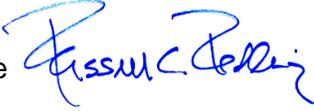




COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF AGRICULTURE

**TO:** Pennsylvania Milk Processors and Brokers

**FROM:** Russell C. Redding, Secretary  
Pennsylvania Department of Agriculture 

**DATE:** November 1, 2021

**RE:** **Available Flexibilities for Milk Purchases in USDA School and Childcare Feeding Programs**

I am writing today to bring your attention to two memos that were recently issued by the Pennsylvania Department of Education (PDE), Division of Food and Nutrition (DFN), to all sponsors of USDA School Nutrition Programs and/or the Child and Adult Care Food Program within the commonwealth with regards to available flexibilities and waivers available for the purchase of fluid milk.

**MEMO #1: Low-Fat (1%) Flavored Milk – Congressional Flexibility Extended – applies to schools only (attached)**

On October 20, 2021, PDE issued a memo to inform schools that, due to recent Congressional action, the provision that had allowed them to serve low-fat (1%) flavored milk in the National School Lunch Program, School Breakfast Program, and Seamless Summer Option – which originally expired on September 30, 2021 – has been extended through December 3, 2021. **This means that until 12/3/2021, schools may offer low-fat (1%) flavored milk in school meals without the need to file a waiver request with PDE.**

As we get closer to the expiration of this extension, our department will continue to monitor this situation and will continue to keep you apprised of any new changes or developments.

**MEMO #2: Emergency Fluid Milk Request during COVID-19 (attached)**

In recognition of the temporary supply chain disruptions that some milk processors are experiencing, resulting in the potential inability to supply allowable fluid milk in sufficient quantities to school and child care programs, PDE issued a memo on November 1, 2021, which **would allow schools and childcare programs to request emergency flexibility to serve forms of milk other than 1% and non-fat (flavored or unflavored) milk temporarily**, until the processor can procure packaging for allowable fluid milk or resolve other issues causing disruption to the supply chain.

During emergencies, USDA regulations permit the state agency to allow schools and childcare providers to serve meals with an alternate form of fluid milk during the temporary emergency period. Supply chain disruptions caused by COVID-19 may be considered a temporary emergency condition for purposes of this flexibility.



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Sponsors of the school and childcare programs who have documentation from their milk supplier of an emergency disruption can contact PDE to request the emergency fluid milk flexibility on a temporary basis. The documentation provided from the supplier to the school or childcare program should provide specific information about the supply chain disruption, explaining why they are unable to supply allowable fluid milk to the school or childcare, what they are able to provide, and, if possible, an estimated time frame for resolution of the supply chain disruption.

The intent of the emergency milk flexibility is to allow sponsors to participate in the program when emergency conditions temporarily prevent delivery of fluid milk. PDE is not authorized to allow ongoing or “blanket” flexibility under this federal regulation. Schools and childcare providers that receive approval to use emergency milk flexibility by PDE may do so only during the temporary supply chain disruption, until allowable fluid milk is again available.

As PDE appropriately notes, “milk is a vital component of the child nutrition programs and provides a composition of nutrients that cannot be replicated.” As proponents of Pennsylvania’s dairy industry, the Pennsylvania Department of Agriculture is proud to partner with PDE to ensure that, despite the supply chain disruptions that are continuing to impact school meals, children in Pennsylvania will continue to have access to locally produced fluid milk that is essential to good health.

If you have any questions regarding either of these provisions, please contact Caryn Long Earl, Director, Bureau of Food Assistance, Pennsylvania Department of Agriculture at [cearl@pa.gov](mailto:cearl@pa.gov) or 717.772.2688.

**TO:** Sponsors of the School Nutrition Program (SNP)

**FROM:** Vonda Ramp, M.S., R.D.  
State Director, Child Nutrition Programs

**DATE:** October 20, 2021

**RE:** Low-Fat (1%) Flavored Milk – Congressional Flexibility Extended

**MESSAGE:**

USDA regulations require that fluid milk offered in the School Nutrition Program, including the School Breakfast Program (SBP), National School Lunch Program (NSLP), and the Seamless Summer Option (SSO), must be unflavored or flavored fat-free milk, or unflavored low-fat milk (1% milkfat or less).

In Section 789, Division A of the Consolidated Appropriations Act 2021 (Public Law No: 116-260), Congress provided that none of the funds made available by the Consolidated Appropriations Act may be used to restrict the offering of low-fat (1%) flavored milk in the NSLP, SBP, and SSO. This flexibility was initially authorized through September 30, 2021.

**Due to recent Congressional action, the flexibility allowing low-fat, flavored milk in the NSLP, SBP, and SSO has been extended through December 3, 2021.** This means that until December 3, 2021, schools may offer low-fat, flavored milk in school meals without filing a School Year (SY) 2021-2022 meal pattern waiver of the requirement that low-fat milk must be unflavored. PDE will provide additional guidance if these provisions are further extended.

The above flexibility only applies to the ability to serve low-fat flavored milk. School Food Authorities must submit requests for other specific meal pattern flexibilities they may need during SY 2021-2022, including a waiver from offering at least two different varieties of fluid milk, using [PDE-05117](#). These targeted waivers must include justifications based on the need to implement Covid-19 safety measures and/or documented supply chain issues:

- Waiver from the requirement that all grains offered must be whole grain-rich (7 CFR 210.10(c); and 220.8(c))
- Waiver from the requirement to serve at least one whole grain-rich serving per day to preschoolers (7 CFR 210.10(o) (3) and (p); and 220.8(o))
- Waiver from meeting the vegetable subgroup requirements (7 CFR 210.10 (c)) and 220.8(c))
- Waiver from offering at least two different varieties of fluid milk (7 CFR 210.10(d)(1)(i) and 220.8(d))
- Waiver from planning menus and offering food components for specified age/grade groups (7 CFR 210.10(c) and 220.8(c))

Questions about the meal pattern flexibilities available for SY 2021-2022 may be sent to: [RA-EDCOVID19MPTNFLEX@pa.gov](mailto:RA-EDCOVID19MPTNFLEX@pa.gov)

**MEMO**

**TO:** Sponsors of the School Nutrition Program (SNP) and Child and Adult Care Food Program (CACFP)

**FROM:** Vonda Ramp, M.S., R.D.  
State Director, Child Nutrition Programs

**DATE:** November 1, 2021

**RE:** Emergency Fluid Milk Request During COVID-19

**MESSAGE:**

The Pennsylvania Department of Education, Division of Food and Nutrition (DFN), is aware of temporary supply chain disruptions that some milk processors are experiencing, including labor and transportation disruptions, milk container shortages, and milk supply issues. Therefore, in some circumstances, milk suppliers may be unable to supply allowable fluid milk in sufficient quantities to meet the needs of your food program.

During emergencies, U.S. Department of Agriculture (USDA) regulations 7 CFR 210.10(d)(2), 7 CFR 220.8(d), and 7 CFR 226.20(e) permit the state agency to allow schools and child and adult care providers to serve meals with an alternate form of fluid milk or without fluid milk, during the temporary emergency period. Supply chain disruptions caused by COVID-19 may be considered a temporary emergency condition for purposes of this flexibility.

Sponsors of the School Breakfast Program (SBP), National School Lunch Program (NSLP), Seamless Summer Option (SSO), and Child and Adult Care Food Program (CACFP), who have documentation from their milk supplier of an emergency disruption, should submit the information noted below to DFN if emergency fluid milk flexibility is needed. DFN will provide approval or disapproval. In order for a meal to be considered reimbursable, the sponsor must have and retain written approval from DFN. For schools, this is consistent with the [USDA Waiver to Allow Fiscal Action Flexibility for Meal Pattern Violations Related to COVID-19 Supply Chain Disruptions Impacting School Meals in School Year 2021-2022 \(#100\)](#) memo issued on September 22, 2021.

**When facing an emergency milk supply issue, sponsors should email the following information to DFN at [RA-EDCOVID19MPTNFLEX@pa.gov](mailto:RA-EDCOVID19MPTNFLEX@pa.gov) as soon as possible:**

- **The specific disruption communicated by your milk supplier; and**
- **The steps you have taken to procure milk for your Program (e.g., inquired about purchasing different variety/fat content of milk that is not usually allowable; tried to obtain milk from at least one additional source, utilizing emergency procurement as needed, etc.).**

Milk is a vital component of the child nutrition programs and provides a composition of nutrients that cannot be replicated. Examples of when an emergency fluid milk request may apply include:

- A school district's milk processor is temporarily unable to procure school-sized cartons or bottles to package allowable fluid milk but has a sufficient supply of 2% milk packaging available. The school district could request emergency flexibility from DFN to serve 2% (flavored or unflavored) milk temporarily, until the processor can procure packaging for allowable fluid milk.
- A milk production issue has made lactose-free milk temporarily unavailable from a childcare center's regular supplier and other local suppliers. If lactose-free milk cannot be obtained, the center can request emergency milk flexibility from DFN. The center would need to reach out to affected families to determine whether a nondairy beverage or another beverage would be acceptable temporarily for their child, until lactose-free milk becomes available.
- Due to temporary supply chain disruptions, a school's milk supplier cannot deliver any fluid milk at all, and the school's efforts to procure any type of fluid milk through other suppliers were unsuccessful. The school can request emergency flexibility from DFN to serve and claim meals without milk during this emergency period. If possible, another beverage, such as water or 100% full-strength juice (understanding this may put the school over the 50% weekly maximum for juice), should be offered with the meal when no type of fluid milk is available.

The intent of the emergency milk flexibility is to allow sponsors to participate in the Program when emergency conditions temporarily prevent delivery of fluid milk. DFN is not authorized to allow ongoing or "blanket" flexibility under this federal regulation. Sponsors approved by DFN to use emergency milk flexibility may do so only during the temporary supply chain disruption, until allowable fluid milk is again available.

DFN appreciates the continuing efforts of schools and childcare providers to work with suppliers through these challenges to procure allowable milk for reimbursable meals and snacks.

Questions and requests for emergency fluid milk flexibility should be sent to:

[RA-EDCOVID19MPTNFLEX@pa.gov](mailto:RA-EDCOVID19MPTNFLEX@pa.gov)