

Food and
Nutrition
Service

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DATE: June 16, 2020

SUBJECT: Families First Coronavirus Response Act (FFCRA) Opt-In Waiver for School Year 2020- 2021 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:	FFCRA Opt-In Waiver for SY 2020-2021 NSLP USDA Foods Entitlement Calculations
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Summary:	Pursuant to section 2202(a) of the FFCRA, 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) and in light of the exceptional circumstances of the novel coronavirus (COVID-19) public health emergency, the Food and Nutrition Service (FNS) is establishing a nationwide opt-in waiver to minimize the impact of school year (SY) 2019-2020 COVID-19 related school closures on State Distributing Agencies' (SDAs) SY 2020-2021 USDA Foods entitlement.

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.

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)

Section 6(c) of the Richard B. Russell National School Lunch Act (NSLA), 42 USC 1755(c), establishes that the amount of 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, the preceding year's lunches are reconciled with actual lunches served and the subsequent year's entitlement is adjusted up or down accordingly.

Due to widespread school closures resulting from COVID-19, there is a potential that reimbursable lunch counts will be reduced in many States across the country. These reductions may result in decreases to the USDA Foods entitlement available to some SDAs for SY 2020-2021, which could lead to less USDA Foods provided in school meals. Therefore, FNS waives Section 6(c)(1)(C) of the NSLA, for all SDAs that elect to be subject to this waiver, to forego the annual reconciliation process in November 2020. Accordingly, for those States electing into this waiver, the following will occur:

- The preliminary SY 2020-2021 entitlement level, based on SY 2018-2019 lunch counts, which States agencies were assigned in January 2020 for placing SY 2020-2021 orders, will be the final entitlement value assigned for SY 2020-2021.
- In November 2021, reconciliation will occur as normal. In other words, SY 2021-2022 USDA Foods entitlement will reflect lunches served in SY 2020-2021.

For SDAs that choose not to opt-in to this waiver, SY 2019-2020 reconciliation will occur as normal in November 2020 using the actual number of lunches served in SY 2019-2020 and the preliminary SY 2020-2021 USDA Foods entitlement will be adjusted based on this reconciliation.

In determining whether to opt-in to this waiver, States should carefully assess their specific circumstances. While many States will likely see lunch count reductions because of the impacts from COVID-19, some States may see an increase in lunches served in SY 2019-2020 compared to SY 2018-2019. Factors that may influence this include additional lunches being served through child nutrition waivers combined with low overall NSLP participation in SY 2018-2019. Prior to electing into this waiver, SDAs should, to the maximum extent practicable, closely monitor and assess the number of NSLP lunches served in SY 2019-2020 and base their decision on this data.

Consistent with Section 2202(a)(2) of the FFCRA, this waiver applies to all States that elect to use it, without further application. If the State elects to be subject to this waiver, it must notify the Food Distribution Division Program Integrity and Monitoring Branch at SM.FN.FDDPIM@usda.gov by **September 15, 2020**, who will acknowledge receipt.

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 SDA and school food authorities; and

- A description of whether this waiver resulted in improved services to children.

FNS stands ready to provide assistance to areas impacted by COVID-19, and intends to continue supporting access to nutritious meals during this public health emergency.

FNS appreciates the exceptional effort of SDAs and school food authorities 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

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