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Interim State Superintendent of Schools

TO: SM 05-24, CA 03-24, FCC 03-24, MK 02-24, SFSP 03-24

FROM: Julie Fletcher, Executive Director *JF*
Office of School and Community Nutrition Programs

DATE: November 1, 2023

SUBJECT: Clarification of Allowable Flexibilities for Child Nutrition Programs Experiencing Milk Supply Shortages

The U.S. Department of Agriculture (USDA) is aware that schools in multiple States are experiencing milk supply chain challenges related to packaging issues. Under current Program regulations found at [7 CFR 210.10\(d\)\(2\)](#), [220.8\(d\)](#), [225.16\(f\)\(6\)](#), and [226.20\(e\)\(1\)](#), the Maryland State Department of Education (MSDE) may allow Program operators experiencing milk supply shortages to serve meals during an emergency period with an alternate form of fluid milk or without fluid milk.

Although Program operators are expected to meet the fluid milk requirements to the greatest extent possible, supply chain disruptions, including disruptions that limit milk variety or affect serving size, would be considered a temporary emergency condition for purposes of this flexibility. Because this is an existing regulatory flexibility, a waiver is not required for the MSDE to exercise this authority. Additionally, administrative reviews will take into account any waivers or flexibility that have been provided to Program operators.

Questions and answers for agencies participating in the School Breakfast Program and the National School Lunch Program are included.

Agencies should disseminate this information to appropriate personnel. Agencies that need flexibility due to milk supply shortages should contact their program specialist by email.

QUESTIONS AND ANSWERS FOR THE SCHOOL MEALS PROGRAMS

Q1: Can schools exceed the juice requirement at this time?

Response: Although State agencies may allow Program operators experiencing milk supply shortages to serve meals during an emergency period without fluid milk, LEAs must still adhere to the NSLP and SBP meal requirement that no more than half of the fruit or vegetable offerings may be in the form of juice. Additional juice may be offered and served as an “extra” food item but may not credit toward the minimum number of food components/food items a school is required to offer.

Q2: OVS with no milk available at Lunch- Can the LEA offer four components and allow students to decline two?

Response: Under current regulations for offer versus serve (OVS) at lunch (7 CFR 210.10(e)), students must be allowed to decline two components at lunch, *except that* the students must select at least ½ cup of either the fruit or vegetable component. When milk is not available due to supply chain shortages, schools are required to offer the remaining four meal components to meet the OVS lunch requirements. If milk is not offered under this circumstance, this will count as one “declined” meal component; therefore, students are allowed to decline one additional meal component at lunch.

Q3: OVS with no milk available at Breakfast- Can the LEA offer two components and allow students to decline one? Does the School still have to offer four food items, or can they offer three food items if milk would have been one of the items offered if not for the shortage?

Response: Under current regulations for offer versus serve (OVS) at breakfast (7 CFR 220.8(e)), schools must offer a minimum of four food items. Students are allowed to decline one of the four items, provided that students select ½ cup of fruit and/or vegetable. If milk is not offered due to a supply chain shortage, schools may offer three food items, but students will need to take all three food items for a reimbursable breakfast.

Q4: Full meal service with no milk available – Can the LEA serve only two components and possibly only two items at breakfast and only four components/items at lunch?

Response: If milk is not offered due to supply chain shortage, and schools are not using offer versus serve, all other required food components for lunch and breakfast must be served for a reimbursable meal. For breakfast served without milk, schools would be required to serve fruits and grains. For lunch served without milk, schools would be required to serve fruits, vegetables, grains, and meats/meat alternates. Senior high schools must participate in offer versus serve at lunch.