



Food and
Nutrition
Service

DATE: September 22, 2021
CODE: COVID-19: Child Nutrition Response # 106

Braddock
Metro Center

SUBJECT: Nationwide Waiver for Selected Child Nutrition Program Reporting Requirements¹

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Place
Alexandria
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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 for Selected Child Nutrition Program Reporting Requirements.
Document ID:	
Z-RIN:	
Date of Issuance:	September 22, 2021
Replaces:	N/A
Summary:	(1) This waiver cancels selected administrative data reporting requirements in the Child Nutrition Programs, specifically the following: FNS-640 Administrative Review Report Form; FNS-828 School Food Authority Paid Lunch Price Report; FNS-874 Local Educational Agency Second Review of Applications; Ameliorative Action Plans for Verification Results; State Agency Food Safety Inspections Report; and Performance-Based Reimbursement (7 Cents) Quarterly Report. (2) This waiver applies to State agencies administrating and LEAs operating the National School Lunch Program and School Breakfast Program. (3) This document relates to: 7 CFR 210.18(n); 42 U.S.C. 1769c (b)(1)(C)(iv); 7 CFR 210.14 (e)(7); 7 CFR 210.15(a)(8); 42 U.S.C. 1769c (b)(6)(E)(ii); 7 CFR 245.11(b)(2); 7 CFR 245.12(i); 42 U.S.C. 1758(h)(3)(B); 7 CFR 210.5(d)(2)(ii); 42 U.S.C. 1758(h)(1)(A)

Pursuant to the authority in 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 based on the exceptional circumstances of this public health emergency, the Food and Nutrition Service (FNS) is

¹ Pursuant to the Congressional Review Act ([5 USC § 801](#) et seq.), the Office of Information and Regulatory Affairs designated this waiver as not major, as defined by [5 USC § 804\(2\)](#).

establishing a waiver on the collection of selected administrative data reporting requirements for State agencies administrating and local educational agencies (LEAs) operating the National School Lunch Program (NSLP), the NSLP Seamless Summer Option (SSO) and School Breakfast Program (SBP), (collectively, Child Nutrition Programs), specifically the FNS-640 Administrative Review Report Form; FNS-828 School Food Authority Paid Lunch Price Report; FNS-874 Local Educational Agency Second Review of Applications; Ameliorative Action Plans for Verification Results; State Agency Food Safety Inspections report; and Performance-Based Reimbursement (7 Cents) Quarterly Report.

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.

This waiver supports the safe provision of meals by aligning Child Nutrition Program reporting requirements in school year (SY) 2021-2022 with the operational flexibilities made available under other nationwide waivers currently offered by FNS. These include previously issued nationwide waivers that allow for the continued service of free meals through the NSLP SSO and modifications to monitoring requirements for school food authorities (SFAs) operating SSO in SY 2021-2022. -The waivers allow State and local program operators to appropriately allocate their limited staffing resources to meal service to best ensure safe service of meals to children..

Furthermore, the COVID–19 pandemic has introduced challenges and limitations that continue to adversely affect State agencies' and LEAs' attempts to submit accurate and complete reports, particularly in the context of reporting related to program monitoring activities. As such, FNS is waiving selected reporting responsibilities based on COVID-19 related impacts for the period specified in the sections below. -

FNS-640 Administrative Review Report Form

Pursuant to the National School Lunch Act (NSLA) Section 22(b)(1)(C)(iv) and regulations at 7 CFR 210.18(n), State agencies shall submit to FNS each year the FNS-640 report² containing the results of the reviews conducted in accordance with 7 CFR 210.18. State agencies must include the results of all administrative reviews conducted in the preceding school year.

Requiring continued preparation and submission of this report despite persistent, widespread limitations would require program operators to devote extensive time and resources to its completion that would be better directed to ensuring meals are provided safely to children.

² The burden associated with reporting data for the FNS-640 is included in the information collection for the Food Programs Reporting System (FPRS), OMB Control #0584-0594, expiration date 07/31/2023.

Therefore, FNS waives, for all State agencies that elect to be subject to this waiver, the requirement at Section 22(b) of the NSLA and 7 CFR 210.18(n) that State agencies submit the FNS-640 report to FNS by March 1, 2022 (which would reflect monitoring activities conducted in SY 2020-2021).

FNS-828 Paid Lunch Price Report

As required in section 12(p)(4) of the NSLA and regulations at 7 CFR 210.14(e)(7) and 7 CFR 210.15(a)(8), school food authorities must annually demonstrate the prices charged for paid meals and the procedures that allow school food authorities to average the pricing of paid lunches at schools throughout the jurisdiction of the school food authority. FNS recognizes that due to the implementation of modified CNP operations, many LEAs will not be operating traditional pricing programs. This complicates a reliable determination of the average pricing of paid lunches established by school food authorities, and presents a further undue burden on local program staff working to respond to COVID-19.

Therefore, FNS waives, for all State agencies that elect to be subject to this waiver, the requirement at section 12(p)(4) of the NSLA, and regulations at 7 CFR 210.14(e)(7) and 7 CFR 210.15(a)(8) that school food authorities and States annually demonstrate the prices charged for paid meals and the procedures that allow school food authorities to average the pricing of paid lunches at schools throughout the jurisdiction of the school food authority for SY 2021-2022.

Please note that this waiver only applies to the reporting requirements for paid lunch prices and *does not* eliminate the underlying requirement for SFAs operating the NSLP to comply with Paid Lunch Equity (PLE) provisions in Section 12(p) of the Richard B. Russell National School Lunch Act, [42 USC 1760\(p\)](#) and implemented in National School Lunch Program regulations at [7 CFR 210.14\(e\)](#). SFAs operating the SSO during SY2021-2022 under the waiver are exempt from the PLE provisions for SY2021-2022.

FNS-874 Second (Independent) Review of Applications

Pursuant to 42 U.S.C. 1769(c) (b)(6)(E)(ii) and 7 CFR 245.11(b)(2), each State agency must submit a report, as specified by FNS, describing the results of the second reviews of eligibility determinations conducted by each LEA in their State. The report must provide information about applications reviewed in each LEA and include activities required under 7 CFR 245.11.

Please note that this waiver only applies to the reporting requirements associated with the independent review process and *does not* eliminate the underlying requirement for LEAs that collect school lunch program applications in SY2021-2022 to conduct independent reviews.

Therefore, FNS waives, for all State agencies that elect to be subject to this waiver, the requirement at 42 U.S.C. 1769(c) (b)(6(E)(ii), and 7 CFR 245.11(b)(2) to submit the FNS-874 for SY 2021-2022.

Ameliorative Action Report

Pursuant to 7 CFR 245.12(i), each State agency must report to FNS any ameliorative actions the State agency has taken or intends to take in LEAs with high levels of applications changed due to verification no later than March 15 of each year. States report this information to FNS on the Ameliorative Action Report.

FNS recognizes that due to the implementation of modified CNP operations in SY 2021-2022 under the flexibilities provided through other COVID-19 waivers, underlying verification activities may be delayed or not occur at all, substantially limiting access to verification information as required under 7 CFR 245.12(i) that would typically serve as the basis for identifying LEAs in need of technical assistance and improvement actions necessary to complete the Ameliorative Action Report. Moreover, because any such verification activities conducted would likely not be representative of a typical school year, the ability for States to identify appropriate corrective actions or draw reliable and generalizable inferences on process improvement needs would be similarly limited.

Therefore, FNS waives, for all State agencies that elect to be subject to this waiver, the requirement at 7 CFR 245.12(i) requiring State agencies to submit to FNS the Ameliorative Action Report for SY 2020-2021.

State Agency Food Safety Inspections Report

As required in section 9(h) of the NSLA, 42 U.S.C. 1758(h)(1)(A) and amended by P.L. 116-94 Stat. 2635, at least twice a year, schools must obtain a food safety inspection conducted by a State or local agency responsible for such inspections. In addition, per requirements at 42 U.S.C. 1758(h)(3)(B), State agencies must annually provide a report on these inspection activities to FNS. However, due to modified procedures continuing in SY 2021-2022, local agencies may be prevented from receiving food safety inspections during the pandemic. While LEAs must still obtain food safety inspections to the maximum extent practicable and in line with existing statutory requirements, FNS recognizes that reporting on these activities is likely to be incomplete for SY 2021-2022. Furthermore, these reporting requirements would result in burden on LEA food service staff, and require State and local program operators to allocate limited staffing resources away from the important efforts associated with meal service and COVID-19 recovery activities.

Therefore, FNS waives, for all State agencies that elect to be subject to this waiver, the requirement included at 42 U.S.C. 1758(h)(3)(B) and amended by P.L. 116-94 Stat. 2635 that each State submit a report of the results of the food safety inspection by a State or local agency for SY 2021-2022.

Performance-Based Reimbursement (7 Cents) Quarterly Report

Per regulatory requirements at 7 CFR 210.5(d)(2)(ii), States must submit a quarterly report to USDA detailing certification of SFA compliance with the provisions of Section 9(f) of the NSLA. This certification is a condition of receiving the additional performance-based reimbursement (7 cents) described in Section 6(b)(3) of the NSLA. FNS recognizes that due to the nationwide waiver to allow SSO for SY 2021-2022, many SFAs will not be operating NSLP/SBP or needing certification of their meal pattern compliance status since most SFAs have already been certified to receive the performance-based reimbursement. Therefore, the applicability of this reporting requirement is limited and the resources to submit this report would be better directed toward COVID-19 recovery activities.

Therefore, FNS waives, for all State agencies that elect to be subject to this waiver, the regulatory requirement at 7 CFR 210.5(d)(2)(ii) that each State submit a quarterly report detailing SFA compliance with the NSLP/SBP meal pattern requirements for School Year 2021-2022. State agencies adopting this flexibility are reminded that while the reporting requirements on certification activities are waived, the requirement to certify each SFA's full compliance with the NSLP/SBP meal patterns prior to their receipt of the additional performance-based reimbursement remains in effect.

* * *

Consistent with Section 2202(a)(2) of the FFCRA, this waiver³ applies automatically to all States that elect to use it, without further application. If the State agency elects to implement this waiver it must notify its respective FNS Regional Office, which will acknowledge receipt. State agencies should inform LEA operators of the cancellation of these reporting requirements as described to prevent any unnecessary application of time and resources.

³ The burden associated with the Nationwide Waiver of Reporting Requirements specified for State agencies and local operators for the National School Lunch Program and School Breakfast Program, along with the requirement for States to elect participation in the Nationwide waiver, will be included in an upcoming change request to OMB Control #0584-0654 FNS Information Collection Needs due to COVID-19 (1/31/22), which also covers the reporting requirements of this waiver under the Paperwork Reduction Act.

As required by section 2202(d), each State that elects to be subject to this waiver must, not later than 1 year after the date such State implemented the waiver(s), submit a report to the Secretary⁴ that includes:

- A summary of the use of this waiver(s) by the State agency and local program operators, and
- A description of whether this waiver(s) resulted in improved services to children.

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

Sincerely,

**SARAH
SMITH
HOLMES**

Digitally signed by
SARAH SMITH
HOLMES
Date: 2021.09.22
11:05:31 -04'00'

Sarah E. Smith-Holmes
Director
Program Monitoring and Operational Support Division

⁴ The burden associated with the Nationwide Waiver of Reporting Requirements specified for State agencies and local operators for the National School Lunch Program and School Breakfast Program, along with the requirement for States to elect participation in the Nationwide waiver, will be included in an upcoming change request to OMB Control #0584-0654 FNS Information Collection Needs due to COVID-19 (1/31/22), which also covers the reporting requirements of this waiver under the Paperwork Reduction Act.