

# Monthly Update



## School Nutrition Programs

August 26, 2020

*Distributed to the School Nutrition Program Authorized Representatives Listserv and the Food Service Directors Listserv and posted at [www.kn-eat.org](http://www.kn-eat.org), School Nutrition Programs, What's New*

### **Waiver to Allow Meal Pattern Flexibilities in Child Nutrition Programs - Milk, Whole Grains, and Sodium Requirements Final Rule**

**CACFP 13-2020 Questions and Answers for the Child Nutrition Programs during School Year 2020-2021 - #5** can be accessed at <https://www.fns.usda.gov/disaster/pandemic/covid-19/questions-and-answers-child-nutrition-programs-during-sy-2020-21>

**Questions 7 & 8. 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? Can 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?**

**Answer:** 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.

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 2020-21 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).

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 the SY 2020-21 (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 2020-21. **To opt-in to this waiver to allow flavored low-fat milk for participants 6 years of age and older and/or retaining Target 1 weekly sodium levels and/or at least 50% of the grains served in the NSLP and SBP must be whole grain rich, go to: <https://www.surveymonkey.com/r/PR77327>.**



**Contact your area Child Nutrition Consultant or the Topeka office if you have questions.**

**Stay healthy and safe,**

**Cheryl, Jill and Julie**



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