

Food and
Nutrition
Service

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DATE: January 15, 2021

SUBJECT: Families First Coronavirus Response Act (FFCRA) Opt-In Waiver for School Year 2021-2022 National School Lunch Program USDA Foods Entitlement Calculations¹

TO: Special Nutrition Programs
Regional Directors
All Regions

State Directors
Child Nutrition Programs
Food Distribution Programs
All States

Issuing Agency/Office:	Food and Nutrition Service (FNS)
Title of Document:	Opt-In FFCRA Waiver NSLP USDA Foods Entitlement Calculations
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Summary:	Pursuant to section 2202(a) of the FFCRA, as extended by the Continuing Appropriations Act 2021, FNS is establishing a nationwide opt-in waiver to help minimize the impact of coronavirus related school closures on USDA Foods entitlement calculations.
Disclaimer:	The contents of this guidance document have the force and effect of law as authorized by the Families First Coronavirus Response Act (FFCRA, P.L. 116-127)
<i>Body of guidance document follows.</i>	

Pursuant to section 2202(a) of the Families 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) (Continuing Appropriations), and in light of the exceptional circumstances of the novel coronavirus (COVID-19) public health emergency, the Food and Nutrition Service (FNS) is allowing the nationwide *Opt-In Waiver for School Year 2020-2021 National School Lunch Program USDA Foods Entitlement Calculations* (Entitlement Waiver) to continue for school year (SY) 2021-2022. This waiver intends to minimize the impact of SY 2020-2021 COVID-19 related school closures on State Distributing Agencies' (States) SY 2021-2022 USDA Foods entitlement.

¹ Pursuant to the Congressional Review Act (5 U.S.C. §801 et seq.), the Office of Information and Regulatory Affairs designated this memorandum as not a major rule, as defined by 5 U.S.C. § 804(2)

Statutory Authorities

Section 2202(a) of the FFCRA permits the Secretary of Agriculture to establish a nationwide opt-in waiver for the purposes of providing meals under the child nutrition programs as determined by the Secretary.

Section 6(c) of the Richard B. Russell National School Lunch Act (NSLA), 42 USC 1755(c), establishes that the amount of donated agricultural commodities and other foods (USDA Foods) entitlement available to a State each school year for the National School Lunch Program (NSLP) is determined by multiplying the number of lunches served in that State in the preceding school year by the per meal rate established by Section 6(c)(1)(A) & (B). Additionally, consistent with Section 6(c), after the end of each school year, FNS implements an annual entitlement reconciliation, in which the number of lunches served in the preceding year are reconciled with actual lunches served, and the subsequent year's entitlement is adjusted up or down accordingly.

Summary of Waiver

Unfortunately, due to widespread school closures resulting from COVID-19, reimbursable lunch counts have been lower than in a typical school year, which would result in decreases to the NSLP entitlement available to some States, and subsequently fewer USDA Foods provided to States, schools, and children eligible for school meals. Therefore all States elected to participate in the June 16, 2020, Entitlement Waiver, which stated that FNS would not complete the annual entitlement reconciliation process in November 2020. This means:

1. Each State's SY 2019-2020 final assigned entitlement value (which was based on SY 2018-2019 lunch counts) was not reconciled to actual SY 2019-2020 lunch counts; and
2. Each State's SY 2020-2021 preliminary entitlement level (which was assigned to States in January 2020 based on SY 2018-2019 lunch counts) is the final assigned entitlement level for SY 2020-2021.

However, under the terms of the June 16, 2020, Entitlement Waiver, FNS is scheduled to resume the normal entitlement reconciliation process in November 2021, at which time the SY 2020-2021 final entitlement and SY 2021-2022 preliminary entitlement would be reconciled to actual SY 2020-2021 lunch counts.

Due to continued widespread school closures, there is a potential that reimbursable lunch counts will continue to be lower than anticipated throughout SY 2020-2021 in many States across the country. This is in part due to the fact that many States are utilizing the *Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations through School Year 2020-2021 – EXTENSION* to operate the Summer Food Service Program (SFSP) instead of the NSLP, and SFSP meals cannot be used to calculate the State's USDA foods entitlement for the school meal programs.

Therefore, FNS will continue to waive Section 6(c)(1)(C) of the NSLA, for all States that elect to be subject to this waiver. For States electing into this waiver, the following will occur:

1. The SY 2020-2021 final assigned entitlement level will be carried forward and will be the basis for the preliminary SY 2021-2022 entitlement level which FNS will assign to States agencies in January 2021. This means that preliminary SY 2021-2022 entitlement values will continue to be based on SY 2018-2019 lunch counts.
2. Additionally, FNS will once again forego the annual entitlement reconciliation process in November 2021. This means that SY 2020-2021 entitlement will not be reconciled to actual SY 2020-2021 lunch counts and that the SY 2021-2022 final assigned entitlement value will continue to be based on SY 2018-2019 lunch counts.
3. In November 2022, reconciliation will resume as normal. In other words, FNS would plan that SY 2021-2022 USDA Foods entitlement would be reconciled to actual SY 2021-2022 lunch counts and a corresponding positive or negative balance will be carried over into SY 2022-2023 entitlement.

For States that choose not to elect into this waiver, the preliminary SY 2021-2022 entitlement assigned in January 2021 will be calculated using SY 2019-2020 lunch counts and SY 2020-2021 reconciliation will occur as normal in November 2021 using the actual number of lunches served in SY 2020-2021.

This waiver is effective immediately and remains in effect for SY 2021-2022.

Consistent with Section 2202(a)(2) of the FFCRA, this waiver applies to all States that elect to use it, without further application. In order to opt into this waiver, States must notify the Food Distribution Division Program Integrity and Monitoring Branch at SM.FN.FDDPIM@usda.gov by **January 31, 2021**.

Considerations for State Distributing Agencies

In determining whether to opt-in to this waiver, States should carefully assess their specific circumstances. While many States will likely see ongoing lunch count reductions because of the impacts from COVID-19, some States may see an increase in NSLP lunches served in SY 2020-2021 compared to SY 2018-2019.

As mentioned above, meals provided by school food authorities (SFAs) under the Summer Food Service Program (SFSP), including under the *Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations through School Year 2020-2021 – EXTENSION*, are not counted as NSLP lunches. Accordingly, they are not counted in a State's USDA Foods entitlement calculation. However, lunches served under Seamless Summer Option do count as NSLP lunches and thus count towards entitlement. States should review the counts of lunches and meals being served under NSLP, SFSP, and other Child Nutrition programs when determining whether to opt-in to this waiver. State agencies

should note that although SFSP meals do not count towards NSLP entitlement, USDA Foods purchased with NSLP entitlement may be used in SFSP meals.

Reporting Requirements

As required by Section 2202(d), each State that receives this waiver must submit a report to the Secretary not later than one year after the date such State elected to implement the waiver that includes:

- A summary of the use of this waiver by the State and SFAs; and
- A description of whether this waiver resulted in improved services to children.

FNS appreciates the exceptional effort of States and SFAs working to meet the nutritional needs of participants during this challenging time. States should direct entitlement questions to SM.FN.FDDPIM@usda.gov.

/s/ Original Signature on File

Laura Castro

Director

Food Distribution Division