



FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

COMMISSIONER NICOLE "NIKKI" FRIED

MEMORANDUM

TO: National School Lunch and School Breakfast Program School Food Authorities (SFAs)

FROM: Lakeisha Hood, Director of Food, Nutrition and Wellness 

SUBJECT: School Nutrition Programs Re-Opening Under COVID-19 for the 2020-2021 School Year Question and Answers (Q&As)

DATE: August 27, 2020

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Pursuant to Section 2202(a) of the Families First Coronavirus Response Act (the FFCRA) (P.L. 116-127) and based on the exceptional circumstances of this public health emergency, USDA Food and Nutrition Service (FNS) extended a number of nationwide waivers to support student access to nutritious meals while minimizing potential exposure to the novel coronavirus (COVID-19) for school year (SY) 2020-2021.

These waivers are posted on the Florida Automated Nutrition System (FANS) Download Forms, COVID-19 section. Consistent with Section 2202(a)(2) of the FFCRA, these waivers are automatically available to SFAs without further application.

- Nationwide Waiver to Allow Non-congregate Feeding in the Child Nutrition Programs – EXTENSION #2
- Nationwide Waiver to Allow Meal Service Time Flexibility in the National School Lunch Program, School Breakfast Program, and Child and Adult Care Food Program – EXTENSION #2
- Nationwide Waiver to Allow Parents and Guardians to Pick Up Meals for Children – EXTENSION #2
- Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs – EXTENSION #4
- Nationwide Waiver to Allow Offer Versus Serve Flexibility for Senior High Schools in the National School Lunch Program for School Year 2020-2021
- Nationwide Waiver of Onsite Monitoring Requirements in the School Meals Programs – EXTENSION #2
- Nationwide Waiver of Food Service Management Contract Duration in the National School Lunch Program and Summer Food Service Program

Consistent with Section 2202(a)(2) of the FFCRA, these waivers are automatically available to SFAs by opting into the flexibility through the National School Lunch Program - Back to School Flexibilities survey. However, in order to participate under the Meal Pattern Flexibility in the Child Nutrition Programs waiver, SFAs must contact the Florida Department of Agriculture and Consumer Services (FDACS), Division of Food, Nutrition and Wellness, for approval to utilize this waiver during SY 2020-2021.

All waivers related to Summer Food Service Program and Seamless Summer Option expire on September 30, 2020, or the date upon which schools reopen if earlier.

FDACS has submitted several statewide specific waiver requests to FNS and is currently awaiting approval. This memorandum will be updated as additional flexibilities are granted.

At this time, SFA meal programs will be required to:

- Operate through National School Lunch and School Breakfast Programs for the 2020-2021 school year.
- Revert to the standard eligibility determination for free, reduce-priced, or paid meals guidelines per program regulations.
- Claim meals only for enrolled students for instructional days.

FNS has released a question and answer document with additional guidance. FDACS has incorporated the FNS Questions & Answers for Child Nutrition Programs below.

School Reopening – NSLP/SBP

1. Can I feed and claim all children for free as we did in the spring when schools closed?

No. In the spring students/children were permitted to be fed through the National School Lunch Program-(NSLP) Seamless Summer Option (SSO) or Summer Food Service Program (SFSP) due to the school closures being unanticipated. Schools were permitted to feed all children for free under regulatory area eligibility or through an area eligibility waiver. As of June 25, 2020, USDA has indicated that SSO and SFSP may no longer operate once schools re-open (remote or in-person) for the 2020-2021 school year. As a result, eligibility determination must resume back to normal determination. Likewise, meal counting and claiming must also resume back to normal point of service meal counts by student eligibility.

2. Will non-congregate feeding continue for SY 2020-2021?

Yes. USDA has waived the congregate meal requirements to ensure appropriate safety measures are taken when providing meals for SY 2020-2021. However, effective September 1, 2020 or beginning of the school year, whichever is sooner, meals will be served and claimed through the NSLP or SBP on instructional days. The non-congregate waiver does not pertain to SSO or SFSP.

3. Will SFAs have to apply to provide non-congregate meals?

No. The Nationwide Waiver to allow non-congregate Feeding in the Child Nutrition Programs released on June 25, 2020, was extended through June 30, 2021 without the need for application; however, FDACS requests that your plan for service of meals in a non-congregate manner be reflected in special Meal Counting and Claiming Procedures and uploaded in FANS.

4. What meal service models are envisioned for COVID-19 meal service for SY 2020-2021?

Each SFA has the flexibility to determine the meal service model(s) that works best for their operation and school reopening policies. A few examples of meal service model options for in-person instructional days that may work include meals in the classroom (CDC recommended), socially-distant cafeterias, and alternate meal consumption locations such as hallways or outside (weather permitting). FDACS has also created several resources to support these service models, which can be found [here](#).

5. 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?

FDACS has elected 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 remote 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, 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.

6. Can you clarify the differences between remote and virtual learning?

Virtual students are enrolled in an approved virtual school or program. Remote learning students may be working online, but they are not enrolled in a virtual school and are enrolled as a traditional student in a National School Lunch Program school. They may return to the physical school building at some point during the year. In addition, remote learning students are students which reside in the LEAs attendance area.

- 7. 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.

- 8. Can remote learners participate in the National School Lunch and School Breakfast Programs?**

Yes, but the meals must be associated back to the physical school building the student is enrolled at and would have consumed the school meals at if non-congregate meal service was not permitted.

- 9. My school will be implementing a combination of in-person and remote instruction. Can we provide breakfast and/or lunch to students on days they attend school remotely?**

Yes, schools are permitted to send meals home (breakfast and lunch) with students or have students or their parents/guardians pick up meals on days when they will be instructed remotely. Students must be enrolled in a traditional brick and mortar school to be eligible to receive program meals. Meals provided to students that are not enrolled in a participating school may not be claimed for reimbursement.

- 10. My school will provide breakfast and lunch to students during school on in-person instructional days and sending meals home with students for their remote learning days. How do we count and claim the meals?**

The Meal Time Flexibility Waiver and Non-Congregate Meal Waiver allow meals to be packaged and sent home with students for their remote learning days. A point of service meal count must still be taken and requires that meals are counted by student for each meal they are served at the time the meal is provided to the student. At the time of the exchange, the SFA is responsible for ensuring the meal is a complete reimbursable meal and that no more than one meal is provided to each student for each approved meal type (breakfast and lunch) for each instructional day. Therefore, meals must be counted by student at the time they are served for the day the meal is intended to be consumed.

Example:

- School ABC has in-person instruction for students on Monday and Wednesday.
- Remote learning is provided on Tuesday, Thursday, and Friday.
- At the end of the day on Monday packaged meals are provided to students for Tuesday’s remote learning day. At the end of the day on Wednesday, packaged meals are provided for students’ remote learning days on Thursday and Friday.

Since a meal count must be recorded for each day a meal is provided, in this example packaged meals provided at the end of the day on Monday must be recorded on point of sale records dated for Tuesday. Packaged meals provided at the end of the day on Wednesday must be recorded on separate point of sale records dated for Thursday and Friday. Regardless of the system the school uses for meal delivery due to COVID-19, meal counts must be taken by student at the point of service.

11. 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 Food Care Program (CCFP) at-risk afterschool meals program during the school year on days when schools are not in session.

12. Can a school serve meals only to free and reduce-priced eligible students?

No. Program regulations require that program meals be available to all enrolled students regardless of their eligibility status.

13. 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.

14. May parents pick up meals for students?

Yes, parents may pick up meals provided the school food authority has a plan for accountability and to protect the integrity of the Child Nutrition Programs that is in accordance with eligibility determination and meal counting and claiming as described above. The School Food Authority's (SFAs) Meal Counting and Claiming Procedures must include processes to ensure that meals are distributed only to parents or guardians of eligible children enrolled in the Local Education Agency (LEA), and that duplicate meals are not distributed to any child. The Meal Counting and Claiming Procedures for parent pick-up must be uploaded in FANS.

15. How do you charge for meals that are taken home?

It depends on your current set-up. Clear communication to families is the key. If you have a Point of Service (POS) system, you should continue to use the system to record meals. If possible, use a POS at the distribution site. School food authorities can also elect to use a pre-pay system. Continue using student meal accounts. School food authorities may not become cashless and must provide a parent/guardian with an option to pay with cash.

16. 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.

17. Will there be flexibilities to the meal service times for SY 2020-2021?

Yes. USDA has waived the meal service time requirements in Program regulations at 7 CFR 210.10(l) and 220.8(l) in the Nationwide Waiver to Allow Non-congregate Feeding in the Child Nutrition Programs for the duration of SY 2020-2021 to support safer access to nutritious meals. This will allow for flexibility for meals served in the physical school building and for meals served to remote learners. For flexibility regarding meal services times on campus adjust the times in FANS site application as needed outside to 10-2 and upload the National Waiver in the required documents for the meal service times waiver. For flexibility regarding the distance learning utilizing the non-congregate waiver upload the Meal Counting and Claiming Procedures for meal service time in FANS.

18. If a full remote learning plan is in place at any point during SY 2020-2021, can meals be claimed through SSO or SFSP as an unanticipated school closure?

No. In the spring students/children were permitted to be fed through SSO or SFSP due to the school closures being unanticipated even though remote instruction was being

provided. Schools were permitted to feed all children for free under regulatory area eligibility or through an area eligibility waiver. As of June 25, 2020, USDA has indicated that SSO and SFSP may no longer operate once schools re-open (remote or in-person) for the 2020-2021 school year and meal service must operate through the NSLP and SBP.

19. Are non-congregate meal distribution sites permitted to be “open sites” allowing students from any LEA to receive a meal?

No. The concept of “open sites” exists only under SSO and SFSP and expires on August 31, 2020 or the beginning of the school year, whichever is sooner. All meals served to remote learners (grab and go, curbside pickup, home delivered, etc.) starting the beginning of the school year, must only be served to students enrolled in the LEA. If a centralized school site(s) is used for meal distribution, point of service meal counts must be reported and claimed for the building which the student is enrolled. While the point of meal distribution is normally considered the location where meals are claimed in FANS, the Nationwide Waiver to Allow Non-congregate Meals permits meals to be served outside of the “normal/traditional cafeteria setting”, but as stated above meals must be associated back to the physical school building the student is enrolled at and would have consumed the school meals at if non-congregate meal service was not permitted.

SFAs should proceed with completing their FANS Sponsor Application and Site Information so that the Sponsor Application is approved for the beginning of the school year. The Sponsor Application and Site Application can be updated as adaptations are made to meal service models, when necessary.

20. Will the provision of multiple grab and go meals on a single serving day be allowed to continue for SY 2020-2021?

Yes. The USDA extension of both the Meal Time Flexibility Waiver and Non-Congregate Meal Waiver on June 25, 2020, allows for the continuation of grab and go meals. Multiple meals may be provided to remote learners. Meals may be provided during the school day, at the end of the day when the student departs to go home for the following days when remote instruction will be occurring or picked up from the school for the remote instructional day(s).

Up to five days’ worth of meals (as approved in FANS) for remote instructional days may be provided at one time. For example, if students are in school for two consecutive days and the following three days are remote instructional days, students can be provided three days’ worth of meals.

As a reminder, only meal types approved on the FANS Site Application may be claimed for reimbursement.

21. May we deliver meals to student homes?

With written consent from parents/guardians, schools may deliver meals to enrolled students for instructional days. The household address and name(s) of enrolled students should be confirmed. Point of service meal counts must be reported and claimed for the building, which the student is enrolled. While the point of service (in this case, meal distribution) is normally considered the location where meals are claimed in FANS, the Nationwide Waiver to Allow Non-congregate Meals permits meals to be served outside of the “normal/traditional cafeteria setting,” but as stated above meals must be associated back to the physical school building the student is enrolled at and would have consumed the school meals at if non-congregate meal service was not permitted.

SFAs must obtain approval for meal delivery from FDACS. The meal service delivery model must be reflected in the special Meal Counting and Claiming Procedures uploaded in FANS.

22. Do SFAs need to request permission from FDACS or complete any forms to utilize any of the Nationwide Waivers?

The Meal Pattern Flexibility Waiver-Extension #4 is the only waiver which is included in this memo that requires SFAs to obtain approval from FDACS prior to utilizing.

Although not a waiver, USDA has specified, that SFAs that wish to deliver meals to student homes must obtain approval from their State agency. SFAs must obtain approval for meal delivery from FDACS.

23. Do Community Eligibility Provision (CEP) schools need to record meal counts by student name?

Normally, CEP schools do not need to record meal counts by student name, unless specifically directed by FDACS (usually associated with a Corrective Action Plan). However, in order to ensure program integrity and accountability and prevent duplication of meal service, CEP schools that serve meals in a non-congregate setting must record meal counts by student name.

Meal Pattern and Potable Water

24. 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).

25. 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.

26. 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, SFAs 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.

27. 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](https://www.fns.usda.gov/cn/nationwide-waiver-meal-pattern-flexibility-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.

28. 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.

29. 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.

30. Will there be any meal pattern flexibilities for SY 2020-2021?

Yes. USDA has waived the requirements of the meal pattern under Program regulations at 7 CFR 210.10(b) and (c), 220.8(b) and (c), in the Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs-Extension #4 The School Food Authority (SFA) must obtain approval from FDACS to utilize this waiver. The Meal Pattern Flexibility Waiver #4 provides State agencies with expanded opportunities to approve waiver requests. Requests should be targeted and justified based on plans to support access to nutritious meals while minimizing potential exposures to COVID-19. Approvals are made on a case-by-case basis. Program operators, to the extent possible, are strongly encouraged to maintain and meet the nutrition standards for each program. SFAs that previously had approval under the Meal Pattern Flexibility Waiver #1, #2, or #3, must reapply for approval in SY 2020-2021.

31. Do we need to offer 2 types of milk at breakfast and lunch?

Yes. The National School Lunch and Breakfast Programs do require that 2 types of milk be offered. Milk must be flavored or unflavored fat free, or 1% white. Two options must be offered.

32. How will Offer versus Serve (OVS) be implemented?

Under the Richard B. Russell National School Lunch Act at 42 USC 1758(a)(3) and Program regulations at 7 CFR 210.10(e), Program operators of high schools must participate in OVS. Due to the COVID-19 public health emergency, USDA issued the Nationwide Waiver to Allow Offer Versus Serve Flexibility for Senior High Schools in the National School Lunch Program on June 25, 2020, suspending the OVS requirement for SY 2020-2021 to support safe access to nutritious meals. This waiver will enable schools to offer complete meals for all meal service styles, including delivery or pickup for students doing distance learning eliminating the OVS requirement.

SFAs with grades 9-12 sites utilizing this waiver should select "No" for question #4 Lunch Section, and if applicable, #4 Breakfast Section on the FANS Site Application. A warning will appear but will not prevent the site application from being submitted. Sites that do not include grades 9-12 will not see a warning when selecting "No" for question #4 Lunch Section and #4 Breakfast Section.

- 33. Our school typically served pre-kindergarten (Pre-K) and Head Start students in the cafeteria. Because they were co-mingled with older students, our school utilized the NSLP and SBP meal pattern. Will this be permitted if Pre-K and/or Head Start students are served in the classroom to maintain social distancing?**

No. If Pre-K and/or Head Start students are no longer co-mingled in the meal service, the Pre-K meal pattern must be followed for meal service to these students. Eligibility determination, meal counting and claiming still follow the NSLP requirements.

- 34. If families are picking up meals for school aged children and have a Pre-K student- does this count as co-mingling and the same food can be provided to the Pre-K through 5th grade students in the car?**

Yes, this is co-mingling. Per SP01-2018, the “service area” refers to the place where students pick up or choose their meal items. If the Sponsor determines the Pre-K student is eligible for meal service because they are enrolled in the school district and has considered all factors in preparation of meals for Pre-K and K-5 students, they may serve the appropriate meal pattern to these students.

- 35. What will be considered “co-mingling” this year? For instance, with social distancing we will have only one age group in the cafeteria at a time...so this would not be considered co-mingling and Pre-K would have to follow the Pre-K meal pattern?**

Correct; this is not co-mingling and the Pre-K meal pattern would need to be followed for the Pre-K students.

- 36. Our school district is considering having the high school students eat at the same time as the Pre-K students, but spaced out. Would this be considered co-mingling?**

This would not be considered co-mingling and the sponsor would have to serve the Pre-K Meal Pattern. See SP37-2017 Q. 3. The option to serve the K-5 meal pattern to preschoolers is only allowed when preschoolers are co-mingled with K-5 students during meal service.

- 37. If all students pick up breakfast in a grab and go bag prior to going to the classrooms, including Pre-K students, is this considered co-mingling?**

If the Pre-K students are being served meals in the same area where the K-5 students have to pick up their meals, then the SFA could serve the K-5 Meal Pattern to the Pre-K students because this is considered co-mingling.

- 38. What is the maximum number of daily/weekly meals allowed through NSLP/SBP for SY 2020-2021?**

Up to three approved (based on approved FANS Site Application) meals may be served each day (breakfast, lunch and/or after school snack) school is in session. Up to five days' worth of approved meals for remote learning days may be provided at one time.

As a reminder, only meal types approved on the FANS Site Application may be claimed for reimbursement.

39. 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.

40. 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.

41. 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)).

42. 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, and FDACS has submitted, 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.).

43. Are we required to accommodate documented special dietary needs?

Yes. Federal regulations require all CNP Sponsors to make substitutions to the standard meal requirements for participants who are considered disabled and whose disability restricts their diet. Please contact the division's Nutrition Standards Section if you need assistance identifying or making dietary accommodations.

Monitoring

44. What flexibilities does the Nationwide Waiver make available for monitoring School Meals?

Per COVID-19: Child Nutrition Response #9: Nationwide Waiver of Onsite Monitoring Requirements in the School Meals Programs, State agencies may elect to waive the on-site portions of the Administrative Review (AR), as defined in 7 CFR 210.18. However, FNS strongly encourages State agencies to review these areas offsite, to the maximum extent practicable.

45. The Nationwide Waiver asks State agencies to continue monitoring activities of Program operations off-site to the maximum extent practicable. Which components of the review can FDACS already conduct off-site?

State agencies are required to complete administrative reviews as described in 7 CFR 210.18 and the Administrative Review manual. While certain portions of the review must occur on site (e.g., meal counting and claiming), FDACS is allowed to complete most portions of the administrative review off-site as described in the AR manual and 7 CFR 210.18. Examples of such activities include reviews of: certification and benefit issuance documentation, verification, production records, menus, local wellness policy, Afterschool Snack Service, and Special Milk Program for Children.

46. The Monitoring Nationwide Waivers asks State agencies and local Program operators to continue monitoring activities of Program operations off-site to the maximum extent practicable. Which components of the review could be conducted offsite?

Desk reviews can be conducted by reviewing records that have been mailed, faxed, or delivered to the State agency. For instance, the State agency monitor may evaluate the school's/institution's audit, budget, and training attendance via desk review. Desk

reviews may be conducted for paperwork-centric areas, such as free and reduced-price meal applications; enrollment rosters; audits; receipts; menus; claims; five-day reconciliation (for all meals, not just one observed); and meal counts vs. Attendance.

47. For portions of the review where direct observation is normally required, what alternatives may State agencies and local program operators use to complete reviews offsite?

In situations where direct observation normally occurs, such as observation of meal preparation, meal pattern components, verification of attendance, and food safety issues, examples of alternatives include State agencies and local Program operators conducting alternative observation using video or photos and/or pictures of meal preparation and meal service. States may also conduct interviews with staff and Program participants to verify information in photos via telephone or video conference.

48. Are Program operators required to submit a waiver request to their State agency to use one of these Nationwide Waivers on Monitoring?

No. These Nationwide Waivers are automatically available to Program operators in States that elect to use them, without further application. However, please note that the waivers includes a required data element requiring each State agency electing to use them to submit a report to the Secretary not later than one year after the State notified the Regional Office it was electing the waiver. Under P.L. 116-127 Sec. 2202, the report must include a summary of the use of the waivers and a description of how the waivers improved services to Program participants. Therefore, FDACS has begun tracking the Program operators that use the waivers from the effective date in order to ease the reporting requirement.

49. Are procurement reviews included in the Nationwide Waiver?

Because FNS regulations do not require that procurement reviews be conducted on-site, State agencies may conduct these activities off-site. Additionally, State agencies have the discretion to complete procurement reviews on the same three-year cycle as ARs or to conduct these reviews on an alternate cycle. The alternate cycle for FDACS is a four-year cycle, which is longer than the current three-year cycle requirement.

50. What records should local Program operators maintain for the Nationwide Waivers on Monitoring?

SFAs are required to maintain records to document compliance with Program requirements. Any local Program operators participating under the waivers should maintain documentation of their participation for future reviews. Documentation may include copies of the FNS issued waivers or a letter provided by the State agency regarding the waivers. In general, otherwise required Program records must be maintained for three years; no additional claim information is required to be maintained.

51. What documentation must an SFA have during an administrative review if they are unable to obtain a food safety inspection during the COVID-19 emergency?

If an SFA is unable to obtain a food safety inspection because the state or local health department has suspended inspections due to the COVID-19 emergency, an SFA would need documentation (e.g., a letter) from the health department that these inspections have been suspended. If the SFA was unable to obtain a food safety inspection because the SFA is closed, the SFA would just need to show that the SFA was closed and therefore unable to obtain the food safety inspection. Both of these circumstances would be outside of the control of the SFA and therefore would not be held against them during an administrative review.

School Closure – SFSP/SSO

52. 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.

Procurement & Food Service Management Company Contracts

53. What procurement flexibilities are available for Food Service Management Company (FSMC) contracts that are at the end of their fourth and last renewal year? What about other contracts?

FNS recognized that in this public health emergency, that many SFAs may not have been unable to conduct a competitive procurement process for a new contract to provide safe and nutritious meals. FNS has waived 7 CFR 210.16(d) to permit SFAs to extend existing FSMC contracts that would not otherwise be eligible for extension through SY 2020-2021 or June 30, 2021. These new or extended FSMC contracts must be executed prior to September 30, 2020.

Additionally, due to the need to secure contracts without delay, SFAs may, pursuant to 2 CFR 200.320(f)(2), use emergency noncompetitive procurement to negotiate a one-year contract for SY 2020-2021. These noncompetitive agreements are subject to state agency approval.

To ensure program integrity, contracts resulting from noncompetitive proposals may not exercise renewal options.

54. SFAs with FSMC contract are purchasing different items to accommodate non-congregate meal service. Should the cost of paper products be included or should the FSMC bill the SFA for those additional products?

Billing of additional costs depends on what costs are included in the existing fixed-price contract. Additional costs amending an SFA-FSMC contract in excess of the Simplified Acquisition Threshold will be subject to 2 CFR 200.323(a), which requires a cost or price analysis in excess of the Simplified Acquisition Threshold, and 7 CFR 210.19(a)(5), which requires state agency review and approval of amendments prior to execution [7 CFR 210.19(a)(5)].

During the COVID-19 operations, SFAs may use the micro-purchase method in 2 CFR 200.320(a) or a noncompetitive proposal as explained in 2 CFR 200.320(f)(2) to obtain the additional goods. SFAs may obtain additional services using these same procurement methods, if applicable. Contracts resulting from noncompetitive proposals are subject to state agency approval and may not exercise renewal options. All costs must be necessary, reasonable, and allocable to be paid using Federal Funds (2 CFR 200.403). When using the micro-purchase method, SFAs are reminded that while price quotes are not required, prices must be reasonable and purchases equitably distributed among qualified suppliers.

Amending contracts executed using noncompetitive proposals in 2 CFR 200.320(f)(2) must follow 2 CFR 200.323(a) as applicable, and as noted above, obtain prior review and approval from FDACS prior to execution.

55. Can SFAs extend contracts with food distributors, milk, dairy, produce and other suppliers with contract periods that ended on or around June 30, 2020?

Federal regulations allow program operators to use a noncompetitive proposal in 2 CFR 200.320(f)(2) to negotiate one-year contracts given the public health emergency with state agency approval.

USDA Foods Entitlement

56. Will SY 2020-2021 USDA Foods entitlement be impacted by the school year (SY) 2019-2020 COVID-19 related school closures?

In light of the exceptional circumstances of the COVID-19 public health emergency, FNS has established a nationwide opt-in waiver for State agencies to minimize the impact of school year (SY) 2019-2020 COVID-19 related school closures on SY 2020-2021 USDA Foods entitlement.

Because FDACS has elected to opt-in to this waiver, the SY 2020-2021 entitlement level will be based on SY 2018-2019 lunch counts. FNS guidance currently states that SY 2021-2022 USDA Foods entitlement will reflect lunches served in SY 2020-2021; however, FDACS will continue monitor and assess the need to request additional flexibility for SY 2021-2022.

Allowable Costs

57. Is the purchase of personal protective equipment or other supplies that are intended to prevent or reduced the spread of COVID-19 an allowable cost?

Yes. Personal protective equipment (e.g., gloves and face masks) as well as cleaning and sanitary supplies are allowable costs during the current public health emergency, provided that such purchases are made in support of child nutrition program operations. All purchases must continue to meet the required criteria of being reasonable, allocable, and necessary (refer to 2 CFR 200.404 and 200.405).

58. May funds from the non-profit food service account be used to cover meal delivery costs and/or the purchase of supplies to facilitate non-congregate meal service during the public health emergency?

Yes. Expenses related to meal delivery and/or provision of meals in non-congregate settings are allowable costs. However, state and local agencies should note that additional reimbursement is not available for these purposes. Further, all such purchases must continue to meet the required criteria of being reasonable, allocable, and necessary (refer to 2 CFR 200.404 and 200.405).

59. May funds from the non-profit food service account be used to purchase bottled water (as an alternative to water fountains and other on-site options) for non-congregate meals served during the public health emergency?

Yes. The purchase of potable bottled water to supplement meals served in non-congregate settings is an allowable cost. For further information, please refer to policy memorandums SP 28- 2011, Water Availability During NSLP Meal Service, CACFP 20-2016 Water Availability in the Child and Adult Care Food Program, and SP 49-2016, CACFP 18-2016, Resources for Making Potable Water Available in Schools and Child Care Facilities. State and local agencies are reminded that milk is expected to be served as part of each reimbursable meal and potable water may not be provided as a substitute for milk.

60. May SFAs pay staff salaries from the non-profit foodservice account when employees are unable to work due to the current public health emergency. Is compensation in the form of hazard pay for employees who are working also allowable?

Yes, but only when such employee absences are covered under the local program operator's established personnel policies. FNS has determined that local program operators with such policies may continue to pay out salaries and benefits to their employees during mandatory closures due to COVID-19, which qualify as an "authorized absence from the job" for affected employees in accordance with the requirements of 2 CFR 200.431(b). These payments must be consistent with the program operator's policy of paying salaries (under unexpected or extraordinary circumstances) from all funding sources, federal and non-federal, and must be fully allocable. Compensation in the form of hazard pay for employees continuing to work is further considered an allowable cost, provided that such compensation is similarly permissible under the program operator's personnel policies, and the hazard pay in question is reasonable.

Any of these covered personnel costs may be charged retroactively to the date upon which mandated staff absences and/or work that occurred when the hazardous conditions related to COVID-19 began. Program operators may draft a new personnel policy if they don't have an existing one in place covering leave, salaries, and benefits during unexpected and extraordinary circumstances. Any new or updated policies must also be fully in accordance with the requirements of 2 CFR, and consistent in their payment of salaries and benefits regardless of the funding sources used/available, both federal and non-federal (as described above).

61. How should SFAs treat non-refundable costs for events and activities that were cancelled due to COVID-19 closures and social distancing protocols?

If a state, institution, or other child nutrition program grantee had expended funds for an approved and otherwise allowable program cost (e.g., travel, meeting registration, supplies) for an event or activity that was cancelled due to COVID-19 closures, and those costs were not refunded by the vendor, the grantee may charge those costs to their program. Grantees should keep records of the original expense, and their attempt to obtain refunds. Grantees should also ensure that any materials of value, such as travel vouchers, supplies, materials, etc., that can be repurposed or used at a later date, are used for the operation of the child nutrition program or a related activity. This flexibility applies only to costs incurred prior to the expiration of OMB Memo, M-20-17, "Administrative Relief for Recipients and Applicants of Federal Assistance Directly Impacted by the Novel Coronavirus, Due to the Loss of Operations."

Equipment Assistance Grants

62. Will FDACS be submitting a waiver request to extend the period of performance of the FY 2018 NSLP Equipment Assistance Grants for reasons related to the COVID-19 public health emergency?

No, a waiver request is not necessary. While the period of performance for the FY 2018 NSLP Equipment Assistance Grants is slated to end on September 30, 2020, the FNS Standard Terms and Conditions for these grants include a provision allowing for a No-Cost-Extension (NCE). The NCE extends the final budget period of a previously approved project one time for up to 12 months, with no additional funding.