



Food and
Nutrition
Service

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DATE: August 21, 2020

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SUBJECT: Questions and Answers for the Child Nutrition Programs during School Year 2020-2021 – #5¹

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:	Questions and Answers for the Child Nutrition Programs during School Year 2020-2021 – #5
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Date of Issuance:	August 21, 2020
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Summary:	(1) This memorandum provides clarification on questions related to Child Nutrition Program operations during school year (SY) 2020-2021. (2) This memorandum applies to State agencies administering, and local organizations operating, the National School Lunch Program, School Breakfast Program, Child and Adult Care Food Program, and Summer Food Service Program in SY 2020-2021. (3) This document relates to 7 CFR Parts 210, 220, 225, and 226.
Disclaimer:	The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

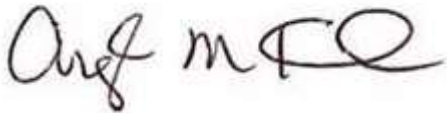
This memorandum includes questions and answers intended to provide clarification to State agencies and Program operators as they transition to the upcoming school year.

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).

Pursuant to the Families First Coronavirus Response Act of 2020 (P.L. 116-127), and based on the exceptional circumstances of this public health emergency, the Food and Nutrition Service (FNS) has issued several nationwide waivers and has exercised existing statutory and regulatory authorities to support access to nutritious meals while minimizing potential exposure to the novel coronavirus. Additional information on the FNS Response to COVID—19 is available at <http://www.fns.usda.gov/coronavirus>.

FNS appreciates the exceptional effort of State agencies and local Program operators working to meet the nutritional needs of child and adult participants during a challenging time. State agencies are reminded to distribute this memorandum to Program operators immediately. Program operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact 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 style with a large initial "A" and a stylized "K".

Angela M. Kline
Director
Policy and Program Development Division

School Reopening – NSLP/SBP

- 1. Are schools required to offer meals to students who are not physically present at school? For example, if a school is operating on a schedule where half the students are physically at school on a given school day and half the students are participating in school through virtual learning, must the students participating in virtual learning be offered a meal?**

If a State agency has not elected to participate in the [*Nationwide Waiver to Allow Non-congregate Feeding in the Child Nutrition Programs \(Extension #2\)*](#), then schools participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) are subject to the congregate feeding requirements.

However, a State agency may elect to use the [*Nationwide Waiver to Allow Non-congregate Feeding in the Child Nutrition Programs \(Extension #2\)*](#). In States that elect to use this nationwide waiver, schools that implement the waiver must offer meals to students participating in offsite virtual instruction and not attending in-person classes. While the Food and Nutrition Service (FNS) strongly encourages schools to accept the flexibilities offered under this waiver and provide meals for all enrolled children, States and school food authorities are not required to accept the flexibilities offered through Federal waivers. If a school chooses to use this waiver to provide non-congregate meals, then meals must be offered to every enrolled student whether they attend virtually or in-person. For example, a school might use this waiver to provide meals to virtual students while continuing to provide congregate meals to students who are physically present. The school has the discretion to choose how non-congregate meals will be offered, e.g., grab and go or meal delivery.

- 2. May schools that offer only virtual classes, do not have a building from which to offer in-person classes, and have not previously qualified as a school eligible to provide meals provide meals to students during COVID-19?**

FNS regulations at 7 CFR 210.2, define a “school” as operating “in a single building or complex of buildings.” Therefore, schools that have always operated entirely virtually and do not normally operate in school buildings would not meet the definition of a school for purposes of the program.

- 3. If schools schedule a shortened school week, e.g., have classes on Monday-Thursday and have Fridays off to clean the building, may they provide meals for the students to take home for Friday through NSLP/SBP?**

If Friday is not a “day of operation” where the school provides instruction then meals may not be provided through NSLP/SBP (7 CFR 210.7(c)). However, if students are given work to do at home and the school considers it an instructional day, meals may be offered if the State has elected to use flexibilities provided under the Nationwide Waiver to Allow Non-congregate Feeding in the Child Nutrition Programs, the Meal

Times Waiver and the Parent Pick-Up Waiver. As a reminder, meals may be offered through the Child and Adult Food Care Program (CACFP) at-risk afterschool meals program during the school year on days when schools are not in session.

4. May students pick up meals at any school within a School Food Authority (SFA), or are they required to pick up meals only at the school they attend?

SFAs that have elected to implement the [Nationwide Waiver to Allow Non-Congregate Feeding in the Child Nutrition Programs – Extension #2](https://www.fns.usda.gov/cn/Nationwide-Waiver-extension2-Non-congregate-Feeding-Child-Nutrition-Programs), June 25, 2020, <https://www.fns.usda.gov/cn/Nationwide-Waiver-extension2-Non-congregate-Feeding-Child-Nutrition-Programs>, may permit students to pick up meals at any school within the SFA. Consistent with the requirements for reimbursement for SFAs found in 7 CFR 210.7(c), each SFA must have a claims reimbursement system in place that accurately reflects the number of free, reduced price, and paid lunches served to eligible children for each school day. SFAs that have elected to implement the [Nationwide Waiver to Allow Parents and Guardians to Pick Up Meals for Children – Extension #2](https://www.fns.usda.gov/cn/covid19/nationwide-waiver-extension-2-parents-guardians-pick-meals), June 25, 2020, <https://www.fns.usda.gov/cn/covid19/nationwide-waiver-extension-2-parents-guardians-pick-meals>, also may permit parents and guardians to pick up meals for their children at any school within the SFA. SFAs may provide meals to students enrolled in schools outside the SFA only if they have an agreement with the student’s SFA to share eligibility information.

5. What is the process for State agency reporting of the required information for each waiver that is due to the Secretary not later than 1 year after the date the State received the waiver?

FNS plans to repurpose the annual School Meals Operations Study to collect the required information from the Families First Coronavirus Response Act waiver activity. The study will begin next spring and will be a census of all Child Nutrition State agencies. The study will include a survey component as well as a review of disaggregated data (at the site or sponsor level) from the FNS-10, FNS-418, and FNS-44. Mathematica will be conducting the study and is scheduled to start data collection in spring 2021. Therefore, State agencies will not be required to individually report to FNS on each of the nationwide waivers elected by the State; participation in the survey will satisfy reporting requirements.

6. For School Year (SY) 2020-2021, some schools are considering providing meals in the classroom rather than the cafeteria. In those situations, do the schools need to display an *And Justice for All* poster in every classroom?

No. It is not feasible or cost-effective to require that each classroom in a school display an And Justice for All Poster. Instead, schools can display posters in prominent locations throughout the school, such as a bulletin board in the main building entrance, the school office, or another area frequently visited by parents and

children. Schools may prefer to copy posters and put one in each classroom, but that is not required.

Meal Pattern and Potable Water

7. Can you share any information regarding the court decision relating to the *Child Nutrition Programs: Flexibilities for Milk, Whole Grains and Sodium Requirements Final Rule*? Are the flexibilities provided under the Final Rule available for SY 2020-2021?

In an April 13, 2020, decision in the *Center for Science in the Public Interest et al., v. Sonny Perdue, Secretary, et al.*, No. 8:19-cv-01004-GLS (D. Md. 2019), the U.S. District Court for the District of Maryland found a procedural error with the promulgation of the 2018 Final Rule, *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (83 FR 63775, December 12, 2018), and therefore, vacated the regulation. For this reason, the flexibilities provided in the vacated rule are no longer available to States and local Program operators. We are moving quickly to ensure SFAs have certainty moving forward.

As a result of the vacatur of the rule in the Maryland case, school meal patterns returned to the requirements of the 2012 final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs*, 77 Fed. Reg. 4088 (Jan. 26, 2012). For SY 2020-2021 in the NSLP, SBP, and CACFP, flavored milk may be only non-fat; all grains served in the NSLP and SBP must be whole-grain rich; and school lunches and breakfasts offered through the NSLP and SBP must meet Target 2 weekly sodium levels as defined in 7 CFR 210.10(c) and 220.8(c).

8. Can SFAs use the COVID-19 Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs to address challenges meeting the meal patterns as a result of the court vacating the *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements Final Rule*?

Due to the coronavirus pandemic, in *COVID-19: Child Nutrition Response #36, Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs – EXTENSION #4*, FNS waived, for all States, the requirements to serve meals that meet the meal pattern requirements during SY 2020-2021 (July 1, 2020 through June 30, 2021). The waiver applies to State agencies administering, and local organizations operating, the NSLP, SBP, and CACFP. The requirements waived by the SY 2020-2021 nationwide waiver are found at 7 CFR 210.10(b) and (c), 220.8(b) and (c), and 226.20.

FNS understands that procurement for SY 2020-2021 was underway when the court decision relating to the *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements Final Rule* was rendered. Therefore, use of the

nationwide meal pattern waiver is allowable if the 2012 requirements cannot be met for SY 2020-2021.

9. Can State agencies approve requests from SFAs to waive the vegetable subgroup requirements and other meal pattern requirements using the nationwide meal pattern waiver?

Yes, the vegetable subgroup requirements and other meal pattern requirements *may* be waived if the State agency determines that waivers are necessary to support access to meals. However, Program operators are encouraged to meet all meal pattern requirements whenever possible.

Under Program regulations at 7 CFR 210.10(b) and (c) and 220.8(b) and (c), NSLP and SBP meals must meet meal pattern requirements. However, the [*Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs – EXTENSION #4*](#) recognizes that, for SY 2020-2021, meal pattern flexibility may be necessary to support safe and consistent access to meals. 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.

10. May State agencies approve requests from SFAs to waive the age/grade group requirements using the nationwide meal pattern waiver for SY 2020-2021?

Yes, the age/grade group requirements *may* be waived if the State agency determines a waiver is necessary to support access to meals. Under Program regulations at 7 CFR 210.10(b) and (c) and 220.8(b) and (c), NSLP and SBP meals must meet meal pattern requirements. However, the [*Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs – EXTENSION #4*](#), June 25, 2020, <https://www.fns.usda.gov/cn/nationwide-waiver-meal-pattern-flexibility-extension-4>, recognizes that, for SY 2020-2021, meal pattern flexibility may be necessary to support safe and consistent access to meals.

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. When possible, Program operators are encouraged to use the overlap between the requirements in different age/grade groups to offer a single menu to multiple grade groups without the use of the meal pattern waiver. For example, Program operators may offer the same breakfast menu to all children in grades K-12. Likewise, Program operators may offer the same lunch menu to all children in grades K-8. The meal pattern for grades 9-12 at lunch requires larger amounts of food to meet the nutritional needs of older children. If an SFA requests to serve the same lunch meal to K-12, the State agency should encourage the SFA to provide extra food to grade 9-12 students, such as an extra piece of fruit.

11. What justification is needed in order for the State agency to approve a meal pattern waiver?

FNS recognizes that, for SY 2020-2021, flexibility and appropriate safety measures are necessary to minimize potential exposure to COVID-19. State agencies may approve meal pattern waivers when the requests are targeted and the waivers are necessary to support safe access to nutritious meals during SY 2020-2021.

Previous versions of the COVID-19 meal pattern waiver required requests to be based upon disruptions to the availability of food products resulting from unprecedented impacts of COVID-19. For SY 2020-2021, State agencies are no longer required to link meal pattern waiver approvals to supply chain disruptions.

12. For what period of time may State agencies approve meal pattern waivers?

Meal pattern waivers should be approved only as needed, but may be approved for the duration of the local educational agency's current COVID-19 educational plan. For example, if a local educational agency announces 100 percent virtual learning through December 2020, a State agency may approve an SFA's request for a meal pattern waiver through December 2020. If the local educational agency revises the educational plan, the SFA may request a new meal pattern waiver, as needed.

13. Are schools required to provide potable water to students eating lunch at school when lunch is served in the classroom?

Yes. When lunch is served in the classroom, schools are required to make water available during the meal service. Schools are generally required to make potable water available to students where meals are served during the meal service (7 CFR 210.10(a)(1)(i)). Although lunch is not typically served in the classroom, due to COVID-19, many schools are considering serving lunch in the classroom to accommodate social distancing. During the COVID-19 pandemic, when lunch is served in the classroom, the potable water requirement does apply.

14. Are schools required to provide potable water to students eating breakfast at school when breakfast is served in the classroom?

No. Consistent with SBP regulations for potable water (7 CFR 220.8(a)(1)) while water must be made available when breakfast is served in the cafeteria schools are not required to make water available when breakfast is served outside of the cafeteria. Schools are encouraged to make potable water available in all meal service locations as safety permits.

15. Are schools required to provide potable water to students who are doing virtual learning and who are not eating lunch at school?

No. The requirement that schools make potable water available to students where lunch is served during the meal service assumes that lunch will be consumed onsite. During the COVID-19 pandemic, when lunch is consumed outside of the school (i.e., lunches are provided via meal delivery, picked up by parents or guardians, etc.), students would not be able to consume the potable water at the onsite location even if it were offered. Accordingly, the potable water requirement does not apply. As noted above, the requirement to provide potable water with school breakfast only applies when breakfast is served in the cafeteria (7 CFR 220.8(a)(1)).

16. Does FNS plan to issue a nationwide waiver of the potable water requirements?

Because the impacts of COVID-19 on the ability of schools to meet the potable water requirement vary among States, FNS does not plan to issue a nationwide waiver of the potable water requirements. However, FNS will consider individual State waiver requests under Section 12(l) of the National School Lunch Act (NSLA) to waive the potable water requirements at 7 CFR 210.10(a)(1)(i) and 220.8(a)(1) when the potable water requirement cannot be met due to COVID-19. Requests to waive the potable water requirements must indicate what alternative plans for providing safe drinking water were considered, why the alternative plans are not feasible, and how schools will mitigate the effects of not providing water (e.g., encourage students to bring water bottles from home, provide students with reusable water bottles, etc.).

Child Care / Afterschool

17. Are child care centers required to serve non-congregate meals to enrolled children who are physically not in care on some, or all, days of the week the center is operating? For example, some children may be receiving virtual instruction while others are being cared for onsite.

Child care centers participating in CACFP are subject to the congregate feeding requirement that restricts meal service to receiving care onsite. However, a State may elect to use the congregate feeding and parent-pick up waivers. While FNS strongly encourages States and child care centers to accept the flexibilities offered under these waivers and provide meals for all enrolled children, there is no requirement to accept the flexibilities offered through Federal waivers. If a center chooses to use these waivers to provide non-congregate meals to any of the children enrolled in care, then meals must be offered to every enrolled child, whether they attend virtually or in-person. The center has the discretion to choose how non-congregate meals will be offered, e.g., grab and go or meal delivery. Parents and guardians have the option to choose not to receive CACFP meals for their children. This also applies to day care homes.

18. During COVID-19 how may we offer the enrichment activity if we are operating in a non-congregate setting for social distancing and safety?

At-risk afterschool care centers providing non-congregate meals under [*Nationwide Waiver to Allow Non-congregate feeding in the Child Nutrition Program – Extension #2*](#) must comply with the requirement to provide an education or enrichment activity (7 CFR 226.17a(b)(1)). However, under the non-congregate and parent pick-up waivers, these activities may be conducted virtually or in other non-congregate ways.

Program operators may consider offering online homework assistance, activity packets, electronic games and books, or other e-learning activities for the children to partake in at home. For example, Team Nutrition offers a variety of online games, books, and nutrition education activities for children at: <https://www.fns.usda.gov/tn/digital-nutrition-resources-kids>. Although children are not required to participate in or complete the activity in order to receive an afterschool meal or snack, the afterschool care center must offer the activity.

19. May school-age children who are attending school virtually and who also are enrolled and attending child care during the day receive meals through both CACFP and school meal programs?

Yes. Students enrolled in both school and child care may receive meals through multiple Child Nutrition Programs. However, State agencies must have an integrity plan with appropriate measures in place to ensure that program accountability is maintained and that program meal limits for the SBP, NSLP, and CACFP are not exceeded. Specific decisions regarding development and implementation of this plan are at the discretion of the State agency. However, the plan must include the processes the State agency is implementing.

School Closure – SFSP/SSO

20. Does an unanticipated school closure occur for the purposes of the Summer Food Service Program (SFSP)/Seamless Summer Option (SSO) of NSLP when school buildings are closed?

If instruction is not provided to children as planned, an unanticipated school closure occurs. If a school plans to offer virtual learning or a mix of in-person classes and virtual learning, any meals provided to children must be claimed through NSLP or SBP. A change in circumstances may cause a school to cease instruction. During the period when no instruction is being provided, an unexpected school closure has occurred, and SSO/SFSP may be operated. Once instruction resumes in any form, the unexpected school closure is ended, and schools must return to providing meals through NSLP/SBP using the many flexibilities that have been provided for SY 2020-

2021 for these programs. Please note that a delay of the school year beginning is not an unanticipated school closure.