DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 225, and 226

[FNS–2022–0043]

RIN 0584–AE88

Child Nutrition Programs: Meal Patterns Consistent With the 2020–2025 Dietary Guidelines for Americans

AGENCY: Food and Nutrition Service (FNS), Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rulemaking finalizes long-term school nutrition requirements based on the goals of the *Dietary Guidelines for Americans, 2020–2025,* robust stakeholder input, and lessons learned from prior rulemakings. Notably, this rulemaking gradually phases in added sugars limits for the school lunch and breakfast programs and in the Child and Adult Care Food Program, updates total sugars limits for breakfast cereals and yogurt to added sugars limits. As a reflection of feedback from stakeholders, this final rule implements a single sodium reduction in the school lunch and breakfast programs and commits to studying the potential associations between sodium reduction and student participation in the school lunch and breakfast programs. This rulemaking addresses a variety of other school meal requirements, including establishing long-term milk and whole grain requirements. Finally, this rule includes provisions that strengthen Buy American requirements. While this rulemaking takes effect school year 2024–2025, the Department is gradually phasing in required changes over time. Program operators are not required to make any changes to their menus as a result of this rulemaking until school year 2025–2026 at the earliest.

DATES: This final rule is effective July 1, 2024. Phased-in implementation dates for required changes are addressed in the **SUPPLEMENTARY INFORMATION** section of this rule.

ADDRESSES: *Docket:* Go to the Federal eRulemaking Portal at *https://www.regulations.gov* for access to the rulemaking docket, including any background documents.

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SUPPLEMENTARY INFORMATION:

Table of Contents

Table of Abbreviations

AFHK—Action for Healthy Kids
ADA—Americans with Disabilities Act
CACFP—Child and Adult Care Food Program
CNA—Child Nutrition Act
CN–OPS—Child Nutrition Operations Study
FAR—Federal Acquisitions Regulations
FDA—U.S. Food and Drug Administration
FNS—Food and Nutrition Service
HEI—Healthy Eating Index
HMI—Healthy Meals Incentives
ICN—Institute of Child Nutrition
NASEM—National Academies of Science, Engineering, and Medicine
NSLA—National School Lunch Act
NSLP—National School Lunch Program
SBP—School Breakfast Program
SFSP—Summer Food Service Program
SNAP—Supplemental Nutrition Assistance Program
SMP—Special Milk Program
SY—School Year
USDA—U.S. Department of Agriculture

Section 1: Background

On February 7, 2023, the U.S. Department of Agriculture (USDA) published *Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans* [1] (''2023 proposed rule'') to update the school meal pattern requirements based on a comprehensive review of the *Dietary Guidelines for Americans, 2020–2025* (Dietary Guidelines), robust stakeholder input on the school meal patterns, and lessons learned from prior rulemakings.[2] USDA is finalizing that proposed rule, with some modifications based on public input. This final rule is the next step in an ongoing effort toward healthier school meals that USDA and the broader school meals community have been partnering on for well over a decade.

Separately, on January 23, 2020, USDA published a proposed rule, *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs* (''the 2020 proposed rule'').[3] As noted in the 2023 proposed meal pattern rule, based on public comment, USDA is finalizing certain meal pattern provisions from the 2020 proposed rule in this final rule.[4] The following sections address rule provisions that were included in the 2020 proposed rule:

- Section 6: Meats/Meat Alternates at Breakfast
- Section 12: Beans, Peas, and Lentils at Lunch
- Section 14: Meal Modifications
- Section 15: Clarification on Potable Water Requirements
- Section 16: Synthetic *Trans* Fats

Through this rulemaking, USDA is exercising broad discretion authorized by Congress to administer the school

[1] *Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans* (88 FR 8050, February 7, 2023). Available at: *https://www.federalregister.gov/documents/2023/02/07/2023-02102/child-nutrition-programs-revisions-to-meal-patterns-consistent-with-the-2020-dietary-guidelines-for.*

[2] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/.*

[3] *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs* (85 FR 4094, January 23, 2020). Available at: *https://www.federalregister.gov/documents/2020/01/23/2020-00926/simplifying-meal-service-and-monitoring-requirements-in-the-national-school-lunch-and-school.*

[4] Other provisions of the 2020 proposed rule related to program monitoring were finalized in *Child Nutrition Program Integrity* (88 FR 57792, August 23, 2023). Available at: *https://www.federalregister.gov/documents/2023/08/23/2023-17992/child-nutrition-program-integrity.*

lunch and breakfast programs and ensure meal patterns ''are consistent with the goals of the most recent'' *Dietary Guidelines*.[5] See 42 U.S.C. 1752, 1758(a)(1)(B), 1758(k)(1)(B), 1758(f)(1)(A), and 1758(a)(4)(B). Consistent with its historical position, USDA interprets ''consistent with the goals of'' the *Dietary Guidelines* to be a broad, deferential phrase that requires consistency with the ultimate objectives of *Dietary Guidelines* but not necessarily the adoption of the specific consumption requirements or specific quantitative recommendations in the *Dietary Guidelines.* Accordingly, through this final rule, USDA is working to ensure an appropriate degree of consistency between school meal patterns and the *Dietary Guidelines* by considering operational feasibility and the ongoing recovery from the impacts of COVID–19, while also ensuring schools can plan appealing meals that encourage consumption and intake of key nutrients that are essential for children's growth and development.

This rulemaking updates current meal pattern requirements, which were most recently updated in SY 2022–2023 through the final rule, *Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium* (''the transitional standards rule''). USDA intended for the transitional standards rule to serve as a bridge, providing immediate relief as schools returned to traditional school meal service following extended use of COVID–19 meal pattern flexibilities. A detailed overview of the transitional standards rule, USDA's stakeholder engagement campaign, and other factors considered in the proposed rule development can be found in the 2023 proposed rule preamble.[6] With this rule, USDA intends to further align school meal nutrition requirements with the goals of the *Dietary Guidelines, 2020–2025.* This effort is described in greater detail, as informed by public comments on the proposed rule, throughout this preamble.

Phased-In Implementation

For most children, school meals are the healthiest meals they consume in a day,[7] and USDA research has found that school meals contribute positively to the diet quality of all participating students.[8] However, there is still room for improvement. For example, the *Dietary Guidelines for Americans, 2020–2025* indicates that about 70 to 80 percent of school children exceed the recommended daily limit of added sugars.[9] Research suggests that among adolescents, certain poor dietary behaviors—such as skipping breakfast and infrequent consumption of fruits and vegetables—worsened during the COVID–19 pandemic.[10] Updating the school meal patterns is one strategy to increase healthy dietary behaviors among school children for the long term. Many children rely on school meals for more than half of their food each school day, so even small nutritional improvements can make a difference.[11]

At the same time, USDA understands that changes to the meal patterns need to be gradual and predictable to give child nutrition program operators and children time to adapt, and to allow industry time to develop new products. This final rule responds to stakeholder input by building in plenty of time for State agencies, school nutrition professionals, and other program operators to successfully implement the required changes. For example, as discussed in *Section 2: Added Sugars,* USDA is gradually phasing in the product-based and weekly limits for added sugars in the school meal programs. As discussed in *Section 5: Sodium,* this final rule gives schools and manufacturers even more time to reduce sodium compared to the proposed rule. As recommended by numerous stakeholders, it also commits to examining sodium reduction in school meals and assessing the potential impact of these reductions on program operations and student participation. This rulemaking does not make changes to the current whole grain requirements for school meals and continues to allow schools to offer flavored milk, subject to new added sugars limits, to all K–12 students. Although USDA considered alternatives for the whole grain and flavored milk requirements, based on stakeholder input, USDA determined that maintaining the current requirements would best position schools and students for success.

Other changes in this rule simplify program regulations and provide child nutrition program operators more flexibility to successfully plan and prepare meals. These changes will be implemented on a quicker timeline, as they provide optional administrative or operational flexibilities but do not require operators to change menus or operations. For example, this rulemaking makes it easier for schools to offer meats/meat alternates at breakfast by removing the minimum grains requirement. It removes the limit for nut and seed crediting at breakfast, lunch, and supper in the child nutrition programs, making it easier for operators to offer vegetarian meals. This rulemaking also makes it easier for program operators to purchase local foods for the child nutrition programs by allowing ''locally grown, raised, or caught'' to be used as procurement specifications for unprocessed or minimally processed food items.

Each provision of this rule, along with its implementation date, is discussed in greater detail throughout this preamble. A chart outlining each regulatory change and its implementation date is included in *Section 21: Summary of Changes.*

[5] The *Dietary Guidelines, 2020–2025* provide four overarching recommendations: (1) Follow a healthy dietary pattern at every life stage. (2) Customize and enjoy nutrient-dense food and beverage choices to reflect personal preferences, cultural traditions, and budgetary considerations. (3) Focus on meeting food group needs with nutrient-dense foods and beverages and stay within calorie limits. (4) Limit foods and beverages higher in added sugars, saturated fat, and sodium, and limit alcoholic beverages.

[6] *Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans* (88 FR 8050, February 7, 2023). Available at: *https://www.federalregister.gov/documents/2023/02/07/2023-02102/child-nutrition-programs-revisions-to-meal-patterns-consistent-with-the-2020-dietary-guidelines-for.*

[7] Liu J, Micha R, Li Y, Mozaffarian D. *Trends in Food Sources and Diet Quality Among US Children and Adults, 2003–2018.* JAMA. April 12, 2021. Available at: *https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2778453?utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_term=040921.*

[8] ''While USDA school meals were bigger contributors to the caloric intakes of students from less food-secure households, they contributed positively to the diet quality of all participating students . . . For both food-insecure and food-secure students, the average HEI scores for non-school foods were between 55 and 57, whereas school foods scored between 79 and 81. School foods were particularly noteworthy as sources of fruit, dairy, and whole grains.'' U.S. Department of Agriculture. USDA School Meals Support Food Security and Good Nutrition. May 3, 2021. Available at: *https://www.ers.usda.gov/amber-waves/2021/may/usda-school-meals-support-food-security-and-good-nutrition/.*

[9] See ''Percent Exceeding Limits of Added Sugars, Saturated Fat, and Sodium'' on pages 79, 82, and 85. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/.*

[10] Michael SL, Jones SE, Merlo CL, et al. *Dietary and Physical Activity Behaviors in 2021 and Changes from 2019 to 2021 Among High School Students—Youth Risk Behavior Survey, United States, 2021.* MMWR Suppl 2023;72(Suppl-1):75–83. DOI: *http://dx.doi.org/10.15585/mmwr.su7201a9.*

[11] Karen Weber Cullen, Tzu-An Chen, *The contribution of the USDA school breakfast and lunch program meals to student daily dietary intake,* Preventive Medicine Reports. March 2017. Available at: *https://www.sciencedirect.com/science/article/pii/S2211335516301516.*

USDA Support for Child Nutrition Programs

USDA is incredibly grateful for the dedication of child nutrition program operators who serve children healthy meals with kindness and care. USDA understands that some program operators continue to face high food costs and supply chain issues. The Department is committed to continuing to provide program operators with support to help them succeed.

USDA is making a $100 million [12] investment in the Healthy Meals Incentives (HMI) Initiative, which is dedicated to improving the nutritional quality of school meals through food systems transformation, school food authority recognition and technical assistance, the generation and sharing of innovative ideas and tested practices, and grants. As part of a cooperative agreement to develop and implement USDA's HMI Initiative, Action for Healthy Kids (AFHK) has awarded nearly $30 million in grants to 264 small and/or rural school food authorities across 44 States and the District of Columbia. These school food authorities will use funding to modernize their operations and provide more nutritious meals to students. Additionally, AFHK is offering Recognition Awards to celebrate and spotlight school food authorities who use innovative practices, student and community engagement activities, and other strategies to provide meals that are consistent with the *Dietary Guidelines for Americans, 2020–2025.*

USDA also provides support to schools through its annual Patrick Leahy Farm to School Grant Program. These funds support a wide range of farm to school activities designed to improve access to local foods in eligible schools from training, planning, and developing partnerships to creating new menu items, expanding local supply chains, offering taste tests to children, purchasing equipment, planting school gardens, and organizing field trips to agricultural operations.

Finally, USDA will continue to provide technical assistance to State agencies, schools, and other program operators to ensure they have the guidance and support they need to successfully implement this rule. USDA will release updated policy guidance and will host a series of webinars to provide a detailed overview of this rulemaking. In addition, communications resources related to this rulemaking are available on the USDA Food and Nutrition Service website.[13]

Federal Strategies To Reduce Sodium and Added Sugars in the Food Supply

USDA recognizes that schools and child and adult care institutions are part of the broader food environment. In order to successfully make improvements to the child nutrition program meal patterns, stakeholders have emphasized that similar improvements must be made to the broader food environment. For example, stakeholders have suggested that children are more likely to accept lower sodium school meals if the meals they consume outside of school are lower in sodium. Research has shown that consumer preferences and expectations for salty tastes can adjust as dietary intake changes.[14]

To that end, other Federal agencies are supporting efforts to improve dietary behaviors among the U.S. population. For example, the Food and Drug Administration (FDA) is taking an iterative approach to gradually reduce sodium in the U.S. food supply that includes establishing voluntary sodium targets for industry, monitoring and evaluating progress, and engaging with stakeholders. The FDA is especially encouraging adoption of the voluntary targets by food manufacturers whose products make up a significant proportion of national sales in one or more food categories and restaurant chains that are national and regional in scope.[15] These efforts are discussed in greater detail in *Section 5: Sodium.*

The FDA is also committed to reducing added sugars in the U.S. food supply and in individual's diets. In 2016, FDA issued a final rule [16] updating the Nutrition Facts label, which requires, in part, a declaration of the added sugars in a serving of a product and the percent Daily Value (% DV) for added sugars. Manufacturers with $10 million or more in annual sales were required to update their labels by January 1, 2020; manufacturers with less than $10 million in annual food sales were required to update their labels by January 1, 2021.

Additionally, following the 2022 White House Conference on Hunger, Nutrition, and Health, the White House released a National Strategy [17] that highlighted that the intake of added sugars for most Americans is higher than what is recommended by the *Dietary Guidelines* and included several FDA initiatives to accelerate efforts to empower individuals with information and create a healthier food supply. In November 2023, FDA, in collaboration with USDA and the U.S. Department of Health and Human Services, held a virtual public meeting and listening sessions entitled, ''Strategies to Reduce Added Sugars Consumption in the United States.'' This public meeting was a commitment made in the National Strategy and connected Federal agencies, communities, and private industry to explore different tactics for reducing added sugars in the U.S. food supply and in individuals diets. Presentations during this meeting provided a background on added sugars, discussed strategies for reducing added sugars by other countries, and highlighted approaches to increase engagement and education on added sugars. This meeting was accompanied by two days of facilitated listening sessions where participants offered feedback and recommendations for next steps on proposed strategies.

The U.S. Department of Health and Human Service's Office of Disease Prevention and Health Promotion's Healthy People 2030 initiative also includes a focus on reducing consumption of added sugars and sodium in individuals aged 2 years and older.[18] As detailed in *Section 2: Added Sugars* and *Section 5: Sodium,* the *Dietary Guidelines,* which are updated and jointly released by the USDA and the Department of Health and Human Services, recommend limiting foods and beverages higher in added sugars and sodium. Specifically, the *Dietary Guidelines* recommend that added sugars make up less than 10 percent of calories per day for individuals age 2 years and older. The *Dietary Guidelines* also recommend consuming less than 2,300 milligrams of sodium per day—

[12] U.S. Department of Agriculture. *USDA Launches $100 Million Healthy School Meals Initiative, Announces Grant Program for Rural Schools.* September 23, 2022. Available at: *https://www.fns.usda.gov/news-item/fns-0010.22.*

[13] U.S. Department of Agriculture Food and Nutrition Service. Available at: *https://www.fns.usda.gov/.*

[14] The Food and Drug Administration. *Memo: Salt Taste Preference and Sodium Alternatives.* 2016. Available at: *https://www.regulations.gov/document/FDA-2014-D-0055-0152.*

[15] The Food and Drug Administration. *Sodium Reduction.* Available at: *www.fda.gov/SodiumReduction.*

[16] *Food Labeling: Revision of the Nutrition and Supplement Facts Labels* (81 FR 33742, May 27, 2016). Available at: *https://www.federalregister.gov/documents/2016/05/27/2016-11867/food-labeling-revision-of-the-nutrition-and-supplement-facts-labels.*

[17] *Biden-Harris Administration National Strategy on Hunger, Nutrition, and Health,* September 2022. Available at: *https://www.whitehouse.gov/wp-content/uploads/2022/09/White-House-National-Strategy-on-Hunger-Nutrition-and-Health-FINAL.pdf.*

[18] U.S. Department of Health and Human Service's Office of Disease Prevention and Health Promotion. *Health People 2030.* Available at: *https://health.gov/healthypeople.*

and even less for children younger than age 14.[19]

In addition, the historic White House Conference on Hunger, Nutrition, and Health inspired actions to support a whole of society approach to improving nutrition and health. Over $8 billion in public- and private-sector commitments were made to improve food and nutrition security, promote healthy choices, and improve physical activity. USDA expects that, when carried through, the commitments made as part of the White House Conference will support improvements to the broader food environment, thereby supporting efforts to improve nutrition in school and child and adult care settings.

For example, the private sector made the following commitments in fall 2022: [20]

- Danone North America committed to prioritizing new reduced-sugar, low-sugar, and no-added-sugar options in its children's products and pledged that 95 percent of these products will contain less than 10 grams of total sugar per 100 grams of food product by 2030.
- The National Restaurant Association committed to expand its Kids Live Well program to 45,000 additional restaurants and food service locations. Kids Live Well is a voluntary initiative to help restaurants offer healthier meal options for children that meet added sugars, sodium, and calories thresholds established by the latest nutrition science.
- Tyson Foods committed to reformulating and improving the nutritional value of its prepared foods portfolio, with a focus on reducing sodium.
- Walgreens committed to increasing the selection of fresh food in its stores by 20 percent, including a greater variety of fresh produce, and implementing new solutions to highlight healthy ingredients and further reduce harmful ones.

The strides made in school nutrition over the past decade demonstrate that healthier school meals are possible when everyone who plays a part—food industry, school nutrition professionals, USDA, and others—work together toward the common goal of improving children's health. This includes USDA continuing to do its part to ensure schools and other child nutrition program operators have the support they need to successfully implement this rulemaking. USDA recognizes that child nutrition program operators have a challenging job and appreciates their tireless dedication to the children in their care. USDA is continually looking for ways to better support program operators who provide our Nation's children with nutritious meals and snacks. The Department welcomes input from stakeholders on what additional guidance and support State agencies, schools, and other program operators will need to successfully implement this rulemaking.

Overview of Public Comments and USDA Response

USDA appreciates public interest in the proposed rule. USDA initially provided a 60-day public comment period (February 7, 2023, through April 10, 2023). Based on stakeholder requests [21] for additional time to review the rule and assess its impact, USDA extended the public comment period by 30 days. During the 90-day comment period (February 7, 2023, through May 10, 2023), USDA received more than 136,000 comments. Of the total, about 125,000 were form letters from 46 form letter campaigns, and about 5,000 were unique submissions. An additional 6,400 were duplicate or non-germane submissions. USDA received public comments from State agencies, school nutrition professionals, advocacy groups, industry respondents, professional associations, school districts, CACFP sponsoring organizations, dietitians, and individuals, including students, parents and guardians, grandparents, and other caregivers. Overall, over 23,000 respondents, including over 700 unique submissions, supported the proposed rule in its entirety. Over 6,000 respondents, including over 1,000 unique submissions, opposed the proposed rule in its entirety.

Many school nutrition professionals supported provisions of the rule that provide menu planners more flexibility, and provisions that maintain requirements that menu planners have already successfully implemented. For example, a national organization representing tens of thousands of school nutrition professionals offered support for the following provisions that USDA ultimately finalized or committed to in this final rule:

- Maintaining the current requirement allowing all schools to offer fat-free and low-fat milk, flavored and unflavored, to K–12 students.
- Maintaining the current requirement that at least 80 percent of weekly grains offered in school meals are whole grain-rich.
- Committing to conducting a study on potential associations between sodium reduction and student participation.
- Allowing schools more flexibility to offer meats/meat alternates in place of grains at breakfast.
- Allowing tribally operated schools, schools operated by the Bureau of Indian Education, and schools serving primarily American Indian or Alaska Native children to serve vegetables to meet the grains requirement.
- Codifying in regulation that traditional Indigenous foods may be served in reimbursable school meals.
- Allowing nuts and seeds to credit for the full meats/meat alternates component in all child nutrition programs and meals.
- Exempting bean dip from the total fat standard in Smart Snacks regulations.
- Allowing State agencies discretion to make exceptions to the degree requirement for school nutrition directors hired in medium and large districts.

USDA worked in collaboration with a data analysis company to code and analyze the public comments using a commercial, web-based software product. The Summary of Public Comments report is available under the Browse Documents tab in docket FNS–2022–0043. All comments are posted online at *https://www.regulations.gov*.[22]

The following paragraphs describe general themes from the public comments. Many respondents also provided feedback on the specific proposals. This specific feedback is included in the subsequent sections of the preamble, as applicable.

Public Comments: Dedication of School Nutrition Professionals

Several respondents expressed appreciation for the efforts of school

[19] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/.*

[20] The White House. *FACT SHEET: The Biden-Harris Administration Announces More Than $8 Billion in New Commitments as Part of Call to Action for White House Conference on Hunger, Nutrition, and Health.* September 28, 2022. Available at: *https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/28/fact-sheet-the-biden-harris-administration-announces-more-than-8-billion-in-new-commitments-as-part-of-call-to-action-for-white-house-conference-on-hunger-nutrition-and-health/.*

[21] USDA received requests to extend the proposed rule comment period from the American Commodity Distribution Association and the Urban School Food Alliance and from Senator Boozman and Representative Foxx. The letters are available at: *https://www.regulations.gov/comment/FNS-2022-0043-2915* and *https://www.regulations.gov/comment/FNS-2022-0043-12391.*

[22] See: Docket FNS–2022–0043. *Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Dietary Guidelines* for Americans. Available at: *https://www.regulations.gov/docket/FNS-2022-0043.*

nutrition professionals. An advocacy group noted that school nutrition professionals provide balanced, nutritious meals to children, promoting academic success and supporting the entire school community's efforts to enrich the lives of students. Another respondent emphasized that school nutrition professionals are deeply caring people who are invested in children's health and wellbeing. An advocacy group agreed, noting that school nutrition professionals go ''above and beyond'' to keep children nourished; as an example, one respondent described efforts at their school to create menus that are nutritionally balanced, flavorful, and cater to student preferences. When considering options for the final rule, one dietitian urged USDA to listen to the school nutrition professionals who ''do the work'' every day by providing meals to children.

Respondents also commended successful implementation of school meal pattern improvements established under the Healthy Hunger-Free Kids Act. For example, one advocacy group reported that the updated nutrition standards enhanced the nutritional quality of meals and increased student participation. Another advocacy group noted that school nutrition professionals have worked tirelessly to reduce sodium, calories, and fat; to introduce students to whole grain foods; and to increase fruits and vegetables in school meals. Another respondent was proud of efforts made by school nutrition professionals thus far, emphasizing that school meals are the healthiest meals that most students receive each day. A joint response from several elected officials stated that strong school nutrition requirements are ''one of the most important public health achievements in a generation.'' This response also noted that school cafeterias across the country are ''leading the way to serving healthy, delicious, and culturally relevant foods'' to children.

USDA Response: USDA appreciates and agrees with public comments that cited the important work of school nutrition professionals. The Department values the vital work that school nutrition professionals and other child nutrition program operators do every day to keep our Nation's children nourished and healthy. In this final rule, USDA incorporated feedback from individuals with firsthand experience operating the child nutrition programs. For example, this feedback is reflected in *Section 3A: Flavored Milk,* where USDA considered operational challenges that respondents raised in response to the proposal that would have applied different milk requirements across grade levels. USDA also considered child nutrition program operator feedback when determining implementation dates for the provisions of this rule, including in *Section 5: Sodium.*

Public Comments: Nutrition and Health

Over 11,000 respondents cited the need for strong nutrition requirements. For example, an advocacy group suggested that aligning the school meal nutrition requirements with the goals of the *Dietary Guidelines* ''sets our students up for lifelong success.'' Other respondents emphasized the importance of strong nutrition requirements to children's academic achievement and overall wellbeing. A form letter campaign stated that strong nutrition requirements can help to address health disparities and improve nutrition equity. Another respondent agreed, maintaining that the child nutrition programs are important tools in addressing health disparities and advancing nutrition security among communities of color. An advocacy group emphasized the importance of nutritious meals in schools and child care settings, noting that these meals often represent a significant portion of children's food intake. This respondent argued that continued improvement in the meal patterns could reduce children's risk for diet-related diseases. Another advocacy group agreed, stating that the school meal programs provide more than half of some students' calories and are often the healthiest sources of food for school children. An industry respondent described school meals as a nutrition ''success story'' and stated that good nutrition is essential to children's growth, learning, and development. An advocacy group emphasized that the proposed evidence-based standards will ''make school meals even healthier.''

Some respondents, including a form letter campaign, encouraged USDA to go further; for example, by implementing sodium reductions beyond those proposed in the rule. Respondents also encouraged USDA to strengthen the whole grains proposal, by requiring all grains offered in school meals to be whole grain-rich.[23] Others urged USDA to adopt a swifter timeline for implementation; for example, one advocacy group recommended that USDA ''implement the strongest nutrition standards on the fastest timeline possible.'' A few respondents, including an advocacy group, encouraged USDA to update the Summer Food Service Program meal patterns to more closely align with the goals of the *Dietary Guidelines,* including by serving more fruits, vegetables, and whole grains. These respondents emphasized the importance of providing children with healthy, high-quality meals year-round.

USDA Response: USDA appreciates public comments that discussed the importance of strong, science-based nutrition requirements and the positive impact on children's health. The Department agrees with respondents that asserted that meals served in child nutrition programs contribute to healthy dietary patterns and improved dietary outcomes. In this final rule, USDA has considered these important factors, along with the importance of ensuring that the meal patterns are practical and achievable for schools. For example, this final rule will continue to reduce sodium in school meals, while taking a gradual approach to implementation to give schools, students, and the food industry time to adapt to the changes. The Department also acknowledges comments that requested more whole grains in school meals; instead, this final rule continues the requirement that the majority of grains offered be whole grain-rich, while providing schools some flexibility to offer other grains. USDA remains committed to its statutory obligation to establish nutrition requirements for school meals that are consistent with the goals of the *Dietary Guidelines* in efforts to improve the nutritional quality of program meals serve to the Nation's children. While USDA appreciates public comments regarding the Summer Food Service Program, extensive updates to the Summer Food Service Program meal pattern are outside the scope of this rulemaking.

Public Comments: Student Participation

Many respondents expressed concern that the proposed changes could negatively impact student participation and consumption of meals. Some respondents suggested that, if the proposed rule was finalized, students would choose to consume a lunch from home or elsewhere instead of participating in the school meal programs. These respondents argued that this would result in non-participating students consuming a meal that is less nutritious than school meals offered under the current requirements. Other respondents maintained that school nutrition programs would suffer if student participation declines.

[23] To meet USDA's whole grain-rich criteria, a product must contain at least 50 percent whole grains, and the remaining grain content of the product must be enriched.

Respondents also raised concerns that the proposed limits for added sugars and sodium could make school meals less appealing to students. For example, an industry respondent asserted that the proposed added sugars and sodium limits would negatively impact the taste of foods that children enjoy. However, an advocacy group noted that students and families support improving the nutritional quality of school meals, citing the role school meals play in student academic achievement and health. A joint comment from several elected officials suggested that children enjoy healthier school meals, and that the amount of food wasted in schools has not changed since the nutrition requirements were updated in 2012.

USDA Response: Although USDA does not expect that updated nutrition requirements would negatively impact student participation in the school meal programs,[24] the Department acknowledges respondent concerns about the importance of maintaining student participation. The Department strives to advance nutrition security while also ensuring that school meals are appealing and enjoyable to students. The changes finalized in this rule thoughtfully consider both concerns by gradually phasing in required changes, such as the added sugars limits and sodium reduction. This phased-in approach will give program operators and children time to implement and adapt to the changes. Additionally, as noted in *Section 5: Sodium,* as part of this rulemaking, USDA has committed to conducting a study on potential associations between sodium reduction and student participation.

Public Comments: Product Availability

Numerous respondents argued that the proposed meal pattern changes would force vendors out of the child nutrition market, making it more difficult for schools to find products needed to comply with USDA meal requirements. Several respondents expressed concern about increased costs, procurement challenges, and reduced options for school breakfast under the proposed rule. A joint comment from a group of elected officials agreed, arguing that the proposed changes could lead to ''increased complexity'' in school food purchasing, decreasing the number of options available to schools and forcing schools to compete for a limited supply of specialized foods. Respondents also expressed concern about ongoing supply chain issues and food-price inflation. One industry respondent suggested that rather than implementing new requirements, USDA should maintain the current requirements and teach students how to make healthy choices through nutrition education.

A school food service director stated that procurement would be a challenge under the proposed rule and suggested that it takes ''a few years'' for manufacturers to catch up with new regulations. This respondent also suggested manufacturers do not dedicate as much space to school-specific items in their warehouses, which impacts product availability. An advocacy group argued that it takes industry three to five years, and a significant amount of money, to reformulate ''any given product.'' This respondent also pointed out that the K–12 sector tends to be the least lucrative market for the food industry. Another advocacy group agreed, arguing that the cost of producing and stocking specialized K–12 menu items is ''too high,'' and the demand for these products on the commercial market is ''too low.'' A State agency also expressed concern about proposed implementation timeframes, noting that manufacturer and distributor capabilities have not yet returned to pre-pandemic levels. A form letter campaign encouraged USDA to work with the food industry to ensure product availability, particularly for lower sodium products. One respondent stated that school kitchens are understaffed, and school nutrition professionals rely heavily on food manufacturers to provide meals for students. A school district raised concerns about increased pressure for scratch cooking; while this respondent acknowledged they would ''love for more scratch options to be served,'' they did not view this as a realistic option given current staffing challenges.

Respondents also cited the importance of supporting local farmers and producers and helping children learn about where their food comes from. One advocacy group cited the benefits of local food systems, which they argued stimulate local economies and provide reliable product availability during supply chain disruptions. Respondents encouraged USDA to consider equity and inclusion in establishing regulatory requirements; for example, an advocacy group suggested that USDA consider the broader food system and supply chains, including farm workers and other people employed in the food system. This respondent supported efforts to create a fair and sustainable agricultural economy. Another respondent advocated for policies that encourage child nutrition operators to source from socially disadvantaged producers. An advocacy group suggested that purchases made through the child nutrition programs should prioritize respect, equity, and inclusion across the food supply chain. This respondent asserted that supporting local and regional foods systems, including by strengthening support for locally owned agricultural and food processing operations, may create more diversified and resilient supply chains. While offering support for the proposed geographic preference provision, some respondents suggested operators would need more financial support to purchase local foods, especially in the CACFP.

USDA Response: USDA recognizes that many stakeholders expressed concerns about product availability and understands the impact of product availability and cost on the operation of the child nutrition programs, as well as challenges posed by staffing constraints. At the same time, the Department appreciates public comments that cited continuous industry efforts to develop nutritious foods for child nutrition programs, and many of the provisions of this rule incorporate input from industry respondents. For example, USDA agrees with public comments that stated there are products already available that meet the product-based limits for added sugars, which aligns with data collected by USDA.[25] USDA expects that ongoing industry efforts to develop nutritious foods will support product availability for child nutrition programs. USDA considered each of these factors when developing this final rule; for example, by moving forward with important changes while providing ample time for implementation. As detailed in *Section 2: Added Sugars* and *Section 5: Sodium,* USDA is providing about three years for implementation of the weekly added sugars limit and sodium reduction in response to public comments that suggested it takes about

[24] According to USDA research conducted following implementation of the 2012 final rule, ''There was a positive and statistically significant association between student participation in the NSLP and the nutritional quality of NSLP lunches, as measured by the HEI–2010. Rates of student participation were significantly higher in schools with HEI–2010 scores in the third and highest quartiles (that is, the top half) of the distribution compared to the lowest quartile.'' See page 38. U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study Summary of Findings.* Available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.*

[25] U.S. Department of Agriculture Food and Nutrition Service, Office of Policy Support data collection of nutrition label information from major cereal and yogurt manufacturer K–12 and food service catalogs. Data were collected on 191 total cereal products and 110 total yogurt products. See *Regulatory Impact Analysis.*

three years for manufacturers to reformulate products.

Public Comments: Financial Challenges

Many respondents emphasized the importance of investing in school nutrition programs financially. For example, respondents cited concerns about food cost, inflation, meal debt, and supply chain challenges. An advocacy group noted that many stakeholder concerns about the proposed rule are related to resource constraints. This respondent suggested financial pressures undermine the program's goals. Another advocacy group expressed appreciation for the HMI Initiative to support small and rural schools, and supported USDA's plans to provide technical assistance, share best practices, and encourage collaboration with the food industry. One State agency supported increased meal reimbursements, investments in kitchen equipment and infrastructure, and more training opportunities. Another respondent agreed, stating that the program reimbursement rates are ''simply not enough'' to cover food and labor costs, while others suggested schools would need extra supplies or funding to implement the updated meal patterns.

USDA Response: USDA acknowledges public comments from program operators that emphasized that financial sustainability is critical for successful child nutrition program operations. USDA understands that schools and other program operators need support to succeed in implementing updated requirements. As part of this effort, USDA continues to provide high-quality, cost-effective foods through USDA Foods and various grant-funded opportunities. USDA has also provided significant additional financial resources to address specific needs, such as the $3.8 billion in supply chain assistance funds provided in fiscal years 2021, 2022, and 2023 to address product shortages and price increases experienced after the pandemic.[26] While increasing the Federal reimbursement rates is beyond USDA's authority and would require Congressional action, the Department remains committed to providing support to child nutrition program operators.

Public Comments: Practical and Durable Standards

Numerous respondents discussed the need for attainable nutrition requirements. Some respondents asserted that certain proposals are impractical, or that the school nutrition programs cannot move beyond current meal pattern requirements. A handful of respondents suggested maintaining the transitional standards as the permanent school nutrition requirements, suggesting the transitional standards represent a ''middle ground.'' Many respondents recommended that USDA study the impact of the current meal pattern requirements prior to making any further changes.

Respondents cited concerns about the broader food environment, arguing that schools are not solely to blame for children's excess consumption of added sugars and sodium. One respondent pointed out that when considering the full calendar year, many children consume more meals outside of school than in school. This respondent agreed that school meals contribute to children's health but emphasized the importance of improving food choices in other settings. Another respondent recommended that USDA focus on the ''food system as a whole'' and engage in a public health initiative to reduce added sugars and sodium in grocery store foods.

Regarding implementation dates, one dietitian recommended that USDA delay implementation of any new requirements until 2027. This respondent suggested that additional time would allow school nutrition directors to educate staff on upcoming changes and allow industry to develop new food products. A school district agreed, describing the implementation timeframes for added sugars and sodium as ''a little rushed.'' Several respondents specifically recommended delaying implementation of any provisions that would impact CACFP. These respondents raised concerns about a lack of CACFP stakeholder engagement and the importance of providing the CACFP community ample time to prepare for the changes.

Other respondents felt the proposed implementation timeframes were adequate. An advocacy group argued that the food industry could adapt to incremental implementation, which they noted was built into the proposed rule. A State agency agreed, suggesting that the proposed phased-in implementation would provide the opportunity to revise menu offerings, manage inventory, and offer technical assistance. A second State agency affirmed that the proposed implementation dates provide adequate lead time; however, this respondent also noted that timely publication of the final rule would be ''critical'' to allow for product reformulation, procurement, and menu planning. An advocacy group described USDA's phased-in approach as ''reasonable,'' stating that the proposed rule would improve school meals ''in a practical way.'' This respondent suggested that the proposed sodium limits, for example, would give schools time to plan, source, and test meals that meet the proposed limits. Another advocacy group that described the rule as ''scientifically sound and practical'' argued that the proposed rule would give schools time to implement the new requirements while also prioritizing children's health. A joint response from several elected officials maintained that the proposed rule included a ''common-sense incremental approach to implementation, making it feasible for schools and the food industry to have success.'' An advocacy group supported the phased-in implementation for sodium but noted it would be ''incumbent'' upon manufacturers to reformulate products to ensure the limits would be effective.

USDA Response: USDA recognizes that meaningful improvement in the nutritional quality of school meals is best achieved by nutrition requirements that are both ambitious and feasible. The Department also acknowledges public comments that suggested child nutrition program operators need time to successfully implement new requirements, and that feedback is reflected in this final rule. For example, this final rule gradually phases in certain requirements, such as the added sugars limits, to provide program operators time to make menu changes. Additionally, this final rule includes several provisions that provide menu planners with more options to create healthy meals; for example, by making it easier for schools to offer meats/meat alternates at breakfast (see *Section 6: Meats/Meat Alternates at Breakfast*). By incorporating valuable feedback from stakeholders into this final rule, the Department continues to put children's health at the forefront while also ensuring that the program requirements are achievable and set up schools and child and adult care institutions for success.

Public Comments: Other School Nutrition Comments

Some respondents recommended other meal pattern requirements or offered suggestions for USDA to consider. One respondent suggested adding a requirement for ''healthy fats'' in school meals, while another recommended establishing a minimum fiber standard. Another respondent encouraged USDA to provide recipes, training, and nutrition education to

[26] U.S. Department of Agriculture. *FNS Actions to Address COVID–19 Related Supply Chain Disruptions.* Available at: *https://www.fns.usda.gov/supply-chain.*

encourage schools to offer more seafood in school meals. Numerous respondents recommended that USDA restrict or limit the use of artificial or non-nutritive sweeteners in school meals. Others encouraged USDA to provide incentives for fresh fruits and vegetables, rather than restricting certain foods. A form letter campaign and numerous other respondents supported expanding access to vegetarian, vegan, or plant-based school meals. One respondent suggested implementing a plant-based protein requirement in school meals, while another encouraged schools to adopt a ''meat-free day.'' A few respondents noted that Black, Indigenous, and other People of Color (BIPOC) are three times as likely to follow a plant-based diet than white people and suggested that providing more plant-based meals would support equity in the school meal programs. Respondents also cited the importance of meeting cultural food preferences. For example, one advocacy group noted that food is ''socially and emotionally nurturing'' and emphasized the importance of meeting nutrition requirements as well as food preferences. Another advocacy group cited a research brief that suggested that ''enhancing the palatability and cultural appropriateness of meals'' offered would improve meal consumption.

A few respondents, particularly those who operate multiple child nutrition programs, supported stronger alignment of the nutrition requirements for all program meal patterns. A student encouraged USDA to seek student perspectives on meal pattern requirements. This respondent suggested students who participate in the school meal programs would provide important perspectives on food waste, cultural relevance, and nutrition. Although outside the scope of this rulemaking, several respondents supported expanding access to free school meals and providing students with more time to eat school lunch. For example, one respondent noted that studies have shown that even modest increases in time to eat result in ''improved consumption, particularly of fruit and vegetables, and reduced food waste.''

USDA Response: USDA appreciates public comments that provided additional feedback and suggestions for new requirements beyond what was proposed. Certain suggestions, such as adjusting the eligibility requirements for free meals or providing more time for children to eat their meals, are beyond USDA's authority. While USDA does not have authority to regulate the length of school meal periods, USDA encourages schools to provide children adequate seat time to consume their meals. USDA acknowledges public comments encouraging more plant-based meals as a strategy to support equity in school meals. Meal pattern requirements are established to provide the foundation of well-balanced meals, and USDA encourages program operators to develop menus that meet the needs of their diverse communities. This rulemaking provides more opportunities for schools to offer plant-based meals. In response to requests to streamline program requirements, USDA has endeavored to better align child nutrition program requirements in this rulemaking; for example, by aligning nut and seed crediting across all child nutrition programs and meals (see *Section 11: Nuts and Seeds*). While other suggestions outside the scope of this rulemaking, such as developing requirements for ''healthy fats'' and artificial sweeteners, are not included in the final rule, the Department remains committed to providing the technical assistance needed to enable schools to serve diverse, culturally diverse meals to meet the unique needs and preferences of their students.

Public Comments: Child and Adult Care Food Program

Although the proposed rule primarily focused on revisions to the school meal patterns, the following proposals applied to CACFP:

- *Added Sugars:* USDA proposed updating the current CACFP *total* sugars limits for breakfast cereals and yogurt to *added* sugars limits, consistent with the proposed limits for breakfast cereals and yogurt in the school meal programs.
- *Whole grains definition:* USDA proposed adding a definition of ''whole grain-rich'' to CACFP regulations, consistent with the definition USDA proposed adding in school meal regulations.
- *Menu Planning Options for American Indian and Alaska Native Students:* USDA proposed to allow CACFP institutions and facilities serving primarily American Indian or Alaska Native children to substitute vegetables for grains. This proposal also applied to NSLP, SBP, and SFSP.
- *Nuts and Seeds:* USDA proposed to allow nuts and seeds to credit for the full meats/meat alternates component in all child nutrition program meals and snacks. This proposal applied to NSLP, SBP, SFSP, and CACFP.
- *Geographic Preference:* USDA proposed to expand geographic preference options by allowing ''locally grown, raised, or caught'' as procurement specifications for unprocessed or minimally processed food items in the child nutrition programs. This proposal applied to NSLP, SBP, SFSP, and CACFP.
- *Miscellaneous Changes:* USDA proposed to change the name of the ''meats/meat alternates'' meal component to ''protein sources'' in CACFP, consistent with the proposed change in NSLP and SBP. USDA also proposed a few other minor terminology changes and meal pattern table revisions that impact CACFP.
- *Proposals from Prior USDA Rulemaking:* USDA signaled its intent to finalize a prior proposal that would update meal modification regulations for disability and non-disability reasons, impacting NSLP, SBP, and CACFP. USDA signaled its intent to finalize a prior proposal regarding a technical correction for nutrient requirements for fluid milk substitutes, impacting NSLP, SMP, SBP, and CACFP.

With the exception of the proposal to change the name of the ''meats/meat alternates'' meal component to ''protein sources'' in CACFP, which is not finalized, all of the proposed changes to CACFP are finalized in this rulemaking.

USDA received over 90 comments from CACFP sponsoring organizations. USDA also received comments from advocacy groups representing the CACFP community, and hundreds of form letters from individuals who are a part of the CACFP community. An advocacy group recommended that USDA engage CACFP stakeholders before finalizing and implementing the rule. This respondent argued such engagement is necessary to understand the rule's impacts on CACFP, including costs, product availability, and nutritional quality. Another advocacy group emphasized the importance of supporting efforts to stabilize the CACFP workforce. This respondent recommended delaying implementation to ensure that the CACFP community has time to prepare for implementation and provide input on the proposed changes.

Specific feedback from the CACFP community is detailed in the relevant sections throughout this preamble. At a high level, concerns raised by the CACFP community include:

- Potential impact on training, technical assistance, and resource development, especially related to the proposed terminology change for the meats/meat alternates component.
- Potential costs associated with updating websites, materials, menus, and recipes.
- The need for implementation support for the proposed changes, such as the need for tools and resources to

successfully implement the proposed added sugars limits for yogurt and cereal. Specifically, one advocacy group recommended USDA develop an ''approved'' list of products that could be offered under the added sugars limits.

• An overall concern that the proposed rule lacked a ''CACFP lens,'' and therefore did not adequately consider its potential impact on the CACFP community.

The CACFP community also raised concerns about other challenges facing operators that were outside the scope of the proposed rule. For example, respondents noted ongoing pandemic recovery, staff shortages, and vendor losses, and the loss of pandemic-era funding and flexibilities. Respondents emphasized the importance of supporting CACFP, which one advocacy group described as a ''financial and nutritional lifeline'' for many children and families. Other respondents agreed, noting that CACFP plays a ''vital role in supporting good nutrition'' and providing ''quality affordable child care'' for families.

USDA Response: USDA appreciates public comments received on behalf of the CACFP community and agrees that CACFP operators play a vital role in supporting the goals of child nutrition programs. USDA acknowledges that the listening sessions conducted prior to the development of the proposed rule were primarily focused on nutrition requirements for school meal programs, given that the majority of the provisions in the proposed rule relate to NSLP and SBP. However, many of the organizations that USDA engaged with through these listening sessions also advocate on behalf of CACFP and/or SFSP operators, in addition to school meals. USDA also received over 8,000 comments on the transitional standards rule, including comments related to CACFP, which were considered in the development of the proposed rule. Public comments submitted in response to the 2023 proposed rule, including those submitted by the CACFP community, were also crucially important to the development of this final rule. As emphasized throughout the proposed rule, USDA greatly values this feedback. USDA has responded to the CACFP community's feedback in the subsequent sections of the rule, especially *Section 2: Added Sugars* and *Section 20: Miscellaneous Changes.*

Public Comments: Supplemental Nutrition Assistance Program

Several respondents raised concerns about the Supplemental Nutrition Assistance Program, or SNAP, a USDA Federal assistance program. While comments related to SNAP are outside the scope of this rulemaking, USDA is providing a summary of the comments here. Respondents were concerned that SNAP does not impose the same nutrition requirements as USDA's child nutrition programs. These respondents asserted that students, including those participating in SNAP, are exposed to unhealthy food outside of school. Some respondents argued that all Federal nutrition programs, including SNAP, should have the same nutrition requirements. For example, a dietitian suggested that if USDA finalizes added sugars limits for school meals, those limits should also apply to SNAP.

USDA Response: USDA appreciates public comments about SNAP and its relation to the Department's other Federal assistance programs, including the child nutrition programs. USDA's mission is to increase food security and reduce hunger by providing children and income eligible people access to food, a healthful diet, and nutrition education in a way that supports American agriculture and inspires public confidence. Within that mission, USDA administers 16 critical nutrition assistance programs, one of which is SNAP, the Nation's largest domestic food and nutrition assistance program for income eligible Americans. SNAP is the primary source of nutrition assistance for millions of people each month, and SNAP participants can purchase a variety of eligible foods items, as defined by statute.[27] USDA is committed to helping SNAP participants and all Americans make healthier food choices through evidenced-based nutrition education. SNAP-Ed is an evidenced-based, federally funded grant program that supports SNAP participants with nutrition education to help participants maximize benefits and make healthy food choices to promote nutrition security. In USDA's most recent analysis of food purchases by SNAP and non-SNAP households,[28] SNAP households and non-SNAP households purchased similar types of foods, such as fruit, vegetables, and milk. This affirms that SNAP households are purchasing similar types of nutrient-dense foods compared to non-SNAP households. Additionally, USDA encourages healthy eating for SNAP participants through incentive programs, which provide additional ways to make healthy choices, such as purchasing fruits and vegetables, easier for SNAP participants. Recent research [29] shows that participants of the Gus Schumacher Nutrition Incentive Program (GusNIP) reported greater fruit and vegetable intake and improvements in food security. Similarly, in a Healthy Incentive Pilot (HIP) report,[30] participants spent more SNAP benefits on fruits and vegetables than non-HIP households. SNAP incentive programs, along with all USDA Federal nutrition assistance programs, play an important role in making nutritious foods more accessible and affordable. While there are differences across the programs, each of USDA's Federal nutrition assistance programs are critical to advancing nutrition security and promoting healthy dietary patterns.

Section 2: Added Sugars

Current Requirement

Currently, there are no added sugars limits in the school meal programs. Under the current regulations, schools may choose to serve some menu items and meals that are high in added sugars, provided they meet average weekly calorie limits (7 CFR 210.10(f)(1) and 220.8(f)(1)).

The *Dietary Guidelines for Americans, 2020–2025* recommends limiting intake of added sugars to less than 10 percent of calories per day. School meal data from school year (SY) 2014–2015 found that the average percentage of calories from added sugars in school meals was approximately 11 percent in school lunch and 17 percent in school breakfast.[31] The *Dietary Guidelines* further indicate that 70 to 80 percent of all school-aged children exceed the recommended limit for added sugars.[32] The current calorie requirements for the school meal programs are intended to encourage schools to choose nutrient-dense foods and beverages. However,

[27] See: Section 3(k) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(k)).

[28] U.S. Department of Agriculture. *Foods Typically Purchased by Supplemental Nutrition Assistance Program (SNAP) Households.* November 18, 2016. Available at: *https://www.fns.usda.gov/snap/foods-typically-purchased-supplemental-nutrition-assistance-program-snap-households.*

[29] *GusNIP NTAE. Gus Schumacher Nutrition Incentive Program (GusNIP): Impact Findings Y3: September 1, 2021 to August 31, 2022.* Prepared for U.S. Department of Agriculture, National Institute of Food and Agriculture; 2023. Available at: *https://nutritionincentivehub.org/gusnip-ntae-y3-impact-findings.*

[30] U.S. Department of Agriculture. *Evaluation of the Healthy Incentives Pilot (HIP) Final Report.* September 2014. Available at: *https://www.fns.usda.gov/snap/hip/final-evaluation-report.*

[31] Fox MK, Gearan EC, Schwartz C. *Added Sugars in School Meals and the Diets of School-Age Children.* Nutrients. 2021; 13(2):471. Available at: *https://doi.org/10.3390/nu13020471.*

[32] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/.*

USDA determined that a specific added sugars requirement would more effectively reduce added sugars in school meals, consistent with the goals of the *Dietary Guidelines.*

Proposed Rule

USDA proposed to reduce added sugars in school meals through a gradual, phased-in, two-step approach: *product-based limits* followed by a *weekly dietary limit.* First, beginning in SY 2025–2026, USDA proposed to implement quantitative limits for leading sources of added sugars in school meals. The proposed product-based limits were as follows:

- *Grain-based desserts:* would be limited to no more than 2 ounce equivalents per week in school breakfast, consistent with the current limit for school lunch. Examples of grain-based desserts include cereal bars, doughnuts, sweet rolls, toaster pastries, coffee cakes, and fruit turnovers.[33]
- *Breakfast cereals:* would be limited to no more than 6 grams of added sugars per dry ounce.
- *Yogurt:* would be limited to no more than 12 grams of added sugars per 6 ounces.
- *Flavored milk:* would be limited to no more than 10 grams of added sugars per 8 fluid ounces or, for flavored milk sold as a competitive food [34] for middle and high schools, 15 grams of added sugars per 12 fluid ounces.[35]

For the second step, beginning in SY 2027–2028, USDA proposed to implement a dietary specification for added sugars. The dietary specification would limit added sugars to less than 10 percent of calories per week in the school lunch and breakfast programs. This weekly limit would be in addition to the product-based limits described above.

USDA requested public input on both steps as well as the following questions:

- USDA is proposing product-specific limits on the following foods to improve the nutritional quality of meals served to children: grain-based desserts, breakfast cereals, yogurt, and flavored milk. Do stakeholders have input on the products and specific limits included in this proposal?
- Do the proposed implementation timeframes provide appropriate lead time for food manufacturers and schools to successfully implement the new added sugars standards? Why or why not?
- What impact will the proposed added sugars standards have on school meal menu planning and the foods schools serve at breakfast and lunch, including the overall nutrition of meals served to children?

For consistency across child nutrition programs, USDA also proposed to apply the product-based added sugars limits to breakfast cereals and yogurt served in the CACFP; under the proposed rule, the *added* sugars limits would replace the current *total* sugars limits for breakfast cereals and yogurt in CACFP. The proposed product-based limits for CACFP aligned with the proposed limits for school breakfast and lunch, and were as follows:

- *Breakfast cereals:* would be limited to no more than 6 grams of added sugars per dry ounce.
- *Yogurt:* would be limited to no more than 12 grams of added sugars per 6 ounces.

Public Comments

USDA received tens of thousands of comments on added sugars, with most in support of reducing added sugars in school meals. State agencies, school nutrition professionals, advocacy groups, industry respondents, professional organizations, CACFP sponsoring organizations, dietitians, and individual respondents, such as parents and students, provided input on the proposals for added sugars. At a high-level, respondents provided the following feedback on added sugars requirements:

- Limiting added sugars in school meals is important for children's health and academic performance.
- Product-based limits would incentivize the food industry to reformulate products to help schools meet the weekly added sugars limit.
- Many respondents expressed a preference for one type of limit over the other:
- Some respondents suggested that product-based limits would be easier and less burdensome for program operators to implement compared to the weekly limit.
- Other respondents asserted that weekly limits align with recommendations from the *Dietary Guidelines* and would allow more flexibility for menu planners compared to the product-based limits.

The following paragraphs describe specific feedback on the proposal as well as feedback on each step of the proposal: product-based limits and weekly limits.

Reducing Added Sugars and Children's Health

Numerous respondents, including advocacy groups, school districts, school nutrition professionals, parents, and a few form letter campaigns, supported added sugars limits in school meals. Several advocacy groups justified limits on added sugars based on the recommendations from the *Dietary Guidelines.* One advocacy group asserted that reducing added sugars is ''urgent'' because children's current intake of added sugars is high. Other proponents reasoned that implementing added sugars limits in school meals would be beneficial to children's health. An advocacy group applauded the proposal because it makes a distinction between naturally occurring and added sugars and creates an incentive to reduce added sugars in ''hyper-processed products.'' A few parents emphasized that reducing added sugars is a top health priority. One parent strongly supported the proposed limits, stating that currently, ''children who rely on school meals [have] no option but to eat sugary breakfasts.'' An individual cited multiple studies demonstrating the negative impacts of added sugars on health, and an advocacy group noted that consuming too many added sugars can increase the risk of type 2 diabetes and heart disease. A few individuals and a form letter campaign affirmed that reducing added sugars may help address health disparities by improving the overall nutritional quality of school meals.

Challenges With Reducing Added Sugars

Other respondents cited challenges with reducing added sugars in school meals. A school district appreciated USDA's efforts but voiced concerns that an added sugars limit would drastically reduce schools' buying options. One school food service director claimed that school meals are already low in sugar and that tracking added sugars would be another standard to monitor. An industry respondent noted that if the proposed rule is finalized, added sugars would be the only element in the meal pattern ''with two prongs of compliance monitoring,'' as it would be subject to both product-based and weekly limits. A dietitian expressed concern about the palatability of meals, adding that

[33] U.S. Department of Agriculture, *Food Buying Guide for Child Nutrition Programs.* Available at: *https://foodbuyingguide.fns.usda.gov/Appendix/DownLoadFBG.* See: Section 4—Grains, Exhibit A: Grain Requirements for Child Nutrition Programs, for a list of grain-based desserts.

[34] Competitive food is a term to define all food and beverages that are available for sale to students on the school campus during the school day. (7 CFR 210.11(a)(2))

[35] For clarification, USDA proposed a higher added sugars limit for flavored milk sold as a competitive food in middle and high schools due to the larger serving size. The serving size for milk offered as part of a reimbursable meal is 8 fluid ounces. Milks sold to middle and high school students as a competitive food may be up to 12 fluid ounces.

limiting added sugars could negatively impact student participation. One individual supported reducing added sugars, but expressed concern that students will not like the food, which could increase food waste.

One industry respondent argued that the existing calorie ranges ''adequately control for sugar'' and schools ''should not be further regulated'' with added sugars limits. Another industry respondent opposed the proposed added sugars limits due to the cost of product reformulation. An advocacy group also raised concerns about product reformulation, noting that each time a food producer needs to change the specifications of a product, it can take up to three years and cost as much as $750,000 per item. This respondent was concerned that some manufacturers may choose to stop making school-specific items instead of reformulating their products.

Proposed Approach: Product-Based Limits

Over 86,000 respondents, including 96 unique comments, supported the proposed product-based limits in general; comment counts specific to each product-based limit are detailed in each product-based comment summary section, below. A school district suggested that product-based limits would provide helpful benchmarks for initial added sugars reductions. An industry respondent asserted that product-based limits would help reduce added sugars in breakfast items. An individual agreed, stating that limiting high-sugar breakfast items would support children in the classroom as well. This respondent explained that breakfasts that are high in sugar do not provide sustainable energy for students to focus in the classroom. A professional organization stated that product-based limits would promote ''progress toward more nutrient dense'' foods, and that the phased-in approach would allow schools and manufacturers time to ''learn and adapt.''

Other respondents supported the product-based limits but did not support the weekly limit. For example, an advocacy group affirmed that the product-based limits would be easier for schools operationally, noting that CACFP sponsoring organizations have successfully implemented product-based limits for breakfast cereals and yogurt. This advocacy group stated that product-based limits would better align child nutrition program requirements and reduce administrative burden. A State agency suggested that the proposed product-based limits would help to educate the public about the health impacts of added sugars. However, this State agency did not support the weekly limit, asserting that it may be burdensome for schools. A school district also preferred the product-based limits over the weekly limit, suggesting that product-based limits would be easier to implement after schools overcome the initial burden of identifying compliant products. An advocacy group agreed, maintaining that the product-based limits are necessary to reduce added sugars at breakfast, but noting that the weekly limit would ''negatively impact school meal menu planning.'' An industry respondent described the product-based limits as ''appropriate tools to reduce consumption of added sugars,'' and argued that an additional weekly limit would be ''duplicative.''

About 100 respondents, including 81 unique comments, opposed proposed product-based limits in general; comment counts specific to each product-based limit are detailed in each product-based comment summary section, below. A food service director opposed the proposed limits for school breakfast specifically, describing breakfast as an important meal and suggesting that some added sugar encourages students to eat breakfast. An individual stated that product-based limits would decrease the availability of grab-and-go meals and would reduce overall breakfast participation. Several respondents, including industry respondents, school districts, and dietitians, added that product-based limits would hinder alternative breakfast models (*e.g.,* breakfast in the classroom) because pre-packaged, grain-based desserts are more commonly offered in these models. A dietitian claimed that even though some popular whole grain products served at breakfast contain added sugars, the nutritional benefits of these foods ''outweigh the sugar content.'' A State agency agreed that breakfast cereals, yogurt, and flavored milks provide ''numerous essential nutrients'' and raised concerns about the potential negative impacts of decreased consumption under the product-based limits. A few school districts expressed concerns about increased costs. An industry respondent asserted that product-based limits are ''too prescriptive and unnecessarily complicate the nutrition standards.'' Instead of requiring the product-based limits, a State agency suggested USDA partner with K–12 food manufacturers to work toward implementation of voluntary, product-based added sugars limits.

Proposed Product-Based Limit: Grain-Based Desserts at Breakfast

Over 900 respondents supported the proposed limit for grain-based desserts in school breakfast, including 20 unique comments. A parent applauded limits for grain-based desserts at breakfast, suggesting that they would ''encourage more nutrient-dense choices.'' An individual supported limits on grain-based desserts, asserting that schools can ''find healthier ways to serve breakfast.'' A school nutrition professional agreed, supporting a limit on ''desserts [and] sweet entrées during breakfast.'' An advocacy group explained that applying the current school lunch limit for grain-based desserts to school breakfasts (*i.e.,* the ability to offer up to 2 ounce equivalents of grain-based desserts per week) would help simplify menu requirements.

Over 700 respondents opposed the proposed limit for grain-based desserts in school breakfast, including 85 unique comments. Many opponents stated that grain-based desserts are popular among students and that limiting these foods may impact student breakfast participation. An individual raised concerns that schools have few options at breakfast and reducing grain-based desserts would further limit menus. An advocacy group noted that currently, schools offer a variety of grain items at breakfast to promote participation, for example, by including whole grain-rich toaster pastries and whole grain-rich cereal bars daily, along with whole grain donuts and whole grain cinnamon rolls on occasion. This respondent maintained that the proposed rule would severely limit schools' ability to serve these popular items at breakfast. A school district noted that convenient, on-the-go grain items are important options for students who attend morning tutoring to recover from learning loss following the COVID–19 pandemic.

Several respondents cited confusion about the definition of ''grain-based dessert'' as described in *Exhibit A: Grain Requirements for Child Nutrition Programs* of the *Food Buying Guide.*[36] An industry respondent argued that under current policy, grain-based desserts are a ''list of foods with no explanation of what sets them apart from other grain foods.'' This respondent noted this list includes a wide range of foods that can differ

[36] U.S. Department of Agriculture, *Food Buying Guide for Child Nutrition Programs.* Available at: *https://foodbuyingguide.fns.usda.gov/Appendix/DownLoadFBG.* See: Section 4—Grains, Exhibit A: Grain Requirements for Child Nutrition Programs, for a list of grain-based desserts.

vastly in added sugars content. Additionally, this respondent suggested that under the proposed rule, manufacturers would have little incentive to reduce added sugars in grain-based desserts, since these products would still face ''strict limitations,'' regardless of their added sugars content. A State agency noted that items such as cereal bars are not typically identified as ''desserts'' outside of the child nutrition programs and encouraged USDA to reevaluate the food items that are considered grain-based desserts. A form letter campaign agreed, pointing out that many items considered to be grain-based desserts are offered as part of a balanced breakfast at school or at home. A State agency requested clarification on what the proposed grain-based dessert limit for school breakfast would mean for preschool meals, noting that the meal pattern currently does not allow any grain-based desserts to be offered to preschoolers.

Proposed Product-Based Limit: Breakfast Cereals

Over 900 respondents supported the proposed product-based added sugars limit for breakfast cereals, including 20 unique comments. Many respondents supported the proposal for breakfast cereals without providing additional rationale. A State agency affirmed that there are plenty of breakfast cereals that already meet the proposed product-based limit. This State agency also suggested that the implementation date would provide sufficient time for manufacturers to decrease added sugars in non-compliant breakfast cereals. Another State agency supported limiting added sugars in breakfast cereals but recommended increasing the limit to 8 or 9 grams per dry ounce, instead of the proposed 6 grams per dry ounce.

About 50 respondents opposed the proposed product-based limit for breakfast cereals, including 33 unique comments. A school nutrition professional and several school districts expressed concern that the product-based limit for breakfast cereals would severely limit variety. An industry respondent claimed that they provide numerous breakfast cereal options that are inexpensive, convenient, and popular with students, and argued that the product-based limit is not necessary because the weekly limit would effectively limit breakfast cereals that are high in added sugars. This respondent stated that their school breakfast cereals provide less than 8 grams of added sugars per serving, but that the product-based limit would limit their options for schools to only two cereals. A school district argued that the breakfast cereals that meet the proposed product-based limit are not preferred by students.

Proposed Product-Based Limit: Yogurt

Nearly 1,000 respondents supported the proposed product-based added sugars limit for yogurt, including 24 unique comments. An industry respondent suggested that ''many options on the market meet the proposed limit'' for yogurt (12 grams of added sugars per 6 ounces). This respondent noted that manufacturers have greater ability to formulate yogurts that meet a product-based limit, as opposed to a weekly limit. Another industry respondent suggested that some yogurts would meet the proposed product-based limit, while others would not, potentially requiring reformulation. A parent who supported the product-based limit suggested that yogurt could be sweetened with fruit instead of added sugars. A professional organization noted that most yogurt served in their program already meets the proposed product-based limit and described it as ''realistic for manufacturers and programs.''

Forty respondents opposed the proposed product-based added sugars limit for yogurt, including 21 unique comments. A CACFP sponsoring organization asserted that it would limit the yogurt that program operators can offer and only allow varieties that ''children will not want to eat.'' A State agency described the proposed limit as ''confusing,'' noting that most yogurt comes in 4-ounce packages and schools would need to ''do culinary math'' to determine how to apply the limit, which was for 6-ounce packages. An industry respondent suggested that yogurt products should be allowed to have various levels of sugars so that schools have more flexibility in selecting products. One school district shared that yogurt varieties that are currently popular with students at breakfast would not meet the product-based limit. This respondent raised concerns that, under the proposed limit, certain varieties of yogurt would be eliminated from their menus and there would be ''limited choices for replacements.''

Proposed Product-Based Limit: Flavored Milk

Over 900 respondents supported the proposed product-based limit for flavored milks, including 44 unique comments. A State agency maintained that they did not expect the flavored milk limit to be an issue, as dairy suppliers are already working to reduce added sugars in flavored milks. Another State agency and two professional associations also supported the proposed limits, and one of these professional associations noted that most milk producers already meet the proposed limit. A school district confirmed that flavored milks currently offered in their district meet the proposed added sugars limit. An industry respondent suggested that the proposed product-based limit for flavored milks is ''likely achievable'' but cautioned that some reformulation efforts to reduce added sugars have started to impact palatability. An advocacy group recommended applying the added sugars limits for flavored milks to SMP and CACFP ''to ensure maximum positive impact on child health.''

Fifty respondents opposed the proposed product-based limit for flavored milks, all of which were unique comments. A State agency suggested that the product-based limit for flavored milks ''may not be necessary and may cause difficulties for schools lacking access to multiple options.'' This State agency pointed to existing efforts in the dairy industry to reduce added sugars in flavored milks, including the International Dairy Foods Association's recent commitment to lower added sugars in flavored milks available in schools.[37] While acknowledging the great improvement, the State agency noted that, depending on their location, some rural schools may not have access to flavored milk options that meet the proposed limit. Another State agency expressed concern about the proposed limit, noting that producers in their State currently offer a fat-free, flavored milk with 11 grams of added sugars per 8 fluid ounces. This State agency questioned whether it would be worth the financial burden for this producer to reformulate their product to reduce added sugars by 1 gram and meet the proposed 10 grams of added sugars per 8 fluid ounces limit. Another State agency mentioned a milk distributor

[37] In April 2023, the International Dairy Foods Association announced its ''Healthy School Milk Commitment.'' According to a press release from the International Dairy Foods Association, ''[b]eginning with the 2025–2026 school year, 37 school milk processors representing more than 90% of the school milk volume in the United States commit to provide healthy, nutritious school milk options with no more than 10 grams of added sugar per 8 fluid ounce serving.'' See: International Dairy Foods Association. *IDFA Announces 'Healthy School Milk Commitment' to Provide Nutritious Milk with Less Added Sugar for Students in Public Schools, Surpassing USDA Standards.* April 5, 2023. Available at: *https://www.idfa.org/news/idfa-announces-healthy-school-milk-commitment-to-provide-nutritious-milk-with-less-added-sugar-for-students-in-public-schools-surpassing-usda-standards.*

that currently has a flavored milk option with 13 grams of added sugars per 8 fluid ounces. Numerous respondents provided additional input on flavored milks, which is detailed in *Section 3A: Flavored Milk.*

Product-Based Limits: Impact on Child and Adult Care Food Program

USDA also received feedback from the CACFP community about how the proposed product-based limits for breakfast cereals and yogurt would affect CACFP. Several respondents opposed any changes to current CACFP total sugars limits, citing the potential burden of implementing the change and the operational differences between school meals and CACFP. For example, an advocacy group suggested that USDA's review of breakfast cereals and yogurt, which focused on products for K–12 schools, did not necessarily reflect the yogurt products available to CACFP operators. An industry respondent agreed, adding that there may be ''little to no demand for these products in grocery stores,'' and products that are commonly served in schools may not be available in the broader food supply. Another industry respondent suggested that the proposed change for yogurt could impact the type of yogurt available in CACFP, resulting in ''less preferred yogurt types'' offered in the Program.

An advocacy group asserted that making major changes to CACFP nutrition requirements to ''streamline'' work for schools is ''a mistake'' and recommended USDA further engage the CACFP community prior to finalizing the proposed breakfast cereal and yogurt added sugars limits in CACFP. This respondent added that CACFP providers use other Federal assistance programs, rather than school meals, as their point of reference. Another advocacy group noted that for breakfast cereals, the proposed change from 6 grams of *total* sugars per dry ounce to 6 grams of *added* sugars per dry ounce would effectively increase the total sugar allowance. This respondent raised concerns about children's health and did not support what they considered to be a more lenient requirement. A State agency suggested applying the current CACFP total sugars limits for breakfast cereals and yogurt to school meals, instead of finalizing the proposed changes.

Other respondents supported applying the added sugars limits for breakfast cereals and yogurt to CACFP. An industry respondent supported transitioning total sugars limits to added sugars limits, arguing that it ''appropriately reflects updated nutrition guidance.'' A dietitian noted that CACFP operators have successfully implemented total sugars limits and supported updating to added sugars limits because added sugars are now consistently listed on the Nutrition Facts label. An advocacy group agreed, suggesting that the updated Nutrition Facts label provides the information CACFP providers would need to select products, adding that there are numerous products in the marketplace that meet the proposed added sugars limits. Another advocacy group suggested that applying the proposed change to CACFP ''will simplify standards for both industry and program operators.''

A form letter campaign supported the product-based limit for breakfast cereals only if CACFP providers can continue to use a list of allowable products provided by the Women, Infant and Children (WIC) Program to identify breakfast cereals that are allowed in the CACFP. Respondents explained that each State agency administering the WIC program provides a list of allowable foods (WIC list) that meet program nutrition requirements. A few advocacy groups highlighted the importance of the WIC list, with one noting that the majority of CACFP providers shop in retail stores and use the WIC list to easily identify cereals that meet CACFP total sugars requirements. A State agency agreed, describing the WIC list of approved breakfast cereals as ''an important resource used by both the State agency and CACFP sponsoring organizations.'' An advocacy group also highlighted the importance of collaboration between CACFP and WIC, including shared materials and messaging. An individual suggested that USDA develop its own ''approved list'' of breakfast cereals and yogurt that child care providers participating in CACFP could use to easily identify compliant products.

Respondents also offered additional suggestions for how USDA could support the CACFP community in implementing the proposed changes, if finalized. An advocacy group recommended that USDA provide tools and resources to help CACFP providers identify allowable products. A CACFP sponsoring organization encouraged USDA to provide flexibility to operators and sites as they transition from current total sugars limits to the proposed added sugars limits. An advocacy group noted that CACFP sponsoring organizations would need ample time to retrain providers and suggested that USDA provide additional funding to support nutrition education, training, and material revisions at the local level. Another advocacy group noted that family child care providers often run small programs where they take on multiple roles including owner, caregiver, meal preparer, and more. This respondent suggested that child care providers may need additional time to implement the added sugars limits for breakfast cereals and yogurt, noting that the changes will require time, training, money, and technical assistance. However, a State agency suggested that the proposed rule would provide adequate lead time for CACFP operators to successfully implement the changes, noting that the State would have time to train sponsoring organizations and update technical assistance resources. However, the State agency recommended that USDA implement the CACFP changes at the beginning of the fiscal year, rather than the beginning of the school year, to match the start of the CACFP program year.

Proposed Approach: Weekly Limits

Over 76,000 respondents, including 114 unique comments, supported a weekly added sugars limit in the school lunch and breakfast programs—the second step of USDA's proposal to reduce added sugars. A dietitian supported the weekly limit, stating that it gives ''menu planners creative freedom'' to develop a menu that incorporates foods that are currently available in the K–12 market. Another respondent explained that the weekly limit would give schools flexibility to occasionally offer foods that are higher in added sugars, provided they are balanced with foods that are lower in added sugars throughout the week.

Some respondents supported a weekly limit only and did not support the product-based limits. For example, an advocacy group suggested that a weekly limit would be easier to monitor, require less training, and provide more flexibility for operators, while still reducing overall intake of added sugars. This respondent suggested that all foods can fit into a healthy diet, just in different amounts and frequencies. An industry respondent also supported the weekly limit only, claiming that product-based limits would cause additional burden to monitor and limit student choice, which could reduce participation. Another industry respondent agreed, suggesting that a 10 percent weekly limit in lunch and breakfast programs provides flexibility for operators, maintains options for students, and gives manufacturers time to reformulate. This respondent argued that the product-based limits would ''reduce opportunities for whole grain intake'' due to the limitation of popular

grains items that contain added sugars, such as granola bars. A school district indicated that the weekly limit would be easier to implement and track and allow schools to decide ''where to spend'' their added sugars in lunch and breakfast menus. An advocacy group supported the weekly limit and suggested the two-step approach would ''cause a lot of confusion and be difficult to manage and document.''

Forty-eight respondents opposed the weekly limit, the majority of which were unique comments. A school district argued that the weekly limit would ''significantly increase administrative burden.'' A State agency agreed, citing specific concern about the potential burden on small, rural districts that do not use menu planning software and may not have the staff capacity to calculate additional dietary specifications. An industry respondent suggested that a weekly limit may ''inadvertently lower the amount of yogurt and dairy'' offered in school meals, which they asserted could decrease ''the nutritiousness of meals.''

Two-Step Approach: Product-Based and Weekly Limits

Some respondents supported both steps of USDA's phased-in approach to reduce added sugars in school meals and emphasized the importance of the product-based and weekly limits. An advocacy group strongly supported both proposals, noting that product-based limits alone would not achieve dietary recommendations for added sugars. This respondent emphasized the importance of implementing a weekly limit, while also pointing out the benefits of product-based added sugars limits—particularly for foods that are commonly served in school meals. A professional association also supported the two-step approach, suggesting that it would allow ''schools, food manufacturers, and distributors time to learn and adapt.'' An advocacy group supported both added sugars proposals, but acknowledged that between the two, a weekly limit would be ''more effective'' to meet the *Dietary Guidelines* recommendations. Another advocacy group described USDA's two-step approach as ''balanced and practical'' and supported phasing in the product-based limits, followed by the weekly limit. A group of Federal elected officials applauded USDA's proposed ''gradual, phased-in approach'' to reducing added sugars in school meals. An advocacy group added that the ''combination of product-based and weekly limits are especially important'' given children's current, excessive intake of added sugars.

Proposed Implementation Timeframes

Over 300 respondents addressed the proposed implementation timeframes, including 96 unique comments. Several respondents suggested that USDA provide schools and industry more time for implementation. A dietitian and a school nutrition director asserted that the product-based limits do not provide manufacturers enough lead time and emphasized that reformulating products takes time and money. A school district stated that they ''have faith'' that manufacturers can reduce added sugars over time and students will adapt, but they do not think two years is adequate. This respondent was concerned about the potential impact on student participation, noting the importance of providing breakfast cereals and other food items that students enjoy. A respondent who supported the proposals expressed concern that the implementation timeline may not be long enough for small or rural school districts that rely on smaller food distributors. One State agency conducted a survey of child nutrition directors and NSLP stakeholders and found that 75 percent of respondents did not feel the proposed implementation dates were sufficient due to limited product availability, supply chain challenges, and student acceptance.

A dietitian recommended lengthening the implementation timeline and providing funding to manufacturers. This respondent was concerned that manufacturers would ''quit the K–12 segment if they cannot comply'' with the limits. An industry respondent argued that, if manufacturers do not have additional lead time, student participation may decrease due to ''inadequate options.'' This respondent added that ''the school nutrition ecosystem is simply too fragile'' to follow the proposed timeline. A joint response from three industry respondents argued that the proposed implementation dates would not provide enough time for reformulation that ensures product quality and safety, given the functional role sugar plays as an ingredient (*e.g.,* preventing spoilage, improving texture, and adding bulk). This response raised concerns about student acceptability, student participation, and food waste under the proposed implementation timeline. A dietitian suggested that if manufacturers are not able to create products to meet the proposed product-based limits, then the implementation dates should be delayed.

An industry respondent maintained that added sugar reductions must be tailored for each individual product, suggesting that timelines can range from 12 to 16 months. This respondent added that schools typically solicit bids for products one year in advance, adding at least 12 months to the process. This industry respondent noted that additional time for implementation would allow schools to update meal planning databases, provide time to develop menu planning tools, and help students gradually adjust to foods containing less added sugars. A State agency relayed that manufacturers have expressed that SY 2027–2028 would be a more realistic timeframe to implement breakfast cereal and yogurt limits. An advocacy group acknowledged that timelines for research and development vary and suggested that K–12 food companies typically report needing 3 years to reformulate products. A State agency also recommended providing at least 3 years after release of the final rule to allow adequate time to update trainings, materials, product formulations, and school menus. An individual suggested that industry would need a minimum of 3–5 years to reformulate or develop food items that meet the proposed limits. A State agency and an industry respondent expected product reformulation to take up to 5 years. Another industry respondent asserted that the proposed implementation dates for added sugars are too short and suggested the reductions occur more gradually over the next 20 years or more.

Other respondents suggested the proposed implementation timeframes were adequate, and some recommended accelerating timeframes in the interest of children's health. An advocacy group affirmed that phased-in implementation would allow adequate time to implement the new requirements. Another advocacy group recommended implementing the weekly added sugars limit alongside the product-based limits in SY 2025–2026. A State agency also suggested implementing the product-based limits and the weekly limit at the same time, suggesting that 12–18 months would be a reasonable amount of time for industry and schools to prepare for changes. A parent suggested implementing the added sugars limits on a quicker timeframe, suggesting that the limits ''need to happen now'' due to what they consider to be an excessive amount of sugar in school meals. An advocacy group agreed, suggesting that USDA implement the added sugars limits ''as soon as is feasible,'' noting that these updates will be beneficial to children's health. Similarly, a second advocacy group stated that USDA

should implement the weekly limit in the school year immediately following release of the final rule. A local government supported both added sugars limits and the proposed implementation timeline; this respondent did not recommend extensions ''due to the urgency needed in reducing consumption of added sugars among children.'' An advocacy group and a few individuals asserted that ''there is no credible reason for USDA to delay achieving the reduction in sugar consumption,'' requesting implementation of the added sugars limits by fall 2023.

A school nutrition professional suggested that the proposed implementation date for the product-based limits would provide ''plenty of time'' but claimed the weekly limit would be ''much harder'' to achieve. This respondent noted that many rural districts currently do not have nutrition software to facilitate implementation of a weekly limit for added sugars. Similarly, a dietitian suggested that the implementation date for product-based limits is achievable, provided that the final rule is published at least one year in advance of implementation (by July 1, 2024). The respondent suggested that this timing would allow USDA and State agencies to provide technical assistance and training. However, this respondent recommended delaying implementation of the weekly added sugars limit to allow additional time for product reformulation and menu revisions.

One respondent encouraged USDA to remove the product-based limits and implement the weekly limit no later than 2025. By accelerating implementation of the weekly limit in school lunch and breakfast programs, this respondent suggested USDA could support healthier meals for children who are currently in school. An industry respondent also recommended removing the product-based limits while maintaining the proposed implementation of SY 2027–2028 for the weekly limit.

Alternative Approaches Suggested by Comments

Some respondents offered alternatives to the proposals, or suggested changes. For example, an industry respondent suggested that USDA determine the product-based limits using the average added sugars content of currently available products. A professional organization recommended that USDA establish total sugars limits, rather than added sugars limits, for breakfast cereals and yogurt because of the naturally occurring sugar content of those foods. An individual suggested that USDA reduce sugar content in school breakfast by following Smart Snacks in School requirements for sugar.[38] A few advocacy groups suggested USDA require or recommend product-based limits for condiments and toppings, noting that these products contribute to children's intake of added sugars, especially at breakfast.

Some respondents suggested alternatives to the proposed limit on grain-based desserts in school breakfasts. A professional organization and another respondent suggested that USDA prohibit (rather than limit) grain-based desserts in the school meal programs to promote more nutrient dense foods. A State agency recommended phasing in the grain-based dessert limit by age/grade group, starting with K–5 children. This State agency suggested this could help prevent a drastic drop in participation among older students. A school nutrition professional suggested that grain-based desserts should not be defined by the product name, but by the amount of added sugars in the product. An advocacy group also encouraged USDA to establish a quantitative added sugars limit for grain-based desserts and suggested further reducing the proposed added sugars limit for breakfast cereals.

An industry respondent suggested that if yogurt and flavored milks are subject to product-based limits, they should be excluded from the overall weekly limit. This respondent expressed concern that counting yogurt and flavored milks in the overall weekly limit could create ''perverse and unintended incentives'' to remove these items from meals. Another industry respondent suggested that USDA exempt the added sugars in dried cranberries from the weekly added sugars limit. This respondent argued that not providing an exemption for cranberry products could discourage the consumption of products like cranberries that include added sugar for processing and palatability.

A few respondents offered alternative suggestions for the weekly added sugars limit. For example, a school nutrition director suggested starting with a higher weekly dietary specification, such as 15 percent, and adjusting the percentage down as needed. This respondent stated that a more gradual approach for the weekly limit would mirror the proposed sodium reductions. Similarly, an advocacy group recommended removing the product-based limits and instead, gradually phasing in the weekly limit for lunch and breakfast meals. This respondent recommended starting in SY 2025–2026 with a dietary specification limiting meals to less than 25 percent of calories from added sugars, and then implementing a 10 percent limit in SY 2027–2028. A school district supported finalizing a 25 percent weekly limit in SY 2026–2027 and did not recommend further reductions. Another school district recommended a weekly dietary limit of 35 percent of calories from added sugars, with no product-based limits, beginning SY 2025–2026.

However, an advocacy group stated that USDA ''should reject any calls to set a limit higher than 10 percent'' because most children would benefit from a diet with even fewer added sugars, as low as 4 to 8 percent. Another respondent argued that the proposed 10 percent limit is ''still very high.'' An advocacy group agreed, recommending that USDA take ''swifter and more far-reaching action'' by implementing a 6 percent weekly limit for added sugars. A local government recommended that USDA apply the limit to both meals together (breakfast and lunch) instead of applying the 10 percent weekly limit to each meal separately. This respondent suggested this would increase the feasibility of implementation, since breakfast foods typically contribute larger amounts of added sugars. A school nutrition professional suggested incentivizing—but not requiring—schools to meet the 10 percent weekly limit.

Several respondents, including a national organization representing tens of thousands of school nutritional professionals, recommended that USDA make it easier for schools to offer meats/meat alternates in place of grains at breakfast, which they argued would support reducing added sugars in school breakfasts. This includes options suitable for grab-and-go breakfast, such as protein-rich breakfast sandwiches and wraps. A school district suggested many schools ''would love to be able to offer eggs and sausage, or fruit and yogurt parfaits for breakfast,'' and requested that USDA remove the requirement to offer a minimum amount of grains daily for breakfast. A dietitian recommended that USDA require a meat/meat alternate at breakfast. A few industry respondents maintained that the added sugars limit would ''create a drive in the market to increase the protein content of breakfast items,'' noting that the current grain minimum and cost constraints present a barrier to offering meats/meat alternates at breakfast. Additional comments on this topic, received in response to a prior

[38] Regulations for competitive food service and standards are found at 7 CFR 210.11.

rulemaking, can be found in *Section 6: Meats/Meat Alternates at Breakfast.*

Other Comments About Added Sugars

Respondents also submitted other comments about added sugars, including comments related to sweeteners, which respondents used a variety of terms to describe. A school nutrition professional raised concerns that manufacturers would replace added sugars with ''artificial sweeteners'' when reformulating products to meet the proposed limits. Similarly, a dietitian stated that while they support reducing added sugars, food manufacturers would face challenges to meet this requirement without using ''sugar substitutes.'' A school nutrition professional suggested prohibiting ''non-caloric sweeteners (both natural and artificial)'' in school meals, noting that there is limited research on their long-term effects and expressed concern these additives may cause stomach problems in young children. An individual voiced similar concerns about ''low calorie sweeteners'' and suggested prohibiting or labeling products so that parents or students can avoid those food items, if desired.

A school district requested that the added sugars limits be accompanied by an increase in reimbursement rates. This respondent anticipated an increase in product costs as added sugars are replaced with more expensive and healthier ingredients. One industry respondent also shared financial concerns, suggesting that schools would need to adjust menus by adding food items or increasing portion sizes to meet calorie ranges if added sugars are reduced. This respondent suggested one solution to this challenge would be to increase Federal funding. Another industry respondent described the ''chronic underfunding of school breakfasts'' and encouraged adequate resources to facilitate schools offering nutritious breakfast items, such as fresh fruits and vegetables. Although this respondent acknowledged their comment was outside the scope of this rulemaking, they emphasized that funding plays an important role in the types of foods that schools can offer students.

A few advocacy groups encouraged USDA to provide sufficient time, menu planning resources, and technical assistance to support implementation of the added sugars limits. Specifically, some respondents suggested USDA update its Team Nutrition resources for reducing sugars in CACFP, if this requirement is finalized. A State agency requested that USDA update Administrative Review guidance and assessment tools, along with guidance on how schools can assess compliance with the weekly limit. An advocacy group recommended that, during implementation, schools should not be penalized and suggested that USDA prioritize additional technical assistance and training for schools that are struggling with compliance. A State agency provided similar input, suggesting that USDA provide schools a ''grace period'' for corrective actions during the first Administrative Review cycle, following implementation of the added sugars limits.

Final Rule

This final rule codifies the proposed added sugars limits in the school lunch and breakfast programs, as follows:

- *Product-based limits:* By SY 2025–2026, schools must implement quantitative limits for breakfast cereals, yogurt, and flavored milks. As explained below, this rule does not finalize the proposed product-based limit for grain-based desserts at breakfast. The product-based limits that are finalized in this rule are as follows:
- *Breakfast cereals* are limited to no more than 6 grams of added sugars per dry ounce.
- *Yogurt* is limited to no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce).
- *Flavored milk* is limited to no more than 10 grams of added sugars per 8 fluid ounces. Flavored milk sold as a competitive food for elementary school students will follow the 10 grams of added sugars per 8 fluid ounce limit, while flavored milk sold as a competitive food for middle and high school students will be limited to 15 grams of added sugars per 12 fluid ounces.[39]
- *Weekly dietary limit:* By SY 2027–2028, schools must implement a dietary specification limiting added sugars to less than 10 percent of calories per week in the school lunch and breakfast programs; this weekly limit will be in addition to the product-based limits described above.

As proposed, this final rule also updates CACFP total sugar limits for breakfast cereals and yogurt to align with the product-based added sugars limits established for NSLP and SBP as stated above. Because CACFP operates on a fiscal year calendar, these changes must be implemented by October 1, 2025. For CACFP, the product-based added sugars limits are as follows:

- *Breakfast cereals* are limited to no more than 6 grams of added sugars per dry ounce.
- *Yogurt* is limited to no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce).

The existing total sugars limits for breakfast cereals and yogurt in CACFP will remain in place until October 1, 2025, when the new added sugars limits must be implemented. With State agency approval, CACFP operators may choose to implement the added sugars limits for breakfast cereals and yogurt early.

Two-Step Approach To Reduce Added Sugars in School Meals

USDA is committed to improving the nutritional quality of school meals by establishing requirements that align with the goals of the most recent *Dietary Guidelines.* USDA also acknowledges stakeholders' concerns about added sugars in school meals and the harmful effects on children's health. The two-step approach to reducing added sugars finalized in this rule is expected to set schools up for success by gradually decreasing added sugars over the next several years. USDA acknowledges that, as noted in public comments, program operators need sufficient time to prepare and plan menus to meet the new added sugars limits. By first phasing in the product-specific limits for breakfast cereals, yogurt, and flavored milk, USDA expects that schools will be better positioned to successfully meet the weekly limits for added sugars, which will take effect two school years after the effective date of the product-based limits.

USDA intends for the product-based limits for breakfast cereals, yogurt, and flavored milk to have a meaningful impact on the added sugars offered in school meals. However, USDA recognizes that there are other foods offered in school meals that contribute to children's overall intake of added sugars, which makes the weekly dietary limit an important second step to align school meals more closely with the goals of the *Dietary Guidelines.* For example, USDA expects that added sugars in condiments and toppings will be addressed through the weekly added sugars limit, upon implementation. While USDA appreciates public comments recommending product-based limits for condiments and toppings, such limits were not included in the proposed rule and this final rule does not establish product-based added

[39] For clarification, the added sugars limit for flavored milk sold as a competitive food in middle and high schools due to the larger serving size. The serving size for milk offered as part of a reimbursable meal is 8 fluid ounces. Milks sold to middle and high school students as a competitive food may be up to 12 fluid ounces. Milks sold to elementary school students as a competitive food may be up to 8 fluid ounces, and so will follow the 10 grams of added sugars per 8 fluid ounce limit.

sugars limits for these items. USDA expects that the overall weekly limit will help to reduce the amount of added sugars offered in condiments and toppings. Additionally, although this rule does not finalize the grain-based dessert limit at breakfast, USDA expects that schools will select grains with less added sugars to meet the weekly added sugars limit at breakfast and, as explained below, USDA will provide resources to support more nutrient-dense choices at breakfast. USDA is also interested in additional stakeholder input on how to improve and simplify its grain-based desserts requirements and will solicit stakeholder input on grain-based desserts in the coming months.

USDA also acknowledges respondent concerns regarding the palatability of meals with less added sugars and related concerns about plate waste and student participation. However, USDA expects that gradually phasing in these requirements will give schools time to adjust menus and help children gradually adapt to meals with fewer added sugars over time.

Added Sugars in the Child and Adult Care Food Program

For consistency, this final rule applies the product-based added sugars limits for breakfast cereals and yogurt to the CACFP. Based on public comment, USDA has adjusted the implementation date for CACFP to follow the program calendar, which operates on a fiscal year rather than a school year. Effective October 1, 2025, the *added* sugars limits will replace the current *total* sugar limits for breakfast cereals and yogurt in CACFP. The existing total sugars limits for breakfast cereals and yogurt in CACFP will remain in place until October 1, 2025, when the new added sugars limits take effect. However, with State agency approval, CACFP operators may choose to implement the added sugars limits for breakfast cereals and yogurt early.

As mentioned in public comments, CACFP operators have successfully implemented product-based sugar limits, and this rule updates these limits from total sugars to added sugars based on *Dietary Guidelines* recommendations. Although some public comments recommended continuing with total sugars limits, that approach would not be consistent with the *Dietary Guidelines* recommendations. And, as noted, added sugars information is now available on the Nutrition Facts label.[40] USDA recognizes that many stakeholders would like more consistent requirements across child nutrition programs; this final rule supports USDA's efforts to better align program requirements. Additionally, in response to public comments, USDA clarifies that the per-ounce limit for yogurt will be 2 grams of added sugars. While this clarification applies to NSLP, SBP, and CACFP, it is most relevant to CACFP, where smaller portions may be offered to younger participants and operators will more often need to assess compliance with the added sugars limit in serving sizes that are smaller than 6 ounces.

CACFP operators provide vital nutrition that contributes to the wellness of child and adult participants. USDA recognizes and appreciates the important role CACFP operators play in helping child and adult participants develop and sustain healthy habits in all stages of life. USDA is committed to ensuring that CACFP operators have the technical assistance and resources they need to be successful, including implementing the changes in this rule.

Alignment With WIC Food Package Standards

In April 2024, USDA finalized revisions to the WIC food packages to incorporate recommendations from the National Academies of Science, Engineering, and Medicine (NASEM) in its 2017 scientific report, ''Review of WIC Food Packages: Improving Balance and Choice,'' and to align the food packages with the *Dietary Guidelines for Americans, 2020–2025*. The WIC final rule, *Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages,*[41] updated limits on total sugars, consistent with recommendations in the NASEM report. This included establishing limits on added sugars in breakfast cereals and yogurt that are consistent with the limits in this final rule. CACFP operators may use any State's WIC list to identify breakfast cereals and yogurt that may be offered in CACFP. Both the WIC final rule and this final rule share the common goal of reducing added sugars intake among child and adult participants and promoting healthy dietary patterns. This cross-program alignment of product-based limits for breakfast cereals and yogurt responds to public comments that highlighted the benefits of allowing use of the WIC list in CACFP by allowing CACFP providers to use the WIC list to identify allowable breakfast cereals and yogurt. It also responds to public feedback requesting that USDA streamline requirements across its nutrition assistance programs.

Additional Feedback Received in Public Comments

USDA appreciates public comments on alternative approaches for reducing added sugars in school meals. A few respondents suggested a stepwise approach for the weekly added sugars limit; for example, by starting with 15 percent and then moving to a 10 percent weekly limit. The intent of the product-based limit is to provide schools with a path toward reaching the 10 percent weekly limit. Other respondents recommended a weekly limit below 10 percent; however, a weekly limit below 10 percent would go beyond recommendations in the current *Dietary Guidelines*. In this final rule, USDA maintains the proposed weekly added sugars limit of 10 percent of calories per week, averaged over the week for lunch and breakfast programs, respectively. In public comments, some respondents recommended combining lunch and breakfast menus under the weekly limit. However, because other school meal pattern requirements (including the other dietary specifications for calories, saturated fat, and sodium) currently apply by program, USDA does not view this as an operationally feasible suggestion. Regarding exemption for certain foods from the weekly limit, USDA has determined that establishing exemptions may impose unintended burden and challenges in calculating and monitoring dietary specifications for the entire menu. This final rule does not exempt any foods from the weekly added sugars limit for school lunch or breakfast. USDA also acknowledges comments that recommended adjusting other meal pattern requirements, such as the calorie limits, as part of this change. However, USDA did not propose changes to the calorie limits in school meals and this final rule does not make changes to the calorie limits for school meals.

Product-Based Limits for Breakfast Cereals, Yogurt, and Flavored Milk

USDA received hundreds of comments regarding the product-based limits for breakfast cereals, yogurt, and flavored milks. For example, some respondents recommended increasing the product-based added sugars limit for breakfast cereals and raised concerns

[40] *Food Labeling: Revision of the Nutrition and Supplement Facts Labels* (81 FR 33741, May 27, 2016). Available at: *https://www.federalregister.gov/documents/2016/05/27/2016-11867/food-labeling-revision-of-the-nutrition-and-supplement-facts-labels.* See also: 21 CFR 101.9(c)(6)(iii).

[41] *Special Supplemental Nutrition Program for Women, Infants, and Children (WIC):* Revisions in the WIC Food Packages (April 2024). Available at: *https://www.fns.usda.gov/wic/fr-041824.*

about the availability of breakfast cereals that meet the proposed limit that children enjoy. Similarly, USDA acknowledges respondent concerns about product availability and the palatability of yogurt and flavored milks that meet the product-based added sugars limits. However, USDA agrees with respondents who stated that the added sugars limits are realistic and that many breakfast cereals, yogurts, and flavored milks that meet the final limits are or will be available to schools. As discussed in the *Regulatory Impact Analysis,* based on data that USDA collected in 2022, 50 percent of breakfast cereals and 57 percent of yogurts already met the added sugars limits finalized in this rule in 2022.[42] Regarding flavored milk, as noted in public comments, the milk industry has committed to reducing added sugars in flavored milk to levels that meet the limits finalized in this rule.[43] USDA appreciates public comments from industry that noted significant progress in product reformulation and a variety of products available in the market that already meet the product-based limits finalized in this rule. Additionally, the gradual, phased-in approach used in this rule will provide schools time to implement the changes.

Product-Based Limit for Grain-Based Desserts at Breakfast [Not Finalized]

As noted above, USDA is not finalizing the proposed limit for grain-based desserts at breakfast. Public comments raised concerns about potential negative impacts of the proposal to the SBP, especially to alternative breakfasts that often contain grab-and-go friendly items, including grain-based desserts such as breakfast bars and toaster pastries. Respondents were concerned about the availability and student acceptance of alternative items that can readily be served in grab-and-go and other alternative breakfast models. In addition, many respondents raised questions about the definition of grain-based desserts as currently used in the NSLP and CACFP[44] or suggested alternative approaches to current requirements for those programs. Under current requirements, which define grain-based desserts by product type, some grain items that are not classified as grain-based desserts are higher in added sugars than items that are classified as grain-based desserts. Some respondents suggested that rather than defining grain-based desserts by product type, USDA should instead define grain-based desserts based on the amount of added sugars in specific products. For these reasons, many respondents recommended that USDA reconsider the proposal. Therefore, in response to stakeholder input, USDA is not finalizing the grain-based dessert limit for school breakfast.

USDA is committed to supporting alternative breakfast models, such as breakfast in the classroom and grab-and-go breakfast, which support student participation[45] by making school breakfast more accessible. USDA also appreciates concerns that the current definition of ''grain-based dessert'' does not target grain products high in added sugar as effectively as possible. Although some respondents raised concerns about product-based limits for breakfast cereals, yogurt, and flavored milk, those comments did not cite operational constraints for alternative breakfast models under the proposed limits. Further, as detailed above, USDA has determined adequate products will be available to meet the product-based limits for breakfast cereals, yogurt, and flavored milk finalized in this rule upon implementation.

USDA recognizes that reducing grain items that are high in added sugars is one important strategy to support the phased-in implementation of the weekly added sugars limit. USDA will continue to support implementation of alternative breakfast models by highlighting popular grain items that are low in added sugars and that are grab-and-go friendly. Schools may also consider offering savory grab-and-go breakfast items, such as breakfast sandwiches and wraps, to reduce the overall added sugars content of school breakfasts. As discussed in *Section 6: Meats/Meat Alternates at Breakfast,* this rule removes the minimum grains requirement at breakfast, making it easier for schools to offer meats/meat alternates at breakfast. In the absence of a grain-based dessert limit at breakfast, schools may need additional support and guidance to reduce added sugars at breakfast and meet the weekly limit upon implementation in SY 2027–2028.

As discussed below, USDA will provide technical assistance to ensure that schools have the resources they need to reduce added sugars at breakfast, including meeting the weekly added sugars limit at breakfast upon implementation. USDA also seeks to support industry in producing breakfast grains which can be part of menus under the weekly added sugars limit. The Department will provide voluntary guideposts for schools and industry to use to assist them in transitioning to the weekly added sugars limits in SY 2027–2028. This will include resources that schools may use to identify grain items that are low in added sugars.

USDA is very interested in and will solicit additional stakeholder input on improving guidance around grain-based breakfast items. As part of this effort, USDA will seek stakeholder input on the current grain-based desserts requirements, alternative approaches to defining and identifying grains that are high in added sugars, and other creative ideas for how to address grain-based desserts in the child nutrition programs. USDA looks forward to receiving stakeholder feedback on this topic in the coming months.

Sweeteners

This final rule is focused on limits for added sugars, not other sweeteners used as sugar substitutes or sugar alternatives. USDA acknowledges respondent concerns regarding sweeteners in child nutrition programs, referred to in public comments in a variety of ways, including ''artificial sweeteners,'' ''non-nutritive sweeteners,'' and ''sugar substitutes.''[46]

[42] USDA Food and Nutrition Service, Office of Policy Support data collection of nutrition label information from major cereal and yogurt manufacturer K–12 and food service catalogs. Data were collected on 191 total cereal products and 110 total yogurt products.

[43] In April 2023, the International Dairy Foods Association announced its ''Healthy School Milk Commitment.'' According to a press release from the International Dairy Foods Association, ''[b]eginning with the 2025–2026 school year, 37 school milk processors representing more than 90% of the school milk volume in the United States commit to provide healthy, nutritious school milk options with no more than 10 grams of added sugar per 8 fluid ounce serving.'' See: International Dairy Foods Association. *IDFA Announces 'Healthy School Milk Commitment' to Provide Nutritious Milk with Less Added Sugar for Students in Public Schools, Surpassing USDA Standards.* April 5, 2023. Available at: *https://www.idfa.org/news/idfa-announces-healthy-school-milk-commitment-to-provide-nutritious-milk-with-less-added-sugar-for-students-in-public-schools-surpassing-usda-standards.*

[44] For NSLP, according to 7 CFR 210.10(c)(2)(iii)(C) (previously 7 CFR 210.10(c)(2)(iv)(C), schools may count up to two ounce equivalents of grain-based desserts per week toward meeting the grains requirement at school lunch. For CACFP, according to 7 CFR 226.20(a)(4)(iii), grain-based desserts do not count toward meeting the grains requirement. The grain-based dessert requirements for NSLP and CACFP remain in effect under this final rule.

[45] Amelie A. Hecht, Deborah A. Olarte, Gabriella M. McLoughlin, Juliana F.W. Cohen, *Strategies to Increase Student Participation in School Meals in the United States: A Systematic Review,* Journal of the Academy of Nutrition and Dietetics, Volume 123, Issue 7, 2023, Pages 1075–1096.e1, ISSN 2212–2672, *https://doi.org/10.1016/j.jand.2023.02.016.* Available at: *https://www.sciencedirect.com/science/article/pii/S221226722300103X.*

[46] Although respondents used a variety of terms in public comments, USDA will refer to ''sweeteners'' in this final rule, consistent with FDA terminology. U.S. Food and Drug Administration, *How Sweet It Is: All About Sweeteners,* June 9, 2023.

Continued

Sweeteners, like all other ingredients added to food in the U.S. food supply, must be safe for consumption under the Federal Food, Drug and Cosmetic Act.[47] FDA determines if food additives, such as sweeteners, are safe for their intended use. FDA has approved six sweeteners as food additives through an extensive evidence-based research process.[48] In addition to the six sweeteners approved as food additives, there are three additional sweeteners that are Generally Recognized as Safe (GRAS). USDA relies on FDA expertise to safeguard the food supply because FDA is the Federal agency responsible for assessing the safety of food additives, food ingredients, and sweeteners, including artificial sweeteners and nonnutritive sweeteners. Therefore, under this final rule, there are no restrictions on sweeteners in school meals, such as the use of sugar substitutes and nonnutritive sweeteners; this approach aligns with current FDA guidance for sweeteners. However, at the local level, schools or districts may opt to limit or remove sweeteners from their school lunch and breakfast menus, which USDA recognizes that some localities have chosen to do. Further, in response to stakeholder concerns about sweeteners, in upcoming studies, USDA will include questions regarding school policies relating to the use of sweeteners in school meals and will continue to monitor FDA research and guidance on this issue.

Ongoing Support

USDA is committed to ensuring that child nutrition program operators have ongoing support and will provide additional technical assistance and resources to assist schools and child care institutions and facilities as they prepare to implement and monitor new or updated requirements. USDA appreciates public comments requesting guidance and support for monitoring these changes and will update the nutrient analysis software approved for use in Administrative Reviews so that it includes a dietary specification for added sugars. As noted above, USDA will provide resources to support schools and industry in transitioning to the weekly added sugars limit in SY 2027–2028 and will make these resources available in time to support procurement for SY 2025–2026. USDA has already highlighted strategies that schools can use to reduce added sugars in *Best Practices for Reducing Added Sugars at School Breakfast.*[49] For example, schools can:

- Reduce how often high-sugar foods and beverages are offered during the week.
- Use fruit to sweeten smoothies and yogurt instead of added sugars.
- Use cinnamon, vanilla, and other spices or extracts to enhance recipes with less added sugars.

In public comments, many respondents suggested that meats/meat alternates be allowed in place of grains to help reduce added sugars in breakfasts. As discussed in *Section 6: Meats/Meat Alternates at Breakfast,* schools may consider this option as a strategy to reduce added sugars at breakfast, since some grain foods commonly offered in school breakfasts tend to be higher in added sugars. Schools now have the option to offer grains, meats/meat alternates, or a combination of both, to meet the combined food component requirement in the SBP. This change gives program operators greater flexibility in menu planning and increases the variety of food items that can be served at school breakfast, helping to address respondent concerns about meeting the added sugars limits at breakfast. Local educational agencies may also consider updating their local school wellness policies with strategies to reduce added sugars in school meals and snacks. USDA also commends industry efforts to reduce added sugars in their products, including in flavored milk. For example, USDA understands that flavored milk processors have already reduced the average amount of added sugars per serving of flavored milk since announcing their ''Healthy School Milk Commitment'' in April 2023.[50] As suggested by comments, support from industry is crucial to schools' efforts to continue to offer foods that are popular with children and also fit within the product-based and weekly limits phased in under this rulemaking.

USDA acknowledges public comments that requested increased funding to support implementation of the added sugars limits. USDA does not have authority to increase the Federal reimbursement rates for school meals.[51] However, USDA launched the HMI Initiative to improve the nutritional quality of school meals through food systems transformation, recognition, and technical assistance; the generation and sharing of innovative ideas and tested practices; and grants. As part of a cooperative agreement to develop and implement USDA's HMI Initiative, AFHK is offering Recognition Awards for school food authorities, including the Breakfast Trailblazer Recognition Award, that will recognize school food authorities who implement specific strategies to reduce added sugars in school breakfast menus, implement an alternative meal service delivery model for breakfast, and use student engagement techniques and/or culinary techniques to prepare breakfasts that students enjoy. Public comments noted the importance of student preferences and participation. Developing healthy dietary patterns and taste preferences begins at a young age, and gradually decreasing added sugars in school meals can contribute to developing student preferences for more nutrient-dense foods, with less added sugars, as recommended by the *Dietary Guidelines.* As part of the HMI Initiative, AFHK will host Healthy Meals Summits, where award recipients and grantees will share best practices and strategies for sustaining their nutritional achievements, including successful strategies to reduce added sugars. The summits will celebrate and showcase creative strategies for serving healthy, appealing meals and the best practices will serve as a blueprint for school food authorities nationwide. USDA will also share strategies and success stories for reducing added sugars in its communications materials and will provide guidance and resources to schools working to reduce

Available at: *https://www.fda.gov/consumers/consumer-updates/how-sweet-it-all-about-sweeteners.*

[47] U.S. Food and Drug Administration, *Aspartame and Other Sweeteners in Food,* July 14, 2023. Available at: *https://www.fda.gov/food/food-additives-petitions/aspartame-and-other-sweeteners-food.*

[48] Amelie A. Hecht, Deborah A. Olarte, Gabriella M. McLoughlin, Juliana F.W. Cohen, *Strategies to Increase Student Participation in School Meals in the United States: A Systematic Review,* Journal of the Academy of Nutrition and Dietetics, Volume 123, Issue 7, 2023, Pages 1075–1096.e1, ISSN 2212–2672, *https://doi.org/10.1016/j.jand.2023.02.016.* Available at: *https://www.sciencedirect.com/science/article/pii/S221226722300103X.*

[49] U.S. Department of Agriculture, *Best Practices for Reducing Added Sugars at School Breakfast,* August 4, 2022. Available at: *https://www.fns.usda.gov/tn/best-practices-reducing-added-sugars-school-breakfast.*

[50] According to the International Dairy Foods Association, ''When the Commitment was announced in April 2023, flavored milk products offered in schools contained an average of 8.2 grams of added sugar per serving. By July 2023, the average had fallen to 7.6 grams of added sugar per serving.'' See: International Dairy Foods Association, *School Milk Is Critical to Child Nutrition—School Year 2023–2024.* Available at: *https://www.idfa.org/wordpress/wp-content/uploads/2023/09/Back-to-School-Milk-Fact-Sheet-2023_2024.pdf.*

[51] The annual payments and rates adjustments for the National School Lunch and School Breakfast Programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. See: U.S. Department of Agriculture. *Rates of Reimbursement.* Available at: *https://www.fns.usda.gov/cn/rates-reimbursement.*

added sugars in school meals in the months ahead.

Assessing Impact of Added Sugars Limits

USDA recognizes the importance of monitoring progress toward the new added sugars limits and assessing the effectiveness of the two-step approach. USDA has a long history of examining the nutritional quality of school meals through studies such as the *School Nutrition and Meal Cost Study* and the *School Nutrition Dietary Assessment Study* series. The 2024–2025 *National School Foods Study* will incorporate added sugars into this assessment, which is based on an extensive menu survey, designed to determine the food and nutrient content of school meals and afterschool snacks, examine compliance with nutrition requirements, and understand the characteristics of foods and beverages in reimbursable meals.

These studies also assess actual student dietary intake and overall diet quality through 24-hour dietary recall interviews. The 2024–2025 study will establish a ''baseline year'' (SY 2024–2025) for examining the impact of the added sugars and sodium limits included in this rulemaking.

In accordance with its commitment to regularly monitor how consistent school meals are with the goals of the *Dietary Guidelines,* USDA conducts the *School Nutrition and Meal Cost Study* on a five-year cycle, which will provide another comprehensive assessment in SY 2029–2030, after both the updated sodium limits and added sugars limits have been fully implemented.

However, to monitor progress and provide data on the effectiveness of product-based limits as a step toward meeting the overall weekly added sugars limit, USDA will invest in an additional menu assessment in SY 2026–2027, between the two *School Nutrition and Meal Cost Study* cycles. This nationally representative survey will focus on the foods and beverages that make up reimbursable meals and allow USDA to examine the effect of the product-based added sugars limits, which will take effect in SY 2025–2026. Additionally, this survey will allow USDA to estimate both added sugars and sodium content of reimbursable school meals.

Together these studies will provide USDA with critical evidence about rule implementation, effects, and potential barriers and help monitor changes in nutrient content of foods over time. This data will provide invaluable insight into school meal nutrient composition and student dietary outcomes. In addition, USDA will continue current practice of using existing data sources—such as the National Health and Nutrition Examination Survey—to periodically examine other outcomes, including the relationship between estimated school meal program participation, diet quality, indicators of nutrition and health, food consumption patterns, and nutrient intakes. This in turn can inform future policy and rulemaking.

Accordingly, this final rule codifies the product-based added sugars limits for breakfast cereals, yogurt, and flavored milk, and codifies the weekly dietary specification for added sugars in NSLP and SBP regulations found at 7 CFR 210.10(b)(2)(iii), (c), (d)(1)(iii), (f)(3), and (h) and 220.8(b)(2)(iii), (c), (d), and (f)(3). These amendments must be implemented by July 1, 2025, except for the weekly dietary specification, which must be implemented by July 1, 2027. This final rule also replaces total sugar limits for breakfast cereals and yogurt with added sugars limits in CACFP regulations found at 7 CFR 226.20(a)(4)(ii), (a)(5)(iii)(B), (b)(5), and (c). The CACFP amendments must be implemented by October 1, 2025.

Section 3: Milk

This section includes the following sub-sections:

- *Section 3A* discusses requirements for flavored milk in the NSLP, SMP, SBP, and CACFP, and for milk sold à la carte (*i.e.,* as a Smart Snack in School).
- *Section 3B* provides an overview of comments that USDA received in response to the proposed rule's request for input on fluid milk substitutes in the child nutrition programs.
- *Section 3C* discusses the nutrient requirements for fluid milk substitutes.

Section 3A: Flavored Milk

Current Requirement

The National School Lunch Act (42 U.S.C. 1758(a)(2)(i)) requires schools to offer students a variety of fluid milk at lunch; such milk must be consistent with the most recent *Dietary Guidelines.* The Child Nutrition Act (42 U.S.C. 1773(e)(1)(A)) requires school breakfasts to meet the same terms and conditions set forth for school lunches in the National School Lunch Act (42 U.S.C. 1758), including the requirements for fluid milk. Current regulations at 7 CFR 210.10(d)(1)(i), 220.8(d), and 210.11(m) allow schools to offer fat-free and low-fat (1 percent fat) milk, flavored and unflavored, in reimbursable school lunches and breakfasts, and for sale à la carte. The current regulations also require that unflavored milk be offered at each school meal service. Fat-free and low-fat milk, flavored and unflavored, may also be offered to participants ages 6 and older in the SMP and CACFP (7 CFR 215.7a(a) and 226.20(a)(1)(iii)). Lactose-free and reduced-lactose milk meet the meal pattern requirements for fluid milk (7 CFR 210.10(d)(1)(i), 215.7a(a), 220.8(d), and 226.20(a)(1)). The current milk requirements took effect on July 1, 2022.

Proposed Rule

USDA proposed the following two alternatives for milk requirements in the school lunch and breakfast programs and invited public comment on both:

- *Alternative A:* Allow flavored milk (fat-free and low-fat) at school lunch and breakfast for high school children only, effective SY 2025–2026. Under this alternative, USDA proposed that children in grades K–8 would be limited to a variety of unflavored milk. USDA also requested public input on whether to allow flavored milk for children in grades 6–8 as well as high school children (grades 9–12). Children in grades K–5 would again be limited to a variety of unflavored milk. Under both Alternative A scenarios, flavored milk would be subject to the new proposed added sugars limit (10 grams of added sugars per 8 fluid ounces).
- *Alternative B:* Continue to allow all K–12 schools to offer fat-free and low-fat milk, flavored and unflavored, with the new proposed added sugars limit for flavored milk (10 grams of added sugars per 8 fluid ounces).

USDA also proposed a minor technical change to the regulatory text for milk sold à la carte. Instead of repeating the allowable milk types in 7 CFR 210.11(m), which describes the beverages that schools can sell à la carte, USDA proposed to cross-reference 7 CFR 210.10(d). This change was intended to clarify that the NSLP milk requirements apply to milk sold à la carte.

Public Comments

USDA received over 1,600 comments on flavored milk, including almost 600 unique comments. Of these, over 1,500 supported flavored milk, including about 375 unique comments. About 70 opposed flavored milk, including about 50 unique comments. Additionally, specific comment counts regarding Alternative A and Alternative B proposals are described in more detail below. A wide range of stakeholders, including State agencies, school nutrition professionals, advocacy groups, industry respondents, professional associations, dietitians, parents, and students commented on the proposed milk alternatives. At a high

level, respondents provided the following feedback on flavored milk:

- Flavored milk is the leading source of added sugars in school meals.
- Offering flavored milk, which is a more palatable option for some children, improves children's milk consumption and reduces milk waste.
- Milk is an important source of calcium, protein, and other micronutrients.
- USDA should consider operational constraints, such as a lack of storage space for flavored milk, when determining which milk alternative to finalize.

More detailed respondent feedback, including respondent input on the two alternatives, is discussed below.

Alternative A: Allow Flavored Milk for Older Students Only

Fifty-five respondents, including 36 unique comments, representing school nutrition professionals, parents, and advocacy groups, supported Alternative A. A school nutrition professional suggested that Alternative A would help transition students away from flavored milk and reduce their consumption of added sugars. This respondent suggested that after students who are currently in grades K–5 transition to middle and high school, USDA could apply the limit to older children, too. A parent agreed, asserting that water and unflavored milk are the only beverages that young children should consume. A school nutrition professional stated that, although flavored milk is the most popular choice, the amount of added sugars in flavored milk is ''unnecessary for our student's diets.'' This respondent argued that students are already exposed to too much added sugars outside of school meals. Another Alternative A proponent stated that flavored milk should be a treat for younger students, not an everyday choice. An advocacy group noted that flavored milk is a top contributor to added sugars intake and that younger children overconsume added sugars at a higher rate than older children.

Some respondents opposed flavored milk in school meals entirely. Several advocacy groups recommended that USDA limit flavored milk options for all grade levels. Many respondents urged USDA to limit flavored milk to the greatest extent possible, citing that nutrients found in milk are also found in other foods that are lower in added sugars. An individual argued that flavored milk should not be served in school meals because the added sugars ''cancels out any potential benefits of consuming milk.'' A school district opposed flavored milk and mentioned that flavored milk is not offered at any of their schools. An advocacy group urged USDA to prohibit flavored milk in school meals due to the harmful public health impacts of added sugars consumption.

A few respondents addressed concerns about Alternative A's potential impact on children's milk consumption. An advocacy group cited research that found a ''modest decrease'' in student milk consumption when flavored milk was removed from schools but noted that the same study found ''no significant reductions in average per-student intake of calcium, protein, or vitamin D from milk.'' The respondent added that the same study found a decline in added sugars intake from removing flavored milk. However, this advocacy group recommended that USDA periodically monitor milk consumption and intake of milk-related nutrients if Alternative A is implemented.

In addition to general feedback, USDA requested public input on the following questions related to Alternative A:

- Do respondents that support Alternative A have specific input on whether USDA should limit flavored milk to high schools only (grades 9–12) or to middle schools and high schools only (grades 6–12)?
- If Alternative A is finalized with restrictions on flavored milk for grades K–8 or K–5 in NSLP and SBP, should USDA also pursue a similar change in SMP and CACFP?
- Are there any special considerations USDA should keep in mind for SMP and CACFP operators, given the differences in these programs compared to school meal program operators?

In response to the first question, one industry respondent supported limiting grades K–8 to unflavored milks only, if this change is accompanied by a reduction in minimum required calories or an increase in program funding. This respondent explained that when omitting flavored milk, menus are significantly higher in cost due to adding calories from other food groups to meet the required minimum calories. A school district and a dietitian each supported removing flavored milk from the school meal programs entirely but stated that if USDA maintains flavored milk for some students, it should be limited to grades 9–12 only. A few advocacy groups also supported limiting elementary and middle schools to offering unflavored milk only. A few other advocacy groups supported allowing flavored milk for grades 6–12 and limiting grades K–5 to unflavored milk only; one suggested that this approach would give middle schools students, who are old enough to make healthy food choices, the option to choose flavored or unflavored milk.

Regarding the second question, over 100 respondents, including 34 unique comments, addressed whether USDA should pursue a similar change in SMP and CACFP, if Alternative A is finalized for school meals. One CACFP sponsoring organization did not support further restricting flavored milk options in CACFP. A few advocacy groups representing CACFP sponsoring organizations stated they ''categorically oppose'' Alternative A and that ''USDA should not pursue a similar change in CACFP.'' Another advocacy group opposed limiting flavored milk to older children only in the CACFP, asserting that ''acceptance of milk would decrease'' if flavored milk is not permitted. A State agency also opposed limiting flavored milk to older children only in the CACFP, noting that some children participating in the afterschool component of CACFP engage in physical activities, where flavored milk could be a suitable recovery beverage. A CACFP sponsoring organization agreed, suggesting that children who participate in their afterschool care program prefer flavored milk.

However, a State agency supported implementing similar changes in SMP and CACFP to support consistency in program requirements, if Alternative A is finalized for school meals. An individual also supported similar changes in SMP and CACFP, arguing that this would help reduce added sugars intake and help establish healthy eating patterns for young children. This respondent stated that special considerations for these programs are ''unnecessary.'' A school district also supported similar changes in SMP and CACFP ''for consistent messaging and implementation.''

Alternative B: Continue To Allow Flavored Milk for All K–12 Students

About 800 respondents, including 180 unique comments, including State agencies, school nutrition professionals, industry respondents, and individuals, supported Alternative B. Many cited children's preference for flavored milk as a key reason for supporting Alternative B. For example, a school district shared that they serve 90 percent flavored milk and 10 percent unflavored milk, and a dietitian asserted that 95 percent of the children at their school drink flavored milk and the children ''won't drink milk anymore'' if they only offer unflavored milk. A school food service professional supported Alternative B because a

majority of the milk they purchase (97 percent) is flavored milk and they would ''rather students take some form of milk than none at all.'' Numerous other respondents agreed, claiming that flavored milk is associated with higher milk consumption and student participation. One respondent emphasized the importance of allowing choice and teaching students how to consume all foods and beverages in moderation.

A national organization representing tens of thousands of school nutrition professionals supported Alternative B, acknowledging that ''milk processers have significantly reduced added sugar[s]'' in flavored milk served in schools. A school nutrition professional, a parent, and other respondents also recognized the importance of reducing added sugars, but maintained that student participation should be a priority; thus, these respondents supported Alternative B. Respondents also noted that flavored milk is an important source of nutrients such as calcium and protein. A dietitian asserted that a small amount of added sugars in milk helps students receive the nutritional benefits of milk. One respondent claimed that children not drinking milk is more ''detrimental to [student] health than added sugars in flavored milk,'' and therefore supported continuing to allow flavored milk for all K–12 students. Another respondent supported lowering added sugars in flavored milks, but not restricting flavored milks. Respondents also stated that restricting flavored milk may cause students to consume other beverages, including sugary beverages like soda and energy drinks.

Several respondents that supported Alternative B raised operational concerns regarding Alternative A. A State agency suggested that many rural schools have one building and may only have one milk cooler for grades K–12. The State agency also noted that many schools serve meals to students across grades in the same meal service (for example, grades 5–7 or grades 7–9) and it would be difficult for students to understand if one grade can have flavored milk and others cannot. Similarly, another State agency mentioned that some of their schools have grades 6–12 in one building, and ''changing out the milk adds one more task to a busy lunch period.'' This respondent added that some schools do not have extra refrigeration space to remove flavored milk from their milk cooler during the meal service. A third State agency also noted that schools in their State have many unique grade configurations, including grades K–6, K–12, and 7–12. This State agency noted that it would be ''very burdensome'' for schools to move milk in and out of coolers between meal services for different grades, and that the challenges of implementing Alternative A would be even more difficult when different grades are served during the same meal periods.

An individual noted that implementing Alternative A could be difficult for school employees, who would be responsible for explaining the change to families. A dietitian agreed, suggesting that Alternative A would send a ''confusing message.'' A State agency cited concerns about supply chain issues and prices, arguing that schools already have limited choices, and further restrictions would negatively impact price and availability. A school district raised purchasing concerns, noting that purchasing for a large district is ''complicated'' and that Alternative A could create more confusion for vendors. A State agency suggested Alternative A would increase monitoring requirements. A different State agency raised similar concerns, especially when multiple grades share meal services. For example, this State agency noted that differing milk requirements by grade level could create challenges during an Administrative Review, as a reviewer would have to inquire about a student's grade level when they are passing through the lunch line, to ensure the student received a compliant milk.

Other Comments on Flavored Milk

Some respondents offered their own alternatives or suggested changes to the milk requirements. For example, instead of finalizing Alternative A, several respondents suggested limiting flavored milk to lunch only and requiring unflavored milk at breakfast. One respondent supported Alternative A, but for a different approach, suggested allowing flavored milk only once per week for grades 9–12. A few respondents, including an advocacy group and school districts, recommended that USDA allow schools to choose which alternative to implement.

Other respondents encouraged USDA to expand milk options beyond fat-free and low-fat milk. For example, one school district suggested USDA allow reduced-fat (2 percent), unflavored milk, arguing that this option is more palatable for students. One respondent suggested allowing whole milk in school meals, while another agreed and specifically suggested allowing whole, flavored milk. A State elected official encouraged USDA to allow reduced-fat and whole milk options, asserting that this would increase milk consumption and reduce milk waste. An industry respondent agreed, stating that they are confident that the next edition of the *Dietary Guidelines* will ''look more favorably on dairy at all fat levels.'' This respondent urged USDA to allow reduced-fat and whole milk in school meals in anticipation of what the industry respondent expects in the next *Dietary Guidelines.* A dietitian suggested USDA consider ''increasing the allowable fat and calories'' in milk options.

A State agency urged USDA to reconsider the requirement to provide a variety of fluid milks (*i.e.,* at least two options) with each meal service. This respondent argued that the variety requirement leads to a lot of waste. A school food service professional agreed, suggesting that providing variety contributes to waste. This respondent stated that ''skim [milk] is almost never chosen and ends up wasted.'' A professional organization cautioned that limiting flavored milk options could potentially effect meal participation and financial viability for schools. A school district respondent requested that USDA increase funding for Farm to School and equipment grant projects to support more locally produced milk and bulk milk dispensers.

Final Rule

This final rule codifies the proposal to maintain the current milk regulations, with minor technical changes, at 7 CFR 210.10(d), 220.8(d), and 210.11(l).[52] Under this final rule, all schools continue to have the option to offer fat-free and low-fat milk, flavored and unflavored, to K–12 students, and to sell fat-free and low-fat milk, flavored and unflavored, à la carte. Consistent with current requirements, unflavored milk must be offered at each school breakfast and lunch meal service. SMP and CACFP operators may continue to offer fat-free and low-fat milk, flavored and unflavored, to participants ages 6 and older. Additionally, as a reminder, lactose-free and reduced-lactose milk will continue to meet the meal pattern requirements for fluid milk under this final rule (7 CFR 210.10(d)(1)(i), 215.7a(a), 220.8(d), and 226.20(a)(1)).

Under requirements established in this final rule for added sugars, as discussed in *Section 2: Added Sugars,* flavored milk offered to K–12 students

[52] This final rule redesignates the paragraph outlining requirements for competitive beverages, which was previously 7 CFR 210.11(m) to instead be 7 CFR 210.11(l). Under this final rule, the requirements for milk sold as a competitive beverage are outlined at 7 CFR 210.11(l).

in the NSLP and SBP and sold to students à la carte during the school day must comply with the product-based added sugars limit. Under this product-based limit requirement, effective SY 2025–2026, flavored milk must contain no more than 10 grams of added sugars per 8 fluid ounces, or for flavored milk sold à la carte in middle and high schools, 15 grams of added sugars per 12 fluid ounces.

USDA is committed to ensuring that school meals provide children with nutrient-dense foods and beverages that are consistent with the goals of the most recent *Dietary Guidelines*. USDA recognizes that dairy products, including fluid milk, provide a variety of essential nutrients—some of which are underconsumed among school-aged children. The decision to allow flavored, low-fat milk acknowledges concerns expressed in public comments about declining milk consumption among school-aged children. It also acknowledges the nutrients that milk provides (*e.g.,* calcium, vitamin D, and potassium), which remain nutrients of public health concern for the general U.S. population because they are underconsumed.[53] Respondents expressed the importance of considering milk palatability and acceptability when establishing long-term requirements.

Many stakeholders raised concerns about the potential impact on milk consumption if flavored milk options were limited under Alternative A. USDA recognizes that both flavored and unflavored milk provide children with key nutrients. Flavored milk has been shown to encourage milk consumption among school-aged children,[54] and public comments from school nutrition professionals suggest that children may select and consume flavored milk more often than unflavored milk. For example, USDA research from SY 2014–2015 found that about 18 percent of low-fat, flavored milk offered with school lunch was wasted, compared to 35 percent of low-fat, unflavored milk.[55] USDA acknowledges the benefit of allowing flavored milk to be offered as a strategy to promote milk consumption, a beverage that provides several nutrients that are underconsumed during childhood and adolescence. Additionally, many respondents stated that flavored milk is purchased in higher quantities compared to unflavored milk, affirming that flavored milk is a popular choice among students. Offering both flavored and unflavored varieties of milk as part of a nutritious school meal may help to minimize the gap between current and recommended intakes of key nutrients among school-aged children and adolescents. For example, a USDA study found that K–12 students who participated in NSLP were significantly more likely to consume milk compared to students who did not participate.[56] Thus, the school meal programs remain a contributing factor in influencing milk consumption among children. USDA acknowledges the importance of allowing schools the option to offer milk varieties that children will consume and enjoy.

USDA recognizes that some stakeholders supported limiting flavored milk options under Alternative A. USDA appreciates public input on Alternative A, which would have limited flavored milk offerings to older students, in grades 9–12 or grades 6–12. Several respondents acknowledged that Alternative A would help reduce the intake of beverages with added sugars, especially for younger children. Advocacy groups and parents also supported this alternative as a way to transition students from flavored to unflavored milk and reduce their consumption of added sugars. Conversely, other respondents raised important concerns about the operational feasibility if Alternative A were finalized. For example, one school district explained that some schools serve multiple grades in a single meal service, and students from grades K–12 may be in the cafeteria at the same time. These schools may not have the opportunity or capacity to limit milk options as children from different grade levels pass through the serving lines, and would have to monitor student milk selections by grade level to ensure compliance with Alternative A. A few State agencies added that limiting flavored milk options by grade levels could be challenging to monitor during Administrative Reviews. USDA acknowledges respondent concerns that Alternative A could be difficult to implement and monitor, especially for small schools or schools where students from different grade levels share the same meal service. Due to the variability in school size, grade level configurations, storage and cafeteria space, and overall operations, USDA recognizes that Alternative A could cause unintended operational and administrative challenges for both schools and State agencies. USDA appreciates the important concerns raised by stakeholders, particularly on behalf of small schools, and considered this input in the final rule.

USDA recognizes that under this final rule, flavored milk will continue to contribute to added sugars in school meals. However, as noted in *Section 2: Added Sugars,* this rulemaking also finalizes a product-based added sugars limit for flavored milk. By SY 2025–2026, schools must implement a product-based limit for flavored milk of no more than 10 grams of added sugars per 8 fluid ounces or, for flavored milk sold as a competitive food for middle and high schools, 15 grams of added sugars per 12 fluid ounces. In SY 2027–2028, this rule will also implement an overall weekly limit for added sugars of less than 10 percent of calories per week. USDA expects that these actions, as well as the other product-based added sugars limits finalized in this rulemaking, will support an overall decrease in the added sugars content of school meals. Additionally, as noted above, this final rule maintains that NSLP and SBP operators who choose to offer flavored milk must also offer unflavored milk (fat-free or low-fat) to students in the same meal service. This requirement ensures that milk variety in the NSLP and SBP is not limited to flavored milk choices, and that a nutrient-dense form of milk that is lower in added sugars (*i.e.,* unflavored milk) is always available for students to select. USDA is committed to advancing the nutritional quality of school meals and reducing added sugars to safeguard children's health and align with the goals of the most recent *Dietary Guidelines*.

USDA appreciates respondent feedback on additional approaches to

[53] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans, 2020–2025. 9th Edition.* December 2020. Page 36. Available at: *DietaryGuidelines.gov*.

[54] See page 58. Institute of Medicine, *Nutrition Standards for Foods in Schools: Leading the Way Toward Healthier Youth* (''IOM Report''). Available at: *https://nap.nationalacademies.org/catalog/11899/nutrition-standards-for-foods-in-schools-leading-the-way-toward*. See also: Mary M. Murphy et al., Drinking Flavored or Plain Milk is Positively Associated with Nutrient Intake and Is Not Associated with Adverse Effects on Weight Status in U.S. Children and Adolescents.

[55] See Table 5.1: *Mean Percentage of Observed Trays including Specific Foods and Mean Percentage of Observed Foods Wasted in NSLP Lunches*. U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes,* by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019. Available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study*.

[56] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes Appendix I–P*. Available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study*.

reduce added sugars intake from flavored milk. For example, respondents suggested that schools can limit flavored milk options to lunch only, procure flavored milks with the least amount of added sugars, or limit flavored milk to one day per school week. Additionally, there is no requirement that schools offer flavored milk, and schools may choose to remove all flavored milk from school meal menus as long as the school continues to offer a variety of fluid milk. For example, one school district commented that they have removed flavored milk from their menus to support school wellness. USDA encourages schools to consider these strategies to further reduce added sugars in school meals and to choose options that work best for their unique communities.

Respondents also raised other ideas and suggestions related to milk requirements. For example, some respondents encouraged USDA to remove the milk variety requirement. The requirement to offer a variety of milk options is mandated by statute, and USDA does not have the authority to change this statutory requirement (42 U.S.C. 1758(a)(2)(i)). Schools have several options to meet the milk variety requirement, such as offering unflavored fat-free and unflavored low-fat milk. Schools may also offer lactose-free or reduced-lactose milk (fat-free or low-fat) to meet the milk variety requirement. Other respondents recommended USDA allow schools to offer milk with a higher fat content. While USDA appreciates comments suggesting schools be allowed to offer reduced fat and whole milk, allowing these milk options in the school meal programs would not be consistent with the goals of the most recent *Dietary Guidelines* as required by the NSLA and would make it difficult for menu planners to achieve weekly dietary specifications without exceeding calorie and saturated fat limits. Statutory requirements state that milk offered in reimbursable school meals must be consistent with the most recent *Dietary Guidelines,* and the *Dietary Guidelines, 2020–2025* recommends unsweetened, fat-free or low-fat milk for school-aged children. Therefore, USDA does not permit reduced-fat or whole milk in the school meal programs (7 CFR 210.10(d)(1)(i) and 220.8(d)).

As mentioned above, this final rule does not change any milk requirements in CACFP. Many respondents requested that milk standards established in school meal programs be consistent with the CACFP. USDA recognizes that regulatory consistency across programs, a long-time goal at USDA, facilitates program administration and operation at the State and local levels, fosters support, and meets stakeholder expectations.

Accordingly, this final rule makes minor technical changes to the requirements found in 7 CFR 210.10(d)(1), 210.11(l)(1)(ii), (l)(2)(ii), and (l)(3)(ii),[57] and 220.8(d). This final rule continues to allow NSLP and SBP operators to offer unflavored or flavored, fat-free or low-fat milk as part of a reimbursable meal and for sale à la carte, and to allow flavored, low-fat milk in the SMP and in the CACFP for participants ages 6 and older. Because this rule finalizes the current flavored milk requirements, child nutrition program operators will not need to make changes to their menus to comply with this provision, beyond those changes described in *Section 2: Added Sugars*.

Section 3B: Fluid Milk Substitutes: Responses To Request for Input

Current Requirement

As noted in *Section 3A: Flavored Milk,* the National School Lunch Act requires fluid milk (cow's milk) to be offered with every school breakfast and lunch. The statute is also very specific about allowable fluid milk substitutes for non-disability reasons. To provide a substitute for cow's milk in the school meal programs, the statute requires:

- That the fluid milk substitute is nutritionally equivalent to fluid milk and meets nutritional standards established by the Secretary, which must include fortification of calcium, protein, vitamin A, and vitamin D to levels found in cow's milk (42 U.S.C. 1758(a)(2)(B)(i)). This requirement also applies to the CACFP (42 U.S.C. 1766(g)(4)(B)).
- That the substitution is requested in writing by a medical authority or the child's parent or legal guardian (42 U.S.C. 1758(a)(2)(B)(ii)). This requirement also applies to CACFP (42 U.S.C. 1766(g)(4)(C)(i)(II)).
- That the school notify the State agency if it is providing fluid milk substitutes for non-disability reasons (42 U.S.C. 1758(a)(2)(B)(ii)).
- That the school cover any expenses related to providing fluid milk substitutes in excess of program reimbursements (42 U.S.C. 1758(a)(2)(B)(iii)). This requirement also applies to institutions or facilities in the CACFP (42 U.S.C. 1766(g)(4)(D)).

Under current school meal regulations, the statutory requirements for fluid milk substitutes for non-disability reasons are codified in two places:

- Current 7 CFR 210.10(d)(3) details the nutrition requirements for fluid milk substitutes for non-disability reasons.
- Current 7 CFR 210.10(m)(2)(i) through (iii) detail additional requirements for fluid milk substitutes for non-disability reasons, such as the process for requesting a fluid milk substitute on behalf of a student.

Under current CACFP regulations, the statutory requirements for fluid milk substitutes are codified at 7 CFR 226.20(g)(3).

As a point of clarification, the statute and program regulations require schools, institutions, and facilities to provide meal modifications for participants with a disability that restricts their diet. Lactose intolerance may be considered a disability. For example, a child whose digestion is impaired due to lactose intolerance may be considered a person with a disability who requires a substitution for cow's milk. In this example, if a student cannot consume cow's milk due to a disability, and the school food authority obtains a written medical statement as documentation of the student's disability, the school is required to provide a substitution for cow's milk. Further, when providing a meal modification for a participant's disability, the substitution for cow's milk does not need to meet the *non-disability* fluid milk substitute requirements. When providing a meal modification for a participant's disability, the school, institution, or facility would review the participant's medical statement which must include a recommended alternative to accommodate the participant with a disability,[58] and the substitution would not be required to meet the nutrition requirements for *non-disability* fluid milk substitutes. The nutrition requirements for *non-disability* fluid milk substitutes apply only in *non-disability* situations. This section will focus on non-disability fluid milk substitute requirements. Please see *Section 14: Meal Modifications* for a more detailed overview of meal modifications for disability reasons,

[57] This final rule redesignates the paragraph outlining requirements for competitive beverages, which was previously 7 CFR 210.11(m) to instead be 7 CFR 210.11(l). Under this final rule, the requirements for milk sold as a competitive beverage are outlined at 7 CFR 210.11(l).

[58] However, Program operators should not deny or delay a requested modification because the medical statement does not provide recommended alternatives. When necessary, Program operators should work with the participant's parent or guardian to obtain a supplemental medical statement. See Question 17. U.S. Department of Agriculture, *Accommodating Disabilities in the School Meal Programs: Guidance and Questions and Answers (Q&As).* April 25, 2017. Available at: *https://www.fns.usda.gov/cn/accommodating-disabilities-school-meal-programs-guidance-qas.*

including updates made by this rulemaking.

Proposed Rule

USDA proposed to reorganize the NSLP regulatory text related to fluid milk substitutes for non-disability reasons to clarify the requirements for requesting and providing non-disability fluid milk substitutes in the school meal programs. The rule proposed to move the NSLP regulatory text explaining the non-disability fluid milk substitute requirements from paragraph (m) of 7 CFR 210.10—which currently discusses exceptions and variations allowed in reimbursable meals—to paragraph (d) of 7 CFR 210.10—which discusses the fluid milk requirements.

USDA did not propose substantive changes to the requirements for non-disability fluid milk substitutes. As noted in the proposed rule, USDA does not have the authority to change the statutory requirements for non-disability fluid milk substitutes. However, USDA requested public input on the current fluid milk substitute process, particularly from parents and guardians with firsthand experience requesting a non-disability fluid milk substitute on behalf of their child, and program operators with firsthand experience processing a request.

Public Comments

USDA received 390 comments with feedback about the current fluid milk substitute process, including 194 unique comments. Several respondents encouraged USDA to make the process of requesting and providing fluid milk substitutes less cumbersome so that participants can more easily access substitutes. These respondents offered a variety of suggestions for USDA, State agencies, schools, institutions, and facilities to consider to improve access to fluid milk substitutes. For example, respondents suggested:

- Pursuing a public education campaign to encourage medical screening of children with possible lactose intolerance and milk allergies.
- Developing informational fliers with basic facts about lactose intolerance and milk allergies to be posted in school cafeterias and community clinics and sent home with children.
- Improving awareness of the process of requesting fluid milk substitutes among school food service professionals, parents, guardians, and students, for example, by:
- Clarifying that schools are authorized and encouraged to provide fluid milk substitutes for non-disability reasons based on a parent or guardian request.
- Issuing guidance with examples of reasons students may request a non-disability fluid milk substitute, such as following a vegan diet.
- Simplifying the process of requesting a fluid milk substitute for a participant, for example, by:
- Including in registration materials a simple way for parents and guardians to request a fluid milk substitute, such as a form with a checkbox.
- Providing a model notice and form parents and guardians may use to request a fluid milk substitute that schools, institutions, or facilities can post on their website and mail to families.
- Providing a list or database of allowable fluid milk substitutes, such as fortified soy beverages or pea protein milk.
- Identifying more shelf-stable fluid milk substitute options, especially for small schools, institutions, and facilities where only a few participants request a fluid milk substitute.
- Clarifying the differences between meal modifications for disability reasons and fluid milk substitutes for non-disability reasons.
- Creating a focus group of students, school nutrition professionals, district officials, and parents and guardians from across the country to further understand the barriers students face in accessing fluid milk substitutes.
- Providing additional reimbursement or funding to schools that offer non-disability fluid milk substitutes.

Several respondents had additional feedback on the process of identifying products that meet the nutrition requirements for fluid milk substitutes. One advocacy group and a few other respondents encouraged USDA to modify the process of identifying acceptable fluid milk substitutes so that program operators can refer to the Nutrition Facts label, noting that currently, some of the required nutrients are not always listed on the label. A State agency observed that when a required nutrient is not included on the Nutrition Facts label, schools need to contact the manufacturer to obtain nutrition information. Another State agency and an advocacy group argued that the current process makes it difficult for program operators to offer fluid milk substitutes. Further, a State agency suggested the requirement for micronutrients in fluid milk substitutes is ''excessive,'' suggesting that requiring substitutes to match the micronutrient profiles of milk discounts the other nutrition benefits of fluid milk substitutes.

A few respondents offered suggestions that would conflict with the statutory requirements for fluid milk substitutes, as detailed in the ''Current Requirements'' section above. For example, respondents suggested that USDA:

- Make non-dairy milk options available to all children and allow more beverages to be offered as fluid milk substitutes.
- Remove the requirement for parents, guardians, or a medical authority to request the fluid milk substitute.
- Remove the requirement that school food authorities notify the State agency if any of its schools choose to offer fluid milk substitutes for non-disability reasons.
- Make broader changes to the meal pattern requirements, such as removing the requirement to offer fluid milk altogether.

A few respondents offered suggestions related to other proposals included in the rule. An industry respondent and an advocacy group suggested that if USDA finalizes added sugars limits for flavored cow's milk, the same limits should apply to fluid milk substitutes. However, another respondent recommended that if USDA applies a sugar limit to fluid milk substitutes, that the limit be for total sugars (rather than added sugars). One State agency requested clarification about whether flavored milk restrictions for K–5 or K–8 students would apply to fluid milk substitutes, if they are finalized for cow's milk. Other respondents supported and recommended maintaining the current non-disability fluid milk substitute process. An industry respondent affirmed that it is important for non-dairy fluid milk substitutes to provide nutrients similar to cow's milk. An advocacy group agreed, noting that except for fortified soy beverages and soy yogurt, the *Dietary Guidelines* do not include plant-based beverages as part of the dairy group. This respondent supported maintaining the statutory requirement that fluid milk substitutes be nutritionally comparable to cow's milk. Another industry respondent affirmed that USDA developed the nutritional requirements for fluid milk substitutes ''on the basis of nutrition science and in accordance with statutory requirements.'' An advocacy group supported the current process for fluid milk substitutes, arguing that it ''works well for school meal program operators'' and provides clear guidelines. A State agency agreed, suggesting that soy milk

and lactose-free milk are ''readily available'' and are nutritious options for children.

One industry respondent appeared to misunderstand the types of fluid milk substitutes that are permitted for non-disability reasons. This respondent argued that certain non-dairy milks are not nutritionally equivalent to cow's milk and that students should either drink cow's milk or water. To clarify, to be allowed as a non-disability fluid milk substitute, a product must meet nutritional requirements outlined in regulation. These statutory requirements ensure that fluid milk substitutes are nutritionally equivalent to fluid milk (42 U.S.C. 1758(a)(2)(B)(i) and 42 U.S.C. 1766(g)(4)(B)). Non-dairy milks that do not meet the nutritional requirements outlined in regulation are not allowable fluid milk substitutes. Another industry respondent confirmed that most plant-based milks, such as almond, coconut, and rice milks, do not currently meet the nutrient standards to qualify as fluid milk substitutes.

Some respondents provided input on lactose-free or reduced-lactose milk. Low-fat or fat-free lactose-free and reduced-lactose milk are milk under the statute and program regulations (42 U.S.C. 1758(a)(2)(A)(ii) and 7 CFR 210.10(d)(1)(i), 220.8(d), and 226.20(a)(1)). This means that schools, institutions, and facilities may offer lactose-free and reduced-lactose milk toward the milk requirements without obtaining a request from a parent or guardian or a medical authority. A few industry respondents encouraged USDA to provide incentives to schools that opt to offer lactose-free milk on a routine basis to all students who want it, and to work with industry to facilitate more extensive offerings of lactose-free milk in schools. For example, these respondents suggested that USDA design a specification for 8-ounce, lactose-free milk and offer it through USDA Foods. Similarly, a State agency noted that it would be helpful if processors packaged 8-ounce, lactose-free or reduced-lactose milks to make these options more accessible to operators.

Several respondents raised concerns on behalf of children who cannot consume, or have difficulty consuming, cow's milk. For example, a group of State Attorneys General mentioned that children of color have markedly higher rates of lactose intolerance, citing a 2013 study [59] that found that Black children were twice as likely as non-Hispanic white children to have allergic sensitization to milk. Similarly, a letter from Members of Congress noted that ''most Black, Indigenous, and other People of Color (BIPOC) are lactose intolerant.'' An advocacy group cited the National Institutes of Health website, which states that about 68 percent of the world's population has lactose malabsorption.[60] A few individuals shared their personal experiences facing digestive issues as a child, which they attributed to drinking cow's milk with their school lunch. These respondents suggested improved access to fluid milk substitutes could help students avoid experiencing the same discomfort today. To help address these issues, a form letter campaign suggested that USDA clarify in the final rule that lactose intolerance may be considered a disability. As noted, a participant whose digestion is impaired due to lactose intolerance may be a person with a disability that requires a menu substitution for fluid milk, and the statute and regulation require schools, institutions, and facilities to provide meal modifications for participants with a disability that restricts their diet. As emphasized by these and numerous other comments, USDA appreciates the importance of clarifying the requirements for meal modifications for disability reasons and fluid milk substitutes for non-disability reasons. USDA is committed to providing guidance to help ensure participants who require a substitution for cow's milk due to a disability receive a meal modification.

Final Rule

This final rule reorganizes the NSLP regulatory text related to fluid milk substitutes for non-disability reasons. This rule moves the regulatory text explaining the non-disability fluid milk substitute requirements from 7 CFR 210.10(m), which discusses exceptions and variations allowed in reimbursable meals, to 7 CFR 210.10(d), which discusses the fluid milk requirements. As noted in the proposed rule, USDA does not have the authority to change the statutory requirements for non-disability fluid milk substitutes,[61] such as the statutory requirement that fluid milk substitutes meet specific nutrition requirements and that fluid milk substitutes must be requested in writing. Therefore, this final rule does not make any substantive changes to the non-disability fluid milk substitute request process outlined in regulation. However, USDA greatly appreciates input that respondents provided on the request process, including their advice on best practices to improve the process for program operators, families, and participants. USDA will consider including this input in future best practice resources.

USDA also encourages State agencies, schools, institutions, facilities, and other stakeholders to consider this input in their State and local processes. For example, community organizations could partner with institutions and facilities to provide families with information about lactose intolerance. USDA reminds schools, institutions, and facilities that lactose-free and reduced-lactose milk meet the meal pattern requirements for fluid milk (7 CFR 210.10(d)(1)(i), 215.7a(a), 220.8(d), and 226.20(a)(1)). Schools, institutions, and facilities may choose to provide lactose-free and reduced-lactose milk to participants without needing to obtain a written request from a parent or guardian.

Regarding fluid milk substitutes that require a written request from a parent or guardian, school food authorities could provide a simple form that parents and guardians could use to request a substitute when sending student registration materials. For its part, USDA remains committed to providing guidance to clarify the differences between meal modifications for disability reasons and fluid milk substitutes for non-disability reasons and will consider ways to improve guidance related to the fluid milk substitutes process. Please see *Section 14: Meal Modifications* for a more detailed overview of meal modifications

[59] The public comment cited the following study: Wegienka et al., *Racial Differences in Allergic Sensitization: Recent Findings and Future Directions,* Current Allergy and Asthma Reports, June 2013, *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4888051.*

[60] The public comment cited the following web page: National Institutes of Health. *How common is lactose malabsorption?* Available at: *https://www.niddk.nih.gov/health-information/digestive-diseases/lactose-intolerance/definition-facts#:~:text=While%20most%20infants%20can%20digest,world%27s%20population%20has%20lactose%20malabsorption.*

[61] As detailed in the Current Requirements section, the following requirements related to fluid milk substitutes are statutory, meaning that USDA does not have discretion to change them: that the fluid milk substitute is nutritionally equivalent to fluid milk and meets nutritional standards established by the Secretary, which must include fortification of calcium, protein, vitamin A, and vitamin D to levels found in cow's milk (42 U.S.C. 1758(a)(2)(B)(i)); that the substitution is requested in writing by a medical authority or the child's parent or legal guardian (42 U.S.C. 1758(a)(2)(B)(ii)); that the school notify the State agency if it is providing fluid milk substitutes for non-disability reasons (42 U.S.C. 1758(a)(2)(B)(ii)); and that the school cover any expenses related to providing fluid milk substitutes in excess of program reimbursements (42 U.S.C. 1758(a)(2)(B)(iii)). This requirement also applies to institutions or facilities in the CACFP (42 U.S.C. 1766(g)(4)(D)).

for disability reasons, including updates made by this rulemaking.

USDA appreciates requests for clarification about whether fluid milk substitutes offered in the NSLP and SBP are impacted by the added sugars provision of this rule. USDA did not propose to apply the product-based added sugars limit for flavored milk to fluid milk substitutes; that proposal was specific to cow's milk. Therefore, fluid milk substitutes are not required to meet the product-based added sugars limit for flavored cow's milk. However, effective SY 2027–2028, all meals offered during a school week—including meals containing fluid milk substitutes—will be required to, on average, meet the weekly added sugars limit (*i.e.,* no more than 10 percent of calories from added sugars).

Accordingly, this final rule amends 7 CFR 210.10(d) and (m) to reorganize the regulatory text related to fluid milk substitutes for non-disability reasons in the school meal programs. Schools are not required to change menus or operations as a result of this technical change.

Section 3C: Fluid Milk Substitutes: Nutrient Requirements

Current Requirements and Proposed Rule

As detailed above, the statute and regulations specify nutrition requirements for fluid milk substitutes (42 U.S.C. 1758(a)(2)(B)(i), 42 U.S.C. 1766(g)(4)(B), 7 CFR 210.10(d)(3), and 226.20(g)(4)(B)). Currently, the vitamin A and vitamin D requirements are specified in International Units, or IUs. However, in 2016, the FDA published a final rule that changed the labeling requirements for vitamins A and D to micrograms (mcg) rather than IUs.[62]

To align with the labeling requirements in the FDA's rule, USDA proposed to update the regulatory nutrition requirements for fluid milk substitutes in the 2020 proposed rule. This proposal applied to NSLP, SMP, and CACFP regulations for fluid milk substitutes.

Public Comments

USDA received 46 of the comments on this provision of the 2020 proposed rule, including 22 unique comments; all supported this change. Several proponents suggested that this change could reduce burden and make it easier for child nutrition program operators to identify fluid milk substitutes. A State agency offered support for aligning regulations with current packaging information, agreeing that this could reduce burden. Another State agency noted that the current inconsistency creates additional work and strongly supported the proposed change.

Final Rule

As a conforming amendment, this final rule changes the units for vitamin A and vitamin D requirements for fluid milk substitutes. Instead of 500 IUs, the unit for the vitamin A requirement is now 150 mcg retinol activity equivalents (RAE) per 8 fluid ounces. Instead of 100 IUs, the unit for the vitamin D requirement is now 2.5 mcg per 8 fluid ounces. These requirements, along with the other nutrition requirements for fluid milk substitutes, are shown in the table below.

Nutrition Requirements for Fluid Milk Substitutes	
Nutrient	**Per Cup (8 fl. oz.)**
Calcium	276 mg.
Protein	8g.
Vitamin A	150 mcg. retinol activity equivalents (RAE)
Vitamin D	2.5 mcg.
Magnesium	24 mg.
Phosphorous	222 mg.
Potassium	349 mg.
Riboflavin	0.44 mg.
Vitamin B-12	1.1 mcg.

The amount of vitamin A and vitamin D required in fluid milk substitutes does not change; only the unit of measurement has changed to conform to FDA labeling requirements.

Accordingly, this final rule amends 7 CFR 210.10(d)(2)(ii), 215.7a(b)(2), and 226.20(g)(3)(ii). Child nutrition program operators are not required to change menus or operations as a result of this technical change.

Section 4: Whole Grains

Current Requirement

Current regulations at 7 CFR 210.10(c)(2)(iv) and 220.8(c)(2)(iv) require that at least 80 percent of the weekly grains offered in the school lunch and breakfast programs must be whole grain-rich. The remaining grain items offered must be enriched. To meet USDA's whole grain-rich criteria, a product must contain 50 to 100 percent whole grains; any grain ingredients that are not whole grain must be enriched, bran, or germ. The current whole grain-rich requirement took effect on July 1, 2022.

Proposed Rule

The proposed rule included two options for offering whole grains in the school lunch and breakfast programs and requested public input on both. The rule:

- Proposed to maintain the current whole grains requirement that at least 80 percent of the weekly grains offered are whole grain-rich, based on ounce equivalents.
- Requested public input on an alternative whole grains option, which

[62] Food and Drug Administration. *Food Labeling: Revision of the Nutrition and Supplement Facts Labels* (81 FR 33742, May 27, 2016). Available at: *https://www.federalregister.gov/documents/2016/05/27/2016-11867/food-labeling-revision-of-the-nutrition-and-supplement-facts-labels.*

would require that all grains offered must be whole grain-rich, except that one day each school week, schools may offer enriched grains.

USDA requested public input on both approaches as well as the following questions:

- Which option would be simplest for menu planners to implement, and why?
- Which option would be simplest to monitor, and why?

In addition, USDA proposed to codify the definition of ''whole grain-rich'' for clarity. The proposed regulatory definition reads as follows: *Whole grain-rich is the term designated by FNS to indicate that the grain content of a product is between 50 and 100 percent whole grain with any remaining grains being enriched.* This proposed definition would not change the meaning of whole grain-rich, which has previously been communicated in USDA guidance. USDA proposed codifying the definition in NSLP, SBP, and CACFP regulations.

Finally, USDA proposed to update the definition of ''entrée item'' in the competitive food service and standards regulations (7 CFR 210.11(a)(3)).[63] These proposed changes sought to update the whole grain-rich requirements for entrée items sold as Smart Snacks in School for consistency with school meal requirements.

Public Comments

USDA received over 80,000 comments on the whole grains provision of the proposed rule, a majority of which were coded as ''mixed'' or ''other'' comments. Overall, about 3,800 comments supported whole grains, including 47 unique comments, while 49 comments opposed whole grains, including 44 unique comments. State agencies, school nutrition professionals, advocacy groups, professional organizations, industry respondents, dietitians, school nutrition professionals, and individuals provided comments on the proposals. At a high level, respondents provided the following feedback on whole grains:

- Whole grains are an important source of fiber and other nutrients.
- Whole grain-rich varieties of certain foods are less palatable to students, and some whole grain-rich products are less widely available than enriched products.
- USDA should establish a whole grain-rich requirement that allows flexibility for schools to occasionally offer enriched grains.

More detailed respondent feedback, including respondent feedback on the proposal to maintain the current requirement, as well as the alternative days-per-week model, is included below.

Importance of Whole Grains

Many respondents highlighted the importance of whole grains to children's diets. An advocacy group supported whole grain consumption for children's health, reasoning that whole grain foods are wholesome, nutrient-dense, and high quality. An industry respondent mentioned that whole grain-rich requirements in school meals allow students to benefit from whole grain foods, which provide important nutrients. An individual agreed, adding that whole grains are a good source of dietary fiber. Similarly, another respondent asserted that whole grain consumption should be encouraged because of the ''well documented'' positive health effects.

Proposed Approach: Maintain 80 Percent Whole Grain-Rich Requirement, Based on Ounce Equivalents

About 4,800 respondents supported maintaining the current whole grain-rich requirement, including 291 unique comments. Several respondents, including a State agency and a few dietitians, stated that maintaining the current, 80 percent requirement would provide a balanced approach throughout the week and allow menu planners and students continued flexibility. An array of respondents supported maintaining the current requirement because of the nutritional benefits of whole grains and fiber consumption. Many respondents, including school nutrition professionals, agreed that the current requirement helps to increase students' whole grain consumption while allowing flexibility to offer some enriched grains, such as pasta. A State agency, professional organizations, school districts, and form letter campaigns noted that maintaining the current requirement would encourage whole grain consumption while allowing schools the opportunity to serve culturally relevant enriched grain items.

One respondent appreciated the current 80 percent whole grain-rich requirement and mentioned that their school menu usually offers about 90 percent whole grain-rich grains. This respondent stated that the 80 percent requirement provides ''wiggle room'' if a product they normally buy as whole grain-rich is not available and they have to buy the enriched option. A school nutrition professional explained that while it took several years to adjust to whole grain-rich products, students at their school now mostly accept them. Another school district shared that its schools implement a 100 percent whole grain-rich requirement, but still supported the 80 percent requirement because it allows flexibility for schools to occasionally offer enriched grains.

A State agency supported maintaining the current requirement because schools have successfully implemented, and are comfortable with, the requirement. Similarly, another State agency noted that schools can rely on existing menu planning software for implementation and monitoring. A national organization, representing tens of thousands of school nutrition professionals supported the current requirement, emphasizing that this approach would be the ''simplest'' for menu planners to implement and State agencies to monitor. One State agency and two professional organizations suggested that maintaining the current requirement would not require staff retraining or menu changes, and would prevent confusion in menu planning, for example, during shortened school weeks.

Twenty-one respondents, all unique comments, opposed the current whole grain-rich requirement or raised concerns about implementation. For example, a State agency expressed concern that the 80 percent threshold may contribute to administrative burden for both menu planning and Administrative Reviews. This State agency noted that calculating 80 percent whole grain-rich offerings across weekly menus could be complex, time-consuming, and error prone. Another respondent mentioned that the current requirement is easier to monitor with nutrition software but acknowledged that the days-per-week model would be easier for schools that do not have software.

Alternative Approach: Days-Per-Week Model

About 9,100 respondents supported the alternative days-per-week model, including 47 unique comments. A State agency reasoned that the alternative option would simplify menu planning and reduce non-compliance and monitoring burden. Other respondents, including a professional association, a few school nutrition professionals, and a dietitian, agreed, and gave examples of how the alternative approach could be easier to implement. For example, respondents suggested that the days-per-week requirement would be easier to understand, would eliminate the need to calculate percentages, and would

[63] For more information on Smart Snacks in Schools, see: U.S. Department of Agriculture, *Tools for Schools—Focusing on Smart Snacks.* Available at: *https://www.fns.usda.gov/cn/tools-schools-focusing-smart-snacks.*

simplify reviews for State agencies. A school nutrition professional stated that they are implementing the current whole grain-rich requirement using a days-per-week model and asserted that they find this approach simple to plan and monitor.

Other proponents added that the alternative whole grain-rich approach is nutritionally sound. For example, a form letter campaign claimed that the days-per-week model supports a strong whole grain standard. An industry respondent mentioned that allowing enriched grains one day per week would ensure that students are exposed to whole grains in most of their school meals.

Fifty-six respondents, including 37 unique comments, opposed the alternative days-per-week model or raised concerns about implementation. A dietitian expressed concern that the alternative model would limit menu planning flexibility. A State agency shared concerns that schools could potentially offer a larger amount of enriched grains one day each school week, which could reduce the overall percentage of whole grain-rich items offered during the week. A few State agencies requested USDA provide implementation guidance for the days-per-week model, particularly for schools with alternative schedules (such as four- or seven-day school weeks) and for school weeks that are shortened due to holidays, vacations, unexpected closures, and emergencies. Some respondents cautioned that during shortened school weeks, an even larger amount of overall grain offerings could be enriched.

Other Approaches Suggested by Comments

Several respondents provided mixed responses on the two approaches or suggested their own alternatives. Many respondents, including professional organizations, advocacy groups, and a school district encouraged USDA to allow school districts to choose which of the whole grain-rich approaches they would like to implement, reasoning that doing so would provide greater flexibility in program operations. A few professional organizations added that some school districts may find it easier to implement one option over the other, depending on their unique supply chain, staffing, and menu planning considerations. Some highlighted that providing a choice between both options would be considerate of the operational differences between school districts of varying sizes as well as differences between rural and urban school districts.

An advocacy group expressed concern that while both approaches would encourage whole grain consumption, they do not fully align with the *Dietary Guidelines* recommendation that at least half of grains are whole grains.[64] Several advocacy groups urged USDA to require 100 percent of grain products offered in school meals to be whole-grain rich. A State agency emphasized that they have maintained a 100 percent whole grain-rich requirement, suggesting that their schools experience minimal issues complying with their statewide requirement and are successful in procuring products to meet that requirement. Another individual recommended USDA require all grains to be *whole grains* (rather than having a *whole grain-rich* requirement) and expressed concern that whole grain-rich items are only required to contain at least 50 percent whole grains. For clarity, USDA proposed codifying the definition of whole grain-rich to explain that products containing 50 to 100 percent whole grain, such as whole grain oatmeal, are whole grain-rich.

An advocacy group supported strengthening the whole grain-rich requirement reasoning that it could improve schools' environmental sustainability. Instead of permanently maintaining the current requirement, this respondent recommended that USDA transition to requiring all grains offered to be whole grain-rich by SY 2027–2028. Or, if USDA opted to finalize the days-per-week model, this advocacy group recommended that USDA add a requirement that schools ''balance'' the enriched grain day with a 100 percent whole grains day. A form letter suggested that USDA adopt a 100 percent whole grain-rich requirement or increase the whole grain-rich threshold to 90 percent and adopt an additional requirement for fiber. An industry respondent supported the 80 percent threshold for NSLP, but suggested USDA require that 100 percent of grains offered in the SBP be whole grain-rich. Additionally, this respondent suggested that all breakfast cereal offered in child nutrition programs should be whole grain-rich, noting that there are a wide variety of whole grain-rich breakfast cereals available.

Some respondents provided suggestions or questions for USDA to consider. A parent suggested adjusting the proposed whole grain-rich definition by emphasizing more whole (100 percent) grains. One respondent asked if schools can receive ''credit'' if they offer 100 percent whole grains (which exceed the 50 percent threshold to qualify as whole grain-rich) in order to offer more enriched grains. A school district urged USDA to consider an approach that would require schools to offer more whole grains, such as brown rice and bread from whole wheat flour, as opposed to ''processed and manufactured products.'' A form letter suggested USDA consider developing a requirement for fiber, noting that grains are a top source of fiber in school meals. Similarly, one advocacy group suggested a carbohydrate-to-fiber ratio standard to help schools identify more healthful grain products.

Conversely, other respondents suggested that USDA decrease the current 80 percent whole grain-rich threshold. A school nutrition director opposed both whole grain proposals asserting that there is no significant difference between the two options. This respondent suggested USDA instead lower the current whole grain-rich threshold from 80 to 50 percent. A State agency advocated for a 50 to 75 percent whole grain-rich threshold, suggesting that the current 80 percent threshold is challenging to meet for grades K–5 based on the minimum grain amount required for the week. A few other respondents, including a State agency, professional association, school district, and individual, argued that the 80 percent threshold limits menu options and claimed that implementing a 50 percent whole grain-rich requirement would yield higher student participation and more menu planning flexibility. A dietitian agreed, stating that a 50 percent whole grain-rich requirement would provide an ''ideal balance'' between providing whole grains and enriched grains in school meals.

Some respondents who supported a lower whole grain-rich threshold cited specific challenges with offering whole grain-rich foods in school meals, including ongoing supply chain issues and concerns about the taste of certain whole grain-rich products. One respondent mentioned that schools continue to experience supply chain issues and production disruptions on a weekly basis. In recent years, this respondent stated that schools have experienced limited availability of whole grain-rich items and vendors have substituted enriched grain products. When commenting on the whole grains proposal, a food industry respondent explained that product development, reformulation, and recipe adjustments are time-consuming activities. This respondent stated that

[64] See page 18. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition*. December 2020. Available at: *https://www.dietaryguidelines.gov/*.

rapid reformulation could increase prices and interfere with consumer testing. Dietitians from a State agency noted that identifying whole grain-rich items is challenging for small school districts that purchase foods from consumer markets and small distributors, which do not have crediting information readily available.

Relatedly, a few respondents shared examples of whole grain-rich products that they asserted are not palatable or do not work well in school cafeteria operations, such as egg noodles, pasta, tortillas, grits, and biscuits. An individual claimed that students do not like certain foods manufactured with whole grain ingredients, and a school nutrition professional asserted that students refuse to consume whole grain-rich biscuits and snack crackers. A school district claimed that offering enriched grains is necessary for student participation in school meals. Another respondent expressed that it is critical for USDA to allow schools to occasionally offer enriched grains, adding that some schools encounter strong regional and cultural preferences for specific items, such as flour tortillas and white rice.

Comments on Other Whole Grain-Rich Proposals

Respondents also provided feedback on the proposal to codify the definition of ''whole grain-rich'' in NSLP, SBP, and CACFP regulations and the proposal to update the definition of ''entrée item'' in the competitive food service and standards regulations. One respondent stated that the proposed regulatory definition for the term ''whole grain-rich'' would allow school nutrition professionals to make more informed decisions when implementing the whole grain-rich requirement. An advocacy group suggested using a minimum of 51 percent in the definition to emphasize that a product should have more whole grains than enriched grains to qualify as whole grain-rich. A professional organization shared concerns that adding the term ''whole grain-rich'' in regulation will require administrative costs for printing materials and training CACFP operators and suggested one year to phase-in implementation. A State agency inquired about what impact, if any, this definition would have on how CACFP program operators identify whole grain-rich items.

Regarding the proposal to update the definition of ''entrée item,'' a few advocacy groups opposed the change and encouraged USDA to maintain the whole grain-rich requirement for Smart Snacks in School entrée items to ensure students purchasing food à la carte receive whole grains. Another advocacy group agreed, stating that while they understood the intent of the change, they were concerned about the impact of schools selling enriched grain entrees à la carte. Other respondents, including a State agency and advocacy groups, supported the proposed change. One advocacy group noted that maintaining the current definition would require entrées sold à la carte to be whole grain-rich, which would prevent schools from selling certain enriched grain NSLP and SBP entrées à la carte. This respondent felt the proposed change would simplify the rules, support consistency within the school meal programs, and improve compliance. Another advocacy group agreed, stating this change would be beneficial to the school meal programs.

Final Rule

Maintain 80 Percent Whole Grain-Rich Requirement, Based on Ounce Equivalents

This final rule maintains the current whole grains requirement that at least 80 percent of the weekly grains offered in the school lunch and breakfast programs are whole grain-rich, based on ounce equivalents. This final rule is based on stakeholder feedback, which emphasized the importance of offering meals that meet local and cultural preferences by ensuring nutrition requirements occasionally allow schools to offer enriched grains. For example, this final rule allows schools the flexibility to occasionally serve white rice or non-whole grain-rich tortillas, while still promoting whole grain-rich foods throughout the school week. The requirement that at least 80 percent of the weekly grains offered in reimbursable school lunch and breakfast programs are whole grain-rich is a minimum standard, not a maximum. Schools may choose to increase whole grain-rich offerings beyond this minimum standard. It reflects a practical and feasible way to work toward the *Dietary Guidelines'* recommendation to increase whole grain consumption. USDA encourages schools to incorporate whole grains in their menus as often as possible to support children's health.

This final rule also supports USDA's commitment to advancing nutrition security by improving the nutritional quality of school meals. Research has demonstrated the importance of school meals in improving children's overall diets, including their whole grain consumption. For example, USDA research published in April 2023 found that after 2013, following implementation of the initial whole grain-rich requirements for school meals, school food became the most whole grain-dense food source in children's diets.[65] USDA expects the Healthy Eating Index (HEI) component score for whole grains will remain high under this final standard. For reference, in SY 2014–2015, USDA found the HEI component score for whole grains was 95 percent of the maximum score at school breakfast and at lunch.[66] In SY 2014–2015, all grains offered in the NSLP and SBP were required to be whole grain-rich; however, school food authorities that demonstrated a hardship in meeting this requirement had the option to request an exemption that allowed them to meet a reduced whole grain-rich requirement: at least 50 percent of all grains offered had to be whole grain-rich.

USDA acknowledges that some respondents asserted that the 80 percent weekly whole grain-rich requirement does not align with the *Dietary Guidelines* recommendations. It is important to acknowledge that schools may offer whole grain-rich foods more often than required throughout the school week and may choose to offer individual items that exceed the minimum threshold to qualify as whole grain-rich. For example, 100 percent whole grain bread and brown rice are examples of foods that exceed the 50 percent minimum criteria to be whole grain-rich. When schools exceed the weekly 80 percent requirement or offer 100 percent whole grain food items, students have greater access to the nutritional benefits of whole grains, further aligning school meals with the goals of the *Dietary Guidelines,* while still maintaining some flexibility for schools to offer enriched grains. USDA appreciates respondent feedback and continues to encourage schools to offer more whole grain-rich foods, including 100 percent whole grain products. Maintaining the option for schools to occasionally offer enriched grains responds to stakeholders who advocated

[65] Lin, Biing-Hwan, Travis A. Smith, and Joanne F. Guthrie. April 2023. *Trends in U.S. WholeGrain Intakes 1994–2018: The Roles of Age, Food Source, and School Food,* ERR–311, U.S. Department of Agriculture, Economic Research Service. Available at: *https://www.ers.usda.gov/publications/pub-details/?pubid=106291.*

[66] See Figure ES.14. And Figure ES.17. *School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals* by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019. Available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.* (OMB Control Number 0584–0596, expiration date 07/31/2017.)

for USDA to allow some menu planning flexibility to provide a variety of grain offerings, including student, regional, and cultural favorites.

USDA appreciates comments received on the alternative days-per-week model and acknowledges respondents' concerns that this approach could be difficult to implement and monitor, particularly during school weeks that are shortened due to emergency school closures, holidays, or scheduled breaks. USDA also acknowledges that the days-per-week model would require special consideration for schools with four-day schedules, or other alternative schedules. Due to this variability, under a days-per-week model, there is potential that the overall amount of whole grain-rich items offered could decrease, which could reduce children's overall whole grain consumption. Therefore, USDA has determined that maintaining the current 80 percent whole grain-rich requirement is a more practical approach, as it supports children's consumption of whole grains and has already been operationally successful in schools nationwide.

Some respondents mentioned that they implement the current 80 percent whole grain-rich requirement using a days-per-week model. Schools may choose to use this approach under the final rule, provided they continue to offer at least 80 percent of all grains as whole grain-rich, calculated by ounce equivalents. USDA encourages schools to implement a strategy that best meets their operational needs and that meets the required 80 percent whole grain-rich threshold.

USDA recognizes that some schools are concerned about product availability due to supply chain challenges. USDA appreciates the importance of maintaining strong, long-term nutrition standards and incentivizing the food industry to develop products that support schools' efforts to provide children with nutritious school meals. In public comments, industry respondents and schools shared progress made toward expanding whole grain-rich offerings that children enjoy. For example, industry respondents mentioned a wide variety of whole grain-rich products that are currently available in the K–12 market. One industry respondent stated that they offer more than 25 entrée items containing whole grain-rich pasta or breading and suggested that these items are accepted by students. Another industry respondent stated that manufacturers ''have made great strides'' in developing whole grain-rich breakfast options. In addition, USDA Foods in Schools offers whole grain and whole grain-rich products available to schools in the yearly *USDA Foods Available List.*[67] For example, whole grain-rich USDA Foods available to schools for SY 2023–2024 included 100 percent white whole wheat flour, rolled oats, pancakes, brown rice, tortillas, and breaded fish sticks.

USDA technical assistance resources also support efforts to offer whole grain-rich foods in the child nutrition programs. USDA developed the *Whole Grain Resource for the National School Lunch and Breakfast Programs*[68] as well as three separate tip sheets on grains in the *Crediting in the Child Nutrition Programs*[69] series that assist school nutrition professionals with selecting appropriate whole grain-rich products for their programs. For CACFP program operators, USDA developed the *Crediting Handbook for the Child and Adult Care Food Program*[70] that includes technical assistance for identifying and serving whole grain-rich foods served in child and adult care centers. Additionally, USDA develops and shares recipes with whole grain-rich ingredients for child nutrition programs that are published on the *Team Nutrition Recipes*[71] web page.

Definition of Whole Grain-Rich

This final rule codifies the definition of ''whole grain-rich'' in NSLP, SBP, and CACFP regulations. The term ''whole grain-rich'' was originally coined by the National Academy of Medicine (formerly known as the Institute of Medicine) in their 2010 report, *School Meals: Building Blocks for Healthy Children,*[72] and was previously communicated in USDA guidance. This final rule defines the term in regulation for clarity. The intent of this change is to codify the existing definition in NSLP, SBP, and CACFP regulations. The definition in regulation reads as follows: *Whole grain-rich is the term designated by FNS to indicate that the grain content of a product is between 50 and 100 percent whole grain with any remaining grains being enriched.* This definition does not change the meaning of whole grain-rich, and program operators can continue to identify whole grain-rich products as described in current guidance. For example, CACFP program operators may continue to use training resources, such as *Identifying Whole Grain-Rich Foods for CACFP,*[73] to credit whole grain-rich foods.

USDA appreciates one respondent's suggestion to adjust the definition to require at least 51 percent of a product to be whole grain in order to qualify as whole grain-rich. However, USDA will finalize the definition as proposed. The definition codified in this final rule was originally used in the National Academy of Medicine's 2010 report and has been in place through policy guidance for more than a decade. Program operators and the food industry have worked diligently to comply with this longstanding definition. For example, the food industry has worked to develop products that comply with the existing definition. While USDA acknowledges that while the respondent's suggested change is minor, finalizing the proposed definition will avoid any unintended consequences that could impact products that comply with the longstanding definition of whole grain-rich. Further, the definition of whole grain-rich finalized in this rulemaking derives from the *Dietary Guidelines,* which recommends at least half, or 50 percent, of total grains be whole grains.

Entrée Items Sold à la Carte

As proposed, this final rule also updates the definition of ''entrée item'' in the competitive food standards regulations at 7 CFR 210.11(a) to clarify that both whole grain-rich and enriched grain entrées offered as part of a reimbursable school meal may qualify as an ''entrée item'' when sold à la carte as a ''Smart Snack.'' USDA acknowledges concerns raised in public comments about how this change could result in schools selling enriched grains to students. However, USDA agrees with public comments that noted that this

[67] U.S. Department of Agriculture, *USDA Foods Available List* January 9, 2023. Available at: *https://www.fns.usda.gov/usda-fis/usda-foods-available.*

[68] U.S. Department of Agriculture, *Whole Grain Resource for the National School Lunch and Breakfast Programs* December 13, 2022. Available at: *https://www.fns.usda.gov/tn/whole-grain-resource-national-school-lunch-and-breakfast-programs.*

[69] U.S. Department of Agriculture, *Crediting in the Child Nutrition Programs* May 23, 2023. Available at: *https://www.fns.usda.gov/tn/crediting-grains.*

[70] U.S. Department of Agriculture, *Crediting Handbook for the Child and Adult Care Food Program* May 8, 2023. Available at *https://www.fns.usda.gov/tn/crediting-handbook-child-and-adult-care-food-program.*

[71] U.S. Department of Agriculture, *Team Nutrition Recipes* March 10, 2023. Available at: *https://www.fns.usda.gov/tn/team-nutrition-recipes.*

[72] See: 7 Recommendations for Nutrient Targets and Meal Requirements for School Meals.'' Institute of Medicine. 2010. *School Meals: Building Blocks for Healthy Children.* Washington, DC: The National Academies Press. *https://doi.org/10.17226/12751.* National Academies of Sciences, Engineering, and Medicine. 2010. School Meals: Building Blocks for Healthy Children. Washington, DC: The National Academies Press. *https://doi.org/10.17226/12751.*

[73] U.S. Department of Agriculture, *Identifying Whole Grain-Rich Foods For CACFP* June 7, 2023. Available at: *https://www.fns.usda.gov/tn/identifying-whole-grain-rich-foods-cacfp.*

change would benefit school programs by simplifying and improving consistency in regulations, acknowledging that both whole grain-rich and enriched grain entrées may be offered at school lunch and breakfast under the current requirements. Additionally, USDA clarifies that as proposed, this change is limited to school lunch and breakfast program entrées sold à la carte; this change does not impact the general standards for competitive foods for all other items sold à la carte. The current whole grain-rich requirements for all other items remain in effect under this final rule; this change is limited to school lunch and breakfast program entrées sold à la carte on the day of, and the school day after, they are included on the school lunch or breakfast menu.

For context, 7 CFR 210.11(c)(3) states that any entrée item offered as part of a reimbursable school meal is exempt from all competitive food standards if it is sold à la carte on the day of, or the school day after, the entrée is offered on a school lunch or breakfast menu. This exemption helps school nutrition professionals prevent food waste and manage their programs. It also helps to reduce potential confusion about whether an entrée served to some students as part of a school meal can be purchased à la carte by other students. The current definition of ''entrée item'' in the competitive food service and standards regulations specifies that grain entrées must be whole grain-rich; however, under the current requirements and this final rule, schools may offer up to 20 percent of their total grains as enriched grains at school lunch and breakfast each week. Therefore, under this final rule, USDA is finalizing the proposed definition of ''entrée item'' so it only references ''grain'' and therefore includes entrées offered with both whole grain-rich and enriched grains. This change updates regulations at 7 CFR 210.11(c)(3) to clarify that whole grain-rich and enriched grain entrées offered in a reimbursable lunch or breakfast may qualify for the competitive foods entrée exemption on the day of, or the school day after, they are offered on the school lunch or breakfast menu. For clarity, this change only applies to grain items sold as entrées in reimbursable school lunches or breakfasts and which qualify for an exemption to the competitive food standards. All other grain items sold à la carte must comply with the general standards for competitive foods at 7 CFR 210.11, which require that grain items sold à la carte must meet USDA's whole grain-rich criteria.

Accordingly, this final rule amends 7 CFR 210.2, 210.10(c)(2)(iii), 210.11(a)(3), 220.2, 220.8(c)(2)(iii), and 226.2 to codify the definition of the term ''whole grain-rich,'' to maintain the current 80 percent whole grain-rich requirement for the school lunch and breakfast programs, and to update the definition of ''entrée item'' to account for the whole grain-rich and enriched grain requirements in school meals. Because this rule finalizes the current whole grain-rich requirements and terminology, as proposed, child nutrition program operators will not need to make changes to comply with this provision of this rule.

Section 5: Sodium

Current Requirement

Current regulations at 7 CFR 210.10(f)(3) and 220.8(f) required schools to meet Sodium Target 1 for school lunch and breakfast in SY 2022–2023. For school lunch only, schools were required to meet Sodium Target 1A in SY 2023–2024. These limits are shown in the tables below:

National School Lunch Program Transitional Sodium Limits:

Age/Grade Group	Sodium Target 1: Effective July 1, 2022	Sodium Target 1A: Effective July 1, 2023
Grades K-5	≤ 1,230 mg	≤ 1,110 mg
Grades 6-8	≤ 1,360 mg	≤ 1,225 mg
Grades 9-12	≤ 1,420 mg	≤ 1,280 mg

School Breakfast Program Transitional Sodium Limits:

Age/Grade Group	Sodium Target 1: Effective July 1, 2022
Grades K-5	≤ 540 mg
Grades 6-8	≤ 600 mg
Grades 9-12	≤ 640 mg

Proposed Rule

USDA proposed to gradually reduce sodium in the school lunch and breakfast programs. For school lunch, USDA proposed three reductions, to be phased in as follows and as shown in the chart below:

- SY 2025–2026: Schools would implement a 10 percent reduction from SY 2024–2025 school lunch sodium limits.
- SY 2027–2028: Schools would implement a 10 percent reduction from SY 2026–2027 school lunch sodium limits.
- SY 2029–2030: Schools would implement a 10 percent reduction from SY 2028–2029 school lunch sodium limits.

Proposed National School Lunch Program Sodium Limits:

Age/Grade Group	Sodium Limit: Effective July 1, 2025	Sodium Limit: Effective July 1, 2027	Sodium Limit: Effective July 1, 2029
Grades K-5	≤ 1,000 mg	≤ 900 mg	≤ 810 mg
Grades 6-8	≤ 1,105 mg	≤ 990 mg	≤ 895 mg
Grades 9-12	≤ 1,150 mg	≤ 1,035 mg	≤ 935 mg

For school breakfast, USDA proposed two reductions, to be phased in as follows and as shown in the chart below:

- SY 2025–2026: Schools would implement a 10 percent reduction from SY 2024–2025 school breakfast sodium limits.
- SY 2027–2028: Schools would implement a 10 percent reduction from SY 2026–2027 school breakfast sodium limits.

Proposed School Breakfast Program Sodium Limits:

Age/Grade Group	Sodium Limit: Effective July 1, 2025	Sodium Limit: Effective July 1, 2027
Grades K-5	≤ 485 mg	≤ 435 mg
Grades 6-8	≤ 540 mg	≤ 485 mg
Grades 9-12	≤ 575 mg	≤ 520 mg

Public Comments

USDA received over 95,000 comments on the proposed sodium limits, a majority of which (about 90,000 comments, including about 400 unique comments) were categorized as ''mixed'' or ''other'' comments. Overall, about 4,900 comments supported sodium reduction as proposed, including about 180 unique comments, 565 comments opposed sodium reductions, including almost 500 unique comments, and over 85,000 comments, nearly all of which were form letters, supported sodium reduction beyond what was proposed. Comments were submitted by State agencies, school nutrition professionals, advocacy groups, industry respondents, professional organizations, school districts, dietitians, and individuals, including parents. At a high level, respondents provided the following feedback on sodium:

- Lower sodium school meals are important to children's health, and some respondents recommended more aggressive reductions, such as 15 percent reductions between sodium limits instead of 10 percent reductions.
- Sodium reduction in school meals is dependent on product availability, and product reformulation takes time and resources.
- Students' consumption of higher sodium foods outside of school impacts their acceptance of lower sodium school meals.
- USDA should research the impact of sodium reduction on school meal menu planning, student participation, and student health prior to finalizing further sodium reductions.

Of the ''mixed'' comments, several form letters with over 85,000 combined submissions supported the sodium proposals but urged USDA to finalize additional reductions, beyond the proposed reductions. Two other ''mixed'' form letters with over 3,600 submissions recommended that USDA retain the current sodium limits instead of moving forward with the proposed limits. Other comments in this category offered suggestions, which are described in more detail below.

Importance of Reducing Sodium

Several respondents discussed the importance of sodium reduction for promoting health across the U.S. population. Advocacy groups mentioned that proposed limits represent progress toward improving children's health and that reducing sodium helps prevent chronic disease. Similarly, a form letter campaign stated that sodium reduction would ''benefit all students and further reduce diet-related diseases.'' A parent agreed, emphasizing the importance of preventative measures to protect children's health. An individual asserted that too much sodium increases children's risk of elevated blood pressure and other chronic health conditions. An advocacy group stated that aligning the proposed rule with the *Dietary Guidelines,* including phasing in sodium reductions, ''sets students up for lifelong success.''

Reducing Sodium in School Meals and Proposed Sodium Limits

As noted, approximately 4,900 respondents supported sodium reduction, including about 180 unique comments. A professional organization and an advocacy group supported the proposed sodium limits because they align with FDA's voluntary reduction goals for the broader food supply. An industry respondent appreciated the sodium proposal because it promotes the use of more herbs and spices in place of sodium, which has the ''potential to shift taste preferences.'' A few school districts supported the proposed limits, with one claiming that manufacturers add an ''unacceptable and unnecessary'' amount of sodium to foods to enhance flavor.

Several respondents provided feedback on the sodium limit proposed for SY 2025–2026, or the other proposed limits. A few school districts and school nutrition professionals supported the initial 10 percent sodium reduction for school lunch and breakfast. A school nutrition director described the initial reduction as ''manageable'' for schools and manufacturers. An industry respondent agreed that USDA should finalize the initial reduction for both programs and expressed their commitment to implement FDA's

voluntary sodium reduction goals to reduce sodium in their K–12 products. Additional respondent feedback on the proposed implementation dates and number of sodium reduction limits is described below.

Over 500 comments opposed sodium reductions, the majority of which were unique comments. Some respondents claimed that, due to student taste preferences, it would be difficult to maintain student acceptance of meals under the proposed sodium reductions. A form letter campaign and other respondents asserted school meals are not to blame for students' excessive sodium intake, pointing instead to meals students consume at home and at other food service establishments. This form letter added that students' taste preferences would not adjust to school meals with less sodium without sodium reductions in the foods that students consume outside of school. Other respondents suggested that school nutrition staffing challenges and reliance on pre-packaged foods make sodium reduction challenging. For example, a dietitian suggested that lower sodium meals may be possible with more scratch cooking, but many districts do not have the time or resources for scratch cooking. Other respondents, including school districts and school nutrition professionals, explained that some schools do not have a full kitchen or adequate staffing to prepare meals with less sodium. A few school districts raised concerns that further sodium reductions would lead manufacturers to replace sodium with chemical preservatives or artificial flavorings.

Approximately 90,000 comments, including about 400 unique comments, provided mixed or other feedback on sodium reduction. A majority of the mixed comments fell into two main categories: those that suggested that USDA maintain the existing sodium limits, or more often, those that suggested that the proposed limits do not go far enough. For example, two ''mixed'' form letters with over 3,600 submissions recommended that USDA retain the existing sodium limits and expressed concern about the proposed reductions. A few school nutrition professionals expressed concerns about the palatability of lower sodium foods and manufacturers' ability to reduce sodium in their products. A professional association encouraged USDA to delay sodium reductions until after conducting listening sessions with school nutrition professionals to determine feasible approaches for lowering sodium.

However, other respondents, including several form letters with over 85,000 combined submissions, suggested that additional sodium reduction is needed, asserting that the proposed limits do not reduce sodium enough. A form letter campaign mentioned that the proposed limits represent progress but stated that the final limits in the proposed rule do not fully align with the *Dietary Guidelines.* A professional organization and a school district recommended providing development opportunities to help school nutrition professionals prepare lower sodium meals, offering financial support for menu changes, and educating students and families on the importance of sodium limits.

Product Availability and Industry Input

Numerous respondents shared input on the availability and development of lower sodium products. An industry respondent asserted that the food industry continues to work to reduce sodium through ''innovation, reformulation, and the use of sodium substitutes'' but that these changes take time. Another industry respondent noted that many manufacturers have already reformulated under the existing sodium limits, asserting that some manufacturers have reduced sodium in their products by up to 80 percent. A third industry respondent asserted that it takes ''on average, three years for manufacturers to innovate and reformulate foods and participate in the school bidding process.'' A State agency suggested that industry ''will not be willing or able'' to reduce sodium in their products.

Other respondents raised concerns about competing priorities within the food industry. For example, one industry respondent explained that resources for reformulation are limited and manufacturers cannot reformulate all of their products at the same time. Another respondent emphasized that manufacturers continue to face supply chain and labor challenges and need time to plan for further sodium reductions. An industry respondent affirmed that product reformulations to reduce sodium can take several months and involve ''trade-offs'' such as reduced shelf-life and increased price. Another industry respondent added that during the reformulation process to reduce sodium content in products, manufacturers may need to use added sugars to maintain palatability, suggesting that a ''careful balance'' is needed when targeting these two ingredients.

Some respondents raised concerns about sodium levels and naturally occurring or ''functional'' sodium in foods commonly offered in school meals. For example, a form letter campaign, as well as other respondents, mentioned that naturally occurring sodium is found in foods such as bread, milk, cheese, and celery. Regarding milk, a school nutrition professional shared that one serving of milk contains 110–125 milligrams of sodium. A few State agencies and school nutrition directors asserted that naturally occurring sodium should be excluded from the weekly sodium limits. An industry respondent mentioned that ''salt and sodium provide significant functionality and [food] safety'' in products like cheese. Another industry respondent expressed that the sodium limits proposed for implementation in SY 2027–2028 and beyond would make it hard for schools to offer plant-based alternatives that are currently available in the school meals market, such as vegetable crumbles and bean patties. This respondent stated that many plant-based products ''require added sodium for food quality, palatability, and shelf-life purposes.'' An individual suggested that condiments be excluded from weekly sodium limits because not all students use them.

Other Alternatives Received From Public Comments

Respondents provided other suggestions or recommendations for USDA to consider. A professional organization suggested allowing sodium limits to be ''optional'' and that USDA encourage schools to meet optional limits by providing a financial incentive. Several other respondents, including school nutrition professionals and industry respondents, encouraged USDA to research the impact of sodium reductions on product availability, menu planning, food waste, student acceptance, student health, and student participation in the school meal programs. An industry respondent added that the study should carefully consider the impacts across all age groups and at schools of varying sizes.

Proposed Implementation Dates and Number of Reductions

USDA requested public input on the following questions about sodium limits and the proposed implementation timeframe:

- Does the proposed implementation timeframe provide appropriate lead time for manufacturers and schools to successfully implement the new sodium limits?
- Do commenters agree with USDA's proposed schedule for incremental sodium reductions, including both the

number and level of sodium reductions and the timeline, or suggest an alternative? Why?

About 300 respondents addressed the proposed implementation timeframe, including 66 unique comments. Some respondents suggested that the proposed implementation timeframe was appropriate. One respondent stated that the gradual approach to sodium reduction would allow time for innovation. An advocacy group agreed, asserting that a gradual approach is ''feasible for schools and the food industry.'' A State agency affirmed that the proposed implementation dates would allow time for student engagement, inventory management, and technical assistance. Another State agency agreed the proposed implementation dates provide adequate lead time for food manufacturers and schools; however, this respondent also emphasized that timely publication of the final rule would be key to successful implementation. An advocacy group asserted that the proposed sodium limits and timeline ''allow schools to plan, source, and test meals that are nutritious, palatable to students and abide by new guidelines.''

Other respondents expressed that the timeframe would not provide schools sufficient time to successfully implement the proposed limits. A State agency suggested USDA reconsider the proposed schedule due to concern about student acceptance. An industry respondent suggested that sodium reduction needs to ''occur more gradually over the next 20 years or more.'' This respondent recommended there be five years between each sodium limit to ''allow technology to catch up to the requirements'' and to allow students to become accustomed to lower sodium meals. A school nutrition professional recommended extending the timeframe for sodium reduction over 10 to 15 years. A school district mentioned that the proposed school breakfast limits are achievable but the proposed school lunch limits are ''too aggressive for manufacturers to implement.'' An individual stated that industry would need at least 3 to 5 years to develop food items to meet the proposed sodium limits. Respondents also provided feedback on the number and levels of sodium limits included in the proposed rule. For example, a few school districts and an advocacy group recommended that USDA maintain the current sodium limits, without any further reductions. A State agency supported only the initial 10 percent reduction, asserting that industry and the U.S. food supply should ''catch up'' before sodium reduction beyond the initial reduction occurs in school meals. A few industry respondents agreed, supporting the initial sodium reduction but recommending that USDA pause on implementation of subsequent limits until research is ''completed and understood.'' Another State agency suggested removing the third proposed sodium limit at lunch and adding more time in between each reduction. Several respondents referenced sodium targets from prior USDA rulemakings, including Sodium Target 2, which falls between the first and second proposed sodium reduction limits.[74] For example, some respondents suggested that Sodium Target 2 levels would be achievable for schools, but that sodium reductions beyond Sodium Target 2 would be too challenging for schools. One advocacy group suggested implementing larger, 15 to 20 percent reductions every two years, instead of 10 percent reductions, or adding a fourth or fifth sodium reduction to align with the recommendations from the *Dietary Guidelines.*

Suggestions for Best Practice Product-Based Sodium Limits

In addition to feedback on the sodium limits and implementation dates, USDA requested public input on the following questions about developing best practices for specific products:

- USDA plans to recommend (but not require) sodium limits for certain products, such as condiments and sandwiches, to further support schools' efforts to procure lower sodium products and meet the weekly limits.
- For which products should USDA develop best practice sodium limits?
- What limits would be achievable for schools and industry, while still supporting lower-sodium meals for children?

State agencies, advocacy groups, and other respondents recommended that USDA develop best practice sodium limits for the following products:

- Broths and soups
- Breaded chicken
- Condiments and sauces
- Canned vegetables and pickles
- Deli meat and sandwiches
- Pizza, pasta dishes, and tacos

A State agency supported USDA's plans to develop best practice product sodium limits for certain foods and encouraged USDA to work with the food industry to develop the voluntary limits. This State agency mentioned that best practice product limits would help State agencies provide technical assistance and support to schools working to reduce sodium. Several respondents, including a form letter campaign, opposed best practice product sodium limits for specific foods; others suggested that developing best practice product limits would not be a good use of time and resources. Some respondents were concerned that best practice product sodium limits would be the ''first stop to product-specific limit requirements'' or appeared to be confused about the intent of the request for input. To clarify, USDA's request for input was intended to inform recommended (not required) best practice product sodium limits for technical assistance purposes. USDA does not intend to require product-based sodium limits.

Final Rule

In response to feedback from stakeholders, this final rule provides schools even more time to gradually reduce sodium in school meals and commits to conducting a study on potential associations between sodium reduction and student participation. As recommended by stakeholders, including a professional organization representing school nutritional professionals in the Nation's largest school districts, this final rule reduces sodium in school lunch and breakfast by approximately 15 percent and 10 percent, respectively. The sodium reduction finalized in this rule falls between the first and second sodium reduction included in the proposed rule and reflect the Sodium Target 2 levels established in the 2012 final rule,[75] a level many stakeholders commented was familiar and achievable. This final rule codifies the following sodium limits in the school lunch and breakfast programs:

- For the next three school years, through SY 2026–2027, schools will maintain current sodium limits (Sodium Target 1A for lunch and Sodium Target 1 for breakfast).
- By SY 2027–2028, schools must implement an approximate 10 percent reduction for breakfast and an approximate 15 percent reduction for

[74] Sodium Target 2 was established by the 2012 rule. Under the 2012 rule, Sodium Target 2 would have been implemented in SY 2017–2018; however, legislative and administrative action prevented implementation of sodium targets beyond Sodium Target 1. To view the Sodium Target 2 limits as established by the 2012 rule, see: U.S. Department of Agriculture. *Nutrition Standards in the National School Lunch and School Breakfast Programs.* (77 FR 4088, January 26, 2012). Available at: *https://www.federalregister.gov/d/2012-1010/p-138.*

[75] U.S. Department of Agriculture. *Nutrition Standards in the National School Lunch and School Breakfast Programs.* (77 FR 4088, January 26, 2012). Available at: *https://www.federalregister.gov/documents/2012/01/26/2012-1010/nutrition-standards-in-the-national-school-lunch-and-school-breakfast-programs.*

lunch from current sodium limits, depending on the age/grade group.

The current sodium limit and the sodium reduction finalized in this rulemaking are shown in the charts below. The current sodium limits for school lunch and breakfast will remain in place through June 30, 2027. Through the end of SY 2026–2027, schools will be able to maintain Sodium Target 1A at lunch and Sodium Target 1 at breakfast. By July 1, 2027, schools must implement the sodium reduction shown in the chart below. The sodium reduction for school lunch, which generally contains higher amounts of sodium than breakfast, will be slightly larger compared to the sodium reduction for school breakfast. This approach allows school nutrition professionals to focus their sodium reduction efforts on lunch.

National School Lunch Program Sodium Limits

Age/Grade Group	Current Sodium Limit: In place through June 30, 2027	Sodium Limit: Must be implemented by July 1, 2027
Grades K-5	≤ 1,110 mg	≤ 935 mg
Grades 6-8	≤ 1,225 mg	≤ 1,035 mg
Grades 9-12	≤ 1,280 mg	≤ 1,080 mg

School Breakfast Program Sodium Limits

Age/Grade Group	Current Sodium Limit: In place through June 30, 2027	Sodium Limit: Must be implemented by July 1, 2027
Grades K-5	≤ 540 mg	≤ 485 mg
Grades 6-8	≤ 600 mg	≤ 535 mg
Grades 9-12	≤ 640 mg	≤ 570 mg

These sodium limits apply, on average, to lunches and breakfasts offered during a school week. Sodium limits do not apply per day, per meal, or per menu item. A weekly average allows flexibility for menu planners to occasionally offer higher sodium meals or menu items, provided they are balanced with lower sodium meals and menu items throughout the week.

While schools are not required to reduce sodium in school meals until SY 2027–2028, USDA encourages schools to gradually reduce sodium at lunch and breakfast prior to the required reduction. USDA encourages school nutrition professionals to adjust food preparation methods, gradually incorporate more lower sodium foods throughout the school week and make menu adjustments to support eventual implementation of the sodium reduction codified by this rulemaking.

As detailed in the *Public Comments* section, many respondents suggested that USDA take a more gradual approach to sodium reduction than proposed. For example, a professional organization representing over 112,000 credentialed nutrition and dietetics practitioners acknowledged the importance of reducing children's sodium intake but recommended a smaller overall reduction at lunch compared to the proposed rule and suggested providing additional time for implementation. USDA agrees with comments that noted the importance of gradually moving toward lower sodium meals in a way that is achievable for schools and the food industry and has incorporated this feedback into the sodium limits established by this final rule. USDA also considered current sodium levels in the U.S. food supply and time needed for product reformulation and for student palates to adjust. The *Dietary Guidelines, 2020–2025* also recognize that ''multiple strategies should be implemented to reduce sodium intake'' across the U.S. population.[76] For example, the *Dietary Guidelines* acknowledge that most sodium comes from salt added during commercial food processing and preparation, and note that ''reducing sodium consumption will require a joint effort by individuals, the food and beverage industry, and food service and retail establishments.''[77] As a reflection of feedback received from schools and industry partners, the sodium reduction for school lunch and breakfast established by this final rule takes a more gradual approach to lowering sodium compared to the proposed series of limits. By finalizing a single sodium reduction for both school lunch and breakfast, this rule gives schools and industry a clear endpoint to work toward in the near-term.

School nutrition professionals emphasized that sodium reductions need to be gradual for schools to be successful and for students to accept lower sodium meals and numerous respondents suggested that at least three years are needed for product reformulation. USDA incorporated this feedback into the sodium reduction implementation date of July 1, 2027—over three years after the publication of this final rule. Additionally, school

[76] See page 46. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/.*

[77] See page 46 and page 102. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/.*

nutrition professionals, advocacy groups, and other respondents encouraged USDA to study the impact of sodium reductions on student participation in the school lunch and breakfast programs. Respondents were concerned, for example, that students would choose to bring meals from home instead of participating in the school lunch and breakfast programs if sodium is further reduced in the programs. Therefore, in response to requests from stakeholders, USDA will examine school meal sodium reduction efforts and monitor student participation data.

As noted above, USDA received numerous comments referencing sodium requirements from prior rulemakings—specifically, the 2012 final rule. USDA considered these comments, as well as implementation of prior rulemakings, to inform the sodium limits in this final rule. A professional organization representing school nutrition professionals in the Nation's largest school districts suggested that Sodium Target 2 from the 2012 rule could be achievable if food manufacturers have an endpoint to work toward. This respondent did not recommend going beyond Sodium Target 2 limits in this rulemaking. Another respondent cited data suggesting that in SY 2014–2015, prior to the pandemic and related supply chain challenges, the average school lunch was ''already well below'' Sodium Target 1 and the average school breakfast was already meeting Sodium Target 2. This is similar to findings discussed in FNS' *Successful Approaches to Reduce Sodium in School Meals* study, conducted prior to the pandemic in 2016 and 2017, which described ''a high rate of success in meeting the Target 1 sodium standards,'' with many school food authorities ''making significant progress toward or reaching [Sodium] Target 2.'' [78] A school district commenting on the proposed rule maintained that they ''would be fine with the [Sodium] Target 2 guidelines,'' adding that Sodium Target 2 was ''achievable and students enjoyed the food we provided prior to COVID.'' Another school district agreed, suggesting that its ''sodium averages are currently at or below [Sodium] Target 2 for both lunch and breakfast.'' However, this school district noted that student feedback and product availability have prevented decreases beyond Sodium Target 2. In response to prior rulemakings stakeholders have also encouraged USDA to allow more time for gradual sodium reduction, including recommending that USDA not go beyond Sodium Target 2. Based on this feedback, USDA expects that gradually phasing in limits that reflect the Sodium Target 2 will be achievable for schools. This rulemaking gives schools and industry a clear endpoint to work toward in the near-term, while providing sufficient time for all stakeholders to prepare for implementation. It also responds to proposed rule comments that suggested that Sodium Target 2 levels are achievable, but that USDA not go beyond the Sodium Target 2 limits in this rulemaking.

USDA also appreciates comments that supported sodium reduction in school meals to benefit children's overall health. While this final rule does not go as far as the proposed rule in reducing sodium, the sodium limits finalized in this rulemaking represent significant progress. The proposed sodium limits, which were informed by FDA's voluntary sodium reduction goals, would have reduced sodium in school lunches by 30 percent and school breakfasts by 20 percent. As detailed in the proposed rule, to develop the proposed limits, USDA used the average short-term FDA targets for foods commonly served in school lunch and breakfast to calculate a baseline menu goal for weekly sodium limits for each meal; this calculation resulted in an initial 10 percent reduction from the transitional sodium limits. The proposed rule built on this initial reduction with two additional reductions at lunch and one additional reduction at breakfast. USDA acknowledges that many respondents supported sodium reduction beyond what was proposed. However, many stakeholders, including school nutrition professionals and industry, expressed concern about meeting sodium levels beyond Sodium Target 2. The sodium limits finalized in this rule respond to stakeholder feedback by considering concerns that respondents raised around student acceptance of meals and the need for product reformulation, which many respondents suggested takes about three years.

This final rule reduces sodium in school lunch and breakfast by approximately 15 percent and 10 percent, respectively, achieving or surpassing the first proposed reduction informed by FDA's voluntary sodium reduction goals while incorporating stakeholder input. The sodium reduction finalized in this rule falls between the first and second sodium reduction included in the proposed rule, and this final rule gives school nutrition professionals additional time to reach the new limits. The sodium limits finalized in this rulemaking also reflect a prior limit that school nutrition professionals and industry are familiar with and have worked toward in the past. As noted above, in SY 2014–2015, many school food authorities were making significant progress toward meeting Sodium Target 2. A single sodium reduction for the school lunch and breakfast programs responds to stakeholders who suggested that one reduction for each program would be more attainable for schools and industry compared to the proposed series of reductions that would have spanned several years. Further, the implementation date for sodium reduction aligns with the weekly dietary limit for added sugars finalized in this rulemaking, allowing school nutrition professionals to implement both changes at the same time, rather than tracking multiple implementation dates.

USDA recognizes that continuing to reduce sodium in school meals is important to improve nutrition security, and USDA will use information from its forthcoming study to inform future sodium reduction efforts. While schools and industry partners have made progress in sodium reduction over the years, USDA acknowledges that there are opportunities for improvement. The *Dietary Guidelines* also acknowledge the importance of reducing sodium intake in achieving a healthy dietary pattern.[79] According to the *Dietary Guidelines,* over 95 percent of children ages 2–18 exceed recommended sodium levels.[80] Consistent with the goals of the *Dietary Guidelines,* this final rule supports efforts to improve children's dietary patterns by gradually reducing sodium limits in school meals. Importantly, this final rule also considers operational feasibility, such as the need for manufacturers to reformulate products to support implementation of reduced sodium limits. As detailed above, the *Dietary Guidelines* acknowledge that most sodium consumed in the United States comes from salt added during

[78] Gordon, E.L., Morrissey, N., Adams, E., Wieczorek, A. Glenn, M.E., Burke, S & Connor, P. (2019). *Successful Approaches to Reduce Sodium in School Meals Final Report.* Prepared by 2M Research under Contract No. AG–3198–P–15–0040. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service. Available at: *https://fns-prod.azureedge.us/sites/default/files/resource-files/Approaches-ReduceSodium-Volume1.pdf.*

[79] See page 76. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/.*

[80] See page 77. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/.*

commercial processing, meaning that ''multiple strategies should be implemented to reduce sodium intake to recommended limits.'' [81] This final rule represents a step toward that gradual, ongoing improvement; USDA agrees with public comments that noted the importance of continual progress toward reducing sodium in American's diets. Additionally, the gradual approach to sodium reduction finalized in this rule aligns with FDA goals and government-wide efforts to reduce sodium intake for the U.S. population. USDA understands that complementary efforts to reduce sodium across the entire U.S. food supply are important to the success of school meal sodium reductions; these efforts are discussed in more detail below, under *Food and Drug Administration Voluntary Sodium Reduction Goals.* USDA is committed to supporting schools' efforts to lower sodium, recognizing that reducing sodium intake is critical for chronic disease prevention and children's health as they grow into adulthood.

Food and Drug Administration Voluntary Sodium Reduction Goals

To develop the proposed rule and this final rule, USDA considered FDA's voluntary sodium reduction goals, which aim to reduce sodium across the U.S. food supply, in the context of school meals. FDA is taking an iterative approach to sodium reduction, which involves establishing sodium targets, monitoring progress, evaluating progress, and engaging stakeholders. FDA recommended voluntary targets, issued in October 2021, be met in 2.5 years and expects to issue revised subsequent targets in the next few years to facilitate a gradual, iterative process to reduce sodium intake. Similar in some respects to FDA's short term sodium reduction targets, this final rule establishes a single limit sodium reduction for both the school lunch and breakfast programs for the near-term. Like FDA's efforts to monitor and evaluate progress, as mentioned above, USDA will examine sodium reduction efforts in school meals assess the potential impacts of these reductions on program operations and participation.

USDA expects that the gradual approach to sodium reduction finalized in this rule will set schools and students up for success, as research [82] indicates gradual sodium reductions are more acceptable to consumers. Aligning school meal sodium limits with FDA's voluntary sodium reduction goals may help support children's acceptance of school lunches and breakfasts with less sodium, as the school meal reductions will occur alongside sodium reductions in the broader U.S. food supply.

Naturally Occurring and ''Functional'' Sodium

In public comments, several respondents raised concerns about naturally occurring sodium in foods such as bread, milk, and celery. As noted above and in the proposed rule, the sodium limits in this rulemaking are informed by FDA's voluntary sodium reduction goals. In developing these goals, FDA ''carefully studied the range of popular foods in today's marketplace to see what reductions are possible'' and considered ''the many functions of sodium in food, including taste, texture, microbial safety and stability.'' [83] This means that FDA's goals are not intended to focus on foods (*e.g.,* milk) that contain only naturally occurring sodium, but rather, to focus on foods where actionable reductions in sodium are feasible. USDA appreciates public comments about naturally occurring sodium in school meals. The sodium limits in this final rule, which are informed by FDA's voluntary sodium reduction goals, account for naturally occurring sodium levels in foods and beverages in the current food supply.

In addition to public comments about naturally occurring sodium, USDA appreciates public comments about ''functional'' sodium. Many respondents requested that USDA account for ''functional'' sodium in this rulemaking. This is similar to feedback included in *Successful Approaches to Reduce Sodium in School Meals,* where manufacturers raised concerns about ''functional'' sodium which plays a role in food shelf life and spoilage.[84] In particular, manufacturers worried that Sodium Target 3 may be so low in sodium that it would affect their ability to produce products such as bakery items, where sodium serves a functional purpose (*e.g.,* salt to strengthen gluten). As noted in the study, while Sodium Target 2 seemed to be ''achievable'' by some manufacturers, Sodium Target 3 was considered ''infeasible'' by nearly all manufacturers, who raised concerns about the impact on food preparation and storage.[85] The *Dietary Reference Intakes for Sodium and Potassium* [86] also acknowledge the functional role sodium plays in the food supply, indicating that ''the major sources of sodium in the diet come from foods in which sodium chloride serves a functional purpose, including baked goods, processed meats, and cheese.'' Similar to examples cited in public comments, the *Dietary Reference Intakes for Sodium and Potassium* point out that sodium plays a role in preserving and fermenting foods, altering the texture of foods, and enhancing flavor. However, based on the evidence available, the Dietary Reference Intakes conclude that continued efforts to reduce sodium intake in the population are warranted.

USDA appreciates the concerns that respondents raised regarding functional sodium. Respondents noted the role sodium plays in food safety, texture, and flavor, and emphasized the importance of considering these factors when determining sodium limits in the school meal programs. USDA considered and accounted for these comments when developing this final rule. Because the sodium limits finalized in this rulemaking are higher than those included in the proposed rule, USDA has concluded that the sodium limits in this final rule adequately account for ''functional'' sodium content in foods offered in school meals while still supporting efforts to reduce sodium intake among children. Further, the sodium limits in this rule do not approach Sodium Target 3, which manufacturers expressed

[81] See page 46 and page 102. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition*. December 2020. Available at: *https://www.dietaryguidelines.gov/*.

[82] McGuire S. Institute of Medicine. 2010. Strategies to Reduce Sodium Intake in the United States. Washington, DC: The National Academies Press. Adv Nutr. 2010 Nov;1(1):49–50. *doi.org/10.3945/an.110.1002*. Epub 2010 Nov 16. PMID: 22043452; PMCID: PMC3042781.

[83] U.S. Food and Drug Administration. *Sodium Reduction.* Available at: *https://www.fda.gov/food/food-additives-petitions/sodium-reduction.*

[84] Gordon, E.L., Morrissey, N., Adams, E., Wieczorek, A. Glenn, M.E., Burke, S & Connor, P. (2019). *Successful Approaches to Reduce Sodium in School Meals Final Report.* Prepared by 2M Research under Contract No. AG–3198–P–15–0040. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service. Available at: *https://www.fns.usda.gov/nslp/successful-approaches-reduce-sodium-school-meals-study.*

[85] Gordon, E.L., Morrissey, N., Adams, E., Wieczorek, A. Glenn, M.E., Burke, S & Connor, P. (2019). *Successful Approaches to Reduce Sodium in School Meals, Volume II: Detailed Study Findings.* Prepared by 2M Research under Contract No. AG–3198–P–15–0040. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service. Available at: *https://www.fns.usda.gov/nslp/successful-approaches-reduce-sodium-school-meals-study.*

[86] National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Food and Nutrition Board; Committee to Review the Dietary Reference Intakes for Sodium and Potassium; Oria M, Harrison M, Stallings VA, editors. Dietary Reference Intakes for Sodium and Potassium. Washington (DC): National Academies Press (US); 2019 Mar 5. 11, Sodium Dietary Reference Intakes: Risk Characterization and Special Considerations for Public Health. Available at: *https://www.ncbi.nlm.nih.gov/books/NBK545448/#sec_ch11_2.*

particular concern within the study *Successful Approaches to Reduce Sodium in School Meals,* as noted above. Finally, as noted, these sodium limits are informed by FDA's voluntary sodium reduction goals which account for functional sodium levels in foods and beverages in the current food supply. With these higher sodium limits, school nutrition professionals will have room to include foods with naturally occurring or ''functional'' sodium on their menus, including foods that are popular among children.

In summary, the overall weekly sodium limits for school meals finalized in this rule take into account levels of sodium needed to accommodate continued service of healthful foods with naturally occurring and functional sodium. Therefore, foods and beverages containing naturally occurring and functional sodium are not exempt from these sodium limits; rather, the sodium limits in this final rule account for such forms of sodium. USDA estimates that under this rule, schools will continue to be able to serve popular foods and beverages containing naturally occurring and functional sodium with similar frequency as they do currently. While this rulemaking gradually reduces the overall weekly sodium levels in school meals, the limits finalized in this rule allow for foods and beverages with naturally occurring and functional sodium. USDA anticipates that manufacturers will continue to explore all avenues of sodium reduction, including product reformulation and new technologies to reduce sodium, and encourages these efforts. As detailed below, USDA also expects that menu planners will play an important role in gradually reducing sodium levels in school meals over time. USDA anticipates that this gradual reduction in weekly average sodium limits will continue to allow menu planners flexibility to offer meals and menu items that children enjoy.

Ongoing Support for Sodium Reduction Implementation

Successfully reducing sodium in school meals will require the commitment and dedication of all school meals stakeholders. For its part, USDA remains committed to ensuring that menu planners receive the support and technical assistance needed to offer students meals that comply with the sodium limits in this rulemaking. USDA will evaluate progress toward reducing sodium in school meals, as well as in the broader food supply, on an ongoing basis. School nutrition professionals advocated for more gradual sodium reductions to allow menu planners time to modify menus and to give children's palates time to adapt; this rule provides that additional time. Additionally, USDA is committed to providing ongoing support to schools through efforts like the HMI Initiative, Team Nutrition grants, Farm to School grants, and tailored technical assistance. USDA welcomes stakeholder input on successful strategies to reduce sodium in school meals, and the additional assistance and guidance needed from USDA to support these efforts. Further, USDA expects that planned research on sodium reduction in school meals will help to inform future sodium reductions.

Best Practice Product-Based Sodium Limits

USDA appreciates comments that provided suggestions for best practice product-based sodium limits. Consistent with the proposed rule, this final rule does not require product-based sodium limits for specific foods and beverages; however, USDA will issue guidance on best practice product limits for high contributors of sodium in school meals and will incorporate FDA's voluntary sodium reduction goals. This guidance is intended to help schools procure lower sodium products for their weekly lunch and breakfast menus. Best practice limits provided in future guidance will be recommendations, not required limits.

Accordingly, this final rule establishes sodium limits found at 7 CFR 210.10(c) and (f)(4) and 7 CFR 220.8(c) and (f)(4) of the regulations. As noted, schools will maintain existing sodium limits (Sodium Target 1A at lunch and Sodium Target 1 at breakfast) through June 30, 2027. Schools will not need to make any changes to comply with the sodium provision of this final rule until July 1, 2027, when the sodium reduction included in this final rule must be implemented.

Section 6: Meats/Meat Alternates at Breakfast

Current Requirement

Current regulations at 7 CFR 220.8(c)(2) require three food components for a complete school breakfast: fruits, grains, and fluid milk. There is no meats/meat alternates component required at breakfast; therefore, under the current SBP meal pattern, a meat/meat alternate offered at breakfast credits toward the weekly grains requirement. Under current regulations, schools may substitute a 1.0 ounce equivalent of meat/meat alternate for a 1.0 ounce equivalent of grains, after meeting the daily minimum grains requirement.[87] Meats/meat alternates [88] may also be offered as ''extra'' food items at breakfast. ''Extra'' food items are not part of the reimbursable school meal, but do count toward the weekly dietary specifications for calories, saturated fat, sodium, and *trans* fat.

Proposed Rule

In the 2020 proposed rule, USDA set forth a combined meats/meat alternates and grains component. Under the proposal, schools would have the option to serve meats/meat alternates, grains, or a combination of both, depending on school and student preferences. The 2020 proposed rule also proposed to remove the requirement for schools to offer 1.0 ounce equivalent of grains each day at breakfast. Instead, the daily and weekly ounce equivalency requirements for the combined component could be met with meats/meat alternates, grains, or a combination of both.

Public Comments on 2020 Proposed Rule

USDA received 556 comments on the 2020 proposed rule about the combined meats/meat alternates and grains component at breakfast, a majority of which were categorized as ''mixed'' or ''other'' comments. Overall, 95 comments supported the proposal, including 86 unique comments, and 41 comments were opposed, including 38 unique comments.

Proponents, including State agencies, industry respondents, advocacy groups, and school districts, asserted that a combined meats/meat alternates and grains component would increase the variety of appealing breakfast options available to schools. Proponents maintained that this change would deliver protein-rich breakfasts that students enjoy, which they argued could encourage student participation and reduce food waste. One school district noted that parents and guardians often request school breakfasts with more protein and less added sugars. Other respondents agreed, noting that this change could decrease the added sugars in school breakfasts.

Proponents maintained that the proposal would simplify regulations and menu planning. Industry and advocacy groups that supported this change asserted that the current minimum grains requirement is burdensome and prevents some schools from offering meats/meat alternates at

[87] Under current regulations, the minimum daily grains requirement for each age/grade group at breakfast is 1.0 ounce equivalent.

[88] ''Meat alternates'' include cheese, eggs, yogurt, nuts and seeds, tofu and soy products, and beans and peas.

breakfast. One school district suggested this change would allow for more creative menu planning. Others, including State agencies and advocacy groups, provided examples of foods that schools could offer more easily under this change, such as yogurt parfaits, turkey sausage, and vegetable omelets. One respondent mentioned that protein-rich breakfast sandwiches could be offered as grab-and-go items for students. Another respondent noted that protein foods are ''a great way to start the day'' and an option that students enjoy.

Some respondents, including advocacy groups and individuals, were concerned that this change could lead to an increase in schools offering meat products that are high in saturated fat and sodium. Opponents suggested that consuming too much meat has adverse health effects, and some advised USDA that ''processed meats should be very limited or not consumed at all'' in school meals. Other respondents, including industry respondents, cautioned against removing the minimum grains requirement, citing the health benefits of grains and noting that grains are an important source of fiber. However, proponents emphasized that a wide variety of nutritious meats/meat alternates may be offered in school breakfasts. Further, one advocacy group emphasized that the current weekly saturated fat and sodium restrictions would limit the amount of processed meat items. A school district agreed, suggesting that the dietary specifications for calories, sodium, and saturated fat already constrain the amount of animal fats that can be offered each school week.

Some respondents offered modifications to the proposal. For example, an individual argued that each school breakfast should require grains *and* meats/meat alternates, while a State agency suggested USDA allow schools to serve meats/meat alternates without a grain three times per week, so that two times per week, schools must meet a minimum grains requirement. An industry respondent suggested a minimum weekly (rather than daily) grains requirement. Advocacy groups and individuals suggested placing specific calorie and sodium limits on meats served at breakfast; presumably, in addition to the weekly calorie and sodium limits already in place for school breakfasts. While several respondents noted that this proposal would help address concerns about added sugars in school breakfast, some respondents, including a State agency, recommended that USDA also place limits on specific grain items that are high in added sugars.

Final Rule

This final rule codifies the combined grains and meats/meat alternates meal component at breakfast and removes the requirement for schools to offer 1.0 ounce equivalent of grains each day at breakfast. Schools may offer grains, meats/meat alternates, or a combination of both to meet this combined component requirement, based on ounce equivalents. The minimum daily requirement (1.0 ounce equivalent) and minimum weekly requirements (7.0–9.0 ounce equivalents, depending on the age/grade group) for the combined component remains the same; however, this rule allows schools to meet the daily and weekly requirements by offering grains, meats/meat alternates, or a combination of both to meet minimum ounce equivalents.

Schools are not required to make any changes to menus under this provision. However, this change gives menu planners more flexibility and options to plan breakfast menus that meet student preferences and are compatible with meal service models, cost considerations, and other local factors. Schools have discretion to decide what combination of grains and/or meats/meat alternates to offer at breakfast to meet the minimum ounce equivalents. The *Dietary Guidelines* recommend including both grains and protein foods in healthy eating patterns.[89] As such, USDA encourages schools to offer a mix of grains and meats/meat alternates at breakfast throughout the school week.

USDA appreciates comments submitted in response to the 2020 proposed rule that highlighted the importance of reducing added sugars in school meals. This feedback, and later feedback gathered through USDA's stakeholder engagement campaign in summer 2022, informed USDA's proposals to limit added sugars in school meals. USDA agrees with respondents that allowing schools more flexibility to offer meats/meat alternates at breakfast will support implementation of the new added sugars limits outlined in *Section 2: Added Sugars.*

As discussed in *Section 4: Whole Grains,* at least 80 percent of the weekly grains offered at school breakfast must be whole grain-rich, and the remaining grain items offered may be whole grain-rich or enriched. Schools that choose to offer a mix of grains and meats/meat alternates at breakfast will calculate the required whole grain-rich offerings based on the total amount of grains offered at breakfast during the week, by ounce equivalents.

According to USDA's *School Nutrition and Meal Cost Study,*[90] among children who participate in the SBP as opposed to skipping breakfast or eating at home, appealing food was among the top three reasons for student participation. Relative to school lunch, current school breakfast participation is low. As suggested by respondents, providing school nutrition professionals with more flexibility to offer a variety of breakfast foods that students enjoy could encourage student participation. For example, this rule allows schools to offer scrambled eggs, a fruit cup, and low-fat milk as a complete breakfast.

USDA understands concerns raised by some respondents regarding meat products that are high in saturated fat and sodium. The dietary specifications for calories, saturated fat, and sodium remain in place under this rule, and as detailed in *Section 5: Sodium,* this rule implements an additional sodium reduction in school meals. USDA agrees with respondents that suggested that the dietary specifications encourage schools to choose options that are low in saturated fat and sodium. According to USDA's *School Nutrition and Meal Cost Study,* the most common categories of meats/meat alternates offered in school breakfasts in SY 2014–2015 were cheese and yogurt.[91] USDA encourages schools

[89] The *Dietary Guidelines* include recommendations for ''food groups—vegetables, fruits, grains, dairy, and protein foods—eaten at an appropriate calorie level and in forms with limited amounts of added sugars, saturated fat, and sodium''. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans, 2020–2025.* 9th Edition. December 2020. Available at: *https://www.dietaryguidelines.gov/.*

[90] See Table 5.2. Mean Percentage of Observed Trays including Specific Foods and Mean Percentage of Food Wasted in SBP Breakfasts. U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes* by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019. Available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.*

[91] The most common categories of meat/meat alternates offered at breakfast in SY 2014–2015 were cheese (offered on 5.4 percent of observed trays) and yogurt (offered on 5.0 percent of observed trays). U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals* by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019. Available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.*

opting to serve meats/meat alternates at breakfast to offer a wide variety of nutrient-dense options, including vegetarian options such as yogurt low in added sugars; [92] breakfast bean burritos; and eggs. USDA acknowledges respondent requests to limit ''processed meats'' in the SBP. However, the dietary specifications for calories, saturated fat, and sodium already limit the amount of meats with added salt that are offered in school breakfasts. Schools must plan all meals to meet the dietary specifications, and these limits provide schools with flexibility to choose foods that meet student preferences while staying within a framework that results in nutritious meals. USDA will not restrict the types of meats permitted at breakfast, beyond existing food crediting guidelines.

This provision does not change the breakfast meal pattern requirements for preschool students. Under 7 CFR 220.8(o), schools serving breakfasts to children ages 1 through 4 may substitute meats/meat alternates for the entire grains component up to three times per week. However, schools are reminded of the existing co-mingling flexibilities, permitted in USDA guidance.[93] Schools that serve meals to preschoolers and K–5 students in the same meal service area at the same time may choose to serve the K–5 breakfast meal pattern under 7 CFR 220.8 to both groups of children.

Accordingly, this final rule amends 7 CFR 220.8(c) introductory text and (c)(2), to codify the combined grains and meats/meat alternates component at breakfast and to remove the requirement for schools to offer 1.0 ounce equivalent of grains each day at breakfast. This change provides schools with more menu planning flexibility at breakfast. Schools are not required to change menus or operations as a result of this provision.

Section 7: Substituting Vegetables for Grains in Tribal Communities

Current Requirement

Current regulations at 7 CFR 210.10(c)(3), 220.8(c)(3), 225.16(f)(3), and 226.20(f) allow program operators in American Samoa, Puerto Rico, and the U.S. Virgin Islands to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains or breads component.[94] Additionally, this option is currently available to SFSP and CACFP sponsors, institutions, and facilities in Guam. The option to substitute vegetables for grains or breads is intended to accommodate cultural food preferences and to address product availability and cost concerns in these outlying areas.

As detailed in *Section 1: Background,* USDA sought stakeholder input when developing the proposed rule. As part of this effort, USDA conducted listening sessions with Tribal leaders, nutritionists, and schools in summer 2022. During these listening sessions, Tribal nutritionists and schools expressed concern that the grains requirements are a poor nutritional match for Indigenous children because grains, such as wheat and flour, were not traditionally a part of their ancestors' diets. Tribal nutritionists and schools requested Indigenous starchy vegetables be allowed as a grain substitute, similar to the current option available for child nutrition program operators in American Samoa, Puerto Rico, and the U.S. Virgin Islands, and for SFSP and CACFP sponsors, institutions, and facilities in Guam.

Proposed Rule

In response to stakeholder input, USDA proposed to add tribally operated schools, schools operated by the Bureau of Indian Education, and schools serving primarily American Indian or Alaska Native children to the list of schools at 7 CFR 210.10(c)(3) and 220.8(c)(3) that may serve vegetables to meet the grains requirements. For SFSP and CACFP, USDA proposed to revise 7 CFR 225.16(f)(3) and 226.20(f) to allow sponsors, institutions, and facilities, as applicable, that serve primarily American Indian or Alaska Native children to substitute vegetables for breads or grains. USDA also proposed to revise the current regulatory text for NSLP, SBP, SFSP, and CACFP to clarify that this provision allows the substitution of traditional Indigenous vegetables, such as prairie turnips. In the proposed SFSP regulatory text, USDA also removed outdated references to the Trust Territory of the Pacific Islands and the Northern Mariana Islands. Finally, USDA proposed to allow all schools, sponsors, institutions, and facilities in Guam and Hawaii to substitute vegetables for grains or breads, to reflect cultural food preferences.

Public Comments

USDA received 264 comments on this proposal, including 143 unique comments. Of these, 104 supported the proposal, including 65 unique comments, none were opposed, and 154 were mixed, including 78 unique comments. School nutrition professionals, advocacy groups, professional organizations, State agencies, and individuals submitted comments on the proposal.

Several respondents, including a national organization representing tens of thousands of school nutrition professionals, an advocacy group, State agencies, individuals, and a form letter campaign, supported the proposal. One individual emphasized the importance of recognizing children's personal, cultural, and traditional dietary preferences. Another individual stated that offering diverse and inclusive meal options promotes belonging and contributes to children's overall wellbeing. This respondent further emphasized the importance of ''taking steps toward embracing our differences, celebrating our diversity, and providing meals that mirror the rich tapestry of cultures represented within our school communities.'' One advocacy group supported the proposal, suggesting that it would ''provide equitable access and outcomes to American Indian and Alaska Native communities and children.'' A State agency described the proposal as a ''nutritional benefit.'' A professional organization affirmed that serving culturally responsive meals and snacks is an equitable practice that may improve meal consumption and strengthen relationships between providers, families, and participants.

Some respondents provided feedback about USDA's proposal to allow program operators in Guam and Hawaii to substitute vegetables for grains or breads. An advocacy group applauded USDA for expanding this option to program operators in Guam and Hawaii. One professional organization encouraged USDA to further accommodate the cultural food preferences of Native Hawaiians. A few other respondents expressed confusion about how the proposal for Guam and Hawaii would interact with the proposal for child nutrition program operators on the mainland that serve primarily American Indian and Alaska Native children. To clarify, USDA proposed to expand this option to all schools, sponsors, institutions, and facilities in Guam and Hawaii. Under the proposed rule, the option to substitute vegetables for grains or breads would be available to any child nutrition program operator

[92] Please see Section 2: Added Sugars, for information on the new added sugars limit for yogurt, which will take effect in SY 2025–2026.

[93] U.S. Department of Agriculture. *Flexibility for Co-Mingled Preschool Meals: Questions and Answers,* June 30, 2017. Available at: *https://www.fns.usda.gov/school-meals/flexibility-co-mingled-preschool-meals-questions-and-answers.*

[94] Current SFSP regulations at 7 CFR 225.15(f)(3) also allow sponsors in Trust Territory of the Pacific Islands, and the Northern Mariana Islands to substitute vegetables for breads. However, these references are outdated.

located in Guam or Hawaii. In addition, under the proposed rule, program operators on the mainland that serve primarily American Indian or Alaska Native children would be eligible to use this option.

Several respondents suggested expanding the proposal, in most cases, advocating for all schools, sponsors, institutions, and facilities to be allowed to substitute vegetables for grains or breads, regardless of their location or participant demographics. One advocacy group suggested expanding the menu planning option to participants from other demographic groups who consume starchy vegetables in place of grains. Going further, a dietitian suggested that expanding the option to all schools, sponsors, institutions, and facilities would eliminate confusion in menu planning. An advocacy group agreed, asserting that vegetable consumption is lacking among all children and that allowing this option for all sites would help reduce sugar, especially at breakfast. A professional organization supported expanding this provision to all schools to avoid excluding any students. An advocacy group agreed, noting that the vast majority of American Indian and Alaska Native children attend public schools that are not tribally operated or majority American Indian or Alaska Native. This respondent concluded that, as proposed, the option may not have its intended impact. A few other respondents raised concerns about the limited focus of the provision, but instead of expanding it, recommended not finalizing it. For example, a State agency acknowledged the importance of offering culturally appropriate foods in the child nutrition programs but raised equity concerns given the narrow focus of the provision; this State agency cautioned against finalizing the proposal. A school nutrition professional claimed that, as proposed, this menu planning option would create division and confusion regarding who can implement the provision. A few respondents offered other suggestions. A form letter suggested that USDA require vegetables offered in place of grains to be prepared in ways that align with traditional preparations, such as baking or boiling. A professional organization suggested that USDA limit substitutions under this provision to starchy vegetables only. This respondent also advocated for more prescriptive language on this provision's eligibility criteria to preserve program integrity and ensure the intended populations are served.

Some respondents requested clarification or additional support. A few respondents, including a State agency and professional organization, requested guidance to support implementation of this provision, including guidance on determining whether a program operator qualifies to use this option. A professional organization expressed concerns about possible administrative burden, specifically for enrolled CACFP sites, further advocating for this provision to be expanded to all program operators. This respondent argued that expanding this option to all operators would prevent administrative burden and promote inclusivity. A form letter campaign did not cite any specific concerns, but asked USDA to ensure that the administrative burden associated with enacting the change will be minimal. A State agency asked for clarification on whether the menu planning option applies to the infant meal pattern. This respondent did not support allowing this option for infants, explaining that allowing vegetables to substitute for other food sources in the infant meal pattern, such as infant cereal, may reduce critical sources of iron in an infant's diet. Another State agency asserted that USDA would need to provide clear guidance about the serving sizes of vegetables that would be required to meet the grains requirements.

In the proposed rule, USDA explained that the list of vegetables included in the proposed regulatory text was not exhaustive. However, USDA encouraged public input on any other vegetables that should be listed as examples in the regulatory text, and some respondents shared feedback. Several advocacy groups suggested that squash, cassava (yuca), and taro would be suitable substitutions for grains and recommended including them as examples. A State agency suggested that Native Hawaiian traditional vegetables such as taro, poi, breadfruit, Okinawan sweet potato, and Molokai sweet potato be included in the regulatory text as examples of vegetables that may be substituted for grains. One professional organization asked USDA to clarify whether all vegetables can be substituted for grains. Another proponent recommended that instead of allowing any vegetable to substitute for grains, as proposed, that USDA set standards about which vegetable subgroups can be substituted for grains to ensure that the vegetables are nutritionally comparable to grains.

In addition to general feedback on the proposal, USDA requested public input on additional menu planning options that would improve the school meal programs for American Indian and Alaska Native children by asking the following question:

- Are there other specific areas of the school meal pattern that present challenges to serving culturally appropriate meals for American Indian and Alaska Native children, specifically regarding any regulatory requirements in 7 CFR 210.10 and 220.8?

A few respondents provided input on specific areas of the school meal patterns that present challenges to serving culturally appropriate meals. One State agency identified that barriers to serving hunted game meats make it challenging to serve culturally appropriate meals to American Indian and Alaska Native children. This respondent also mentioned that milk is not a part of the traditional eating pattern for American Indian and Alaska Native communities. Similarly, an individual stated the milk requirement is challenging to implement due to the high prevalence of lactose intolerance among American Indian and Alaska Native populations. Other respondents mentioned challenges with food crediting. A State agency encouraged USDA to ''simplify the crediting process for scratch-cooked meals'' to incentivize schools to scratch cook culturally relevant meals. Similarly, an advocacy group suggested USDA consider a ''simplified'' crediting model that would facilitate scratch cooking and procurement of minimally processed products. Lastly, a form letter campaign voiced concerns about the potential for additional, case-by-case menu planning options due to the administrative burden of such a process. Instead, this form letter recommended that USDA address any barriers to serving culturally appropriate meals through comprehensive changes to the meal patterns.

Final Rule

The final rule amends 7 CFR 210.10(c)(3) and 220.8(c)(3) to allow school food authorities and schools that are tribally operated, operated by the Bureau of Indian Education, and that serve primarily American Indian or Alaska Native children to serve vegetables to meet the grains requirement in NSLP and SBP. For SFSP and CACFP, USDA finalizes the proposal to revise 7 CFR 225.16(f)(3) and 226.20(f) to allow sponsors, institutions, and facilities, as applicable, that serve primarily American Indian or Alaska Native participants to substitute vegetables for grains or breads. Additionally, this final rule allows all schools, sponsors, institutions, and facilities in Guam and Hawaii to serve vegetables to meet the grains or breads

requirement, and in the SFSP regulatory text, removes outdated references to the Trust Territory of the Pacific Islands and the Northern Mariana Islands. Lastly, for all child nutrition programs applicable to this provision, this final rule clarifies that any creditable vegetable can be substituted for grains or breads.

While the proposed rule only listed ''schools'' in the NSLP and SBP regulatory text, this final rule clarifies that this option is available to ''school food authorities and schools'' that qualify. This change responds to comments that encouraged USDA to ensure that the administrative burden associated with enacting the change is minimal. By allowing implementation at the school food authority level, this final rule simplifies use of this option for school food authorities that qualify and reduces the documentation burden. Instead of maintaining documentation for all qualifying schools, school food authorities that qualify would maintain documentation at the school food authority level.

Program operators in Guam and Hawaii are not required to submit a request for approval to use this menu planning option; it is automatically available to any school, sponsor, institution, or facility in Guam or Hawaii that chooses to use it. Therefore, upon implementation of this final rule, all schools, sponsors, institutions, and facilities located in American Samoa, Guam, Hawaii, Puerto Rico, or the U.S. Virgin Islands are eligible for this option; it is not necessary for program operators in these specific areas to maintain documentation to demonstrate eligibility for this option. However, school food authorities or schools that are tribally operated, operated by the Bureau of Indian Education, or program operators that serve primarily American Indian or Alaska Native children must maintain documentation to demonstrate that they qualify if they choose to use this option.

For the NSLP and SBP, the school food authority is responsible for maintaining documentation to demonstrate that the school food authority or its schools qualify to use this option. If the school food authority is tribally operated, is operated by the Bureau of Indian Education, or serves primarily American Indian or Alaska Native students, then the school food authority would maintain school food authority-level documentation of eligibility. If individual schools within the school food authority qualify for this option, then the school food authority would maintain documentation for its qualifying schools, as applicable. As described in the proposed rule, school food authorities or schools ''serving primarily American Indian or Alaska Native children'' include school food authorities or schools where American Indian or Alaska Native children represent the largest demographic group of enrolled children. USDA will issue guidance on acceptable data that can be used to report student demographics, which may include participant self-reporting, school data, or census data. School food authorities must maintain this documentation for program reviews. For example:

- For school food authorities that are tribally operated or operated by the Bureau of Indian Education, an example of documentation is a certifying statement indicating the school food authority is tribally operated or operated by the Bureau of Indian Education.
- For schools serving primarily American Indian or Alaska Native children, an example of documentation may be aggregate data of student demographics, such as participant self-reporting, school data, or census data.

For the SFSP and CACFP, a sponsor, institution, or facility that chooses to use this menu planning option must maintain documentation demonstrating that the site serves primarily American Indian or Alaska Native participants. USDA will issue guidance on acceptable data that can be used to report participant demographics, which may include participant self-reporting, school data, or census data. For example:

- For enrolled sites, the sponsor, institution, or facility determines, based on participant self-reporting, that American Indian or Alaska Native participants represent the largest demographic group of enrolled participants.
- For enrolled sites, the sponsor, institution, or facility provides a certifying statement indicating that the site primarily serves American Indian or Alaska Native participants.
- For non-enrolled sites, the sponsor, institution, or facility determines that American Indian or Alaska Native participants represent the largest demographic group of participants served by the site, based on school or census data.

This final rule allows any vegetable to substitute for the grains or bread component. However, USDA emphasizes the importance of traditional and culturally relevant vegetables, and this final rule provides examples of traditional and cultural vegetables, such as prairie turnips and breadfruit, in the revised regulatory text at 7 CFR 210.10(c)(3), 220.8(c)(3), 225.16(f)(3), and 226.20(f). Respondents provided examples such as squash, cassava (yuca), and taro, all of which would be traditional and culturally relevant vegetables that may substitute for grains or breads under the final rule.

Some respondents asked USDA to establish vegetable subgroup requirements for the provision, or to limit this provision to vegetables prepared in specific ways. USDA is not requiring specific vegetable subgroups or types of preparation in this final rule to minimize burden for program operators that choose to use this flexibility. This approach is imperative for program operators of the SFSP and CACFP because SFSP and CACFP meal patterns do not require vegetable subgroups and a vegetable subgroup requirement for this provision could create barriers to implementation in these programs. Allowing program operators the flexibility to offer vegetables from any subgroup in place of grains or breads allows for a variety of vegetables to be offered, many of which are underconsumed among all populations.[95]

A few respondents requested clarification on specific questions. A State agency requested clarification on whether this option would be applicable to the infant meal pattern. This rule does extend the option to the infant meal pattern. Extending the option to substitute vegetables for grains in the infant meal pattern allows infants to also consume foods, and develop taste preferences, aligned with an Indigenous diet. USDA recognizes the concern that allowing this flexibility for infants could result in a reduced consumption of critical nutrients, such as iron. However, the infant meal pattern allows a variety of foods to meet the required food components for meals and snacks, and only currently requires a grain item at snack when a child is developmentally ready to accept those foods. Allowing sponsors, institutions, and facilities to serve culturally responsive meals and snacks can improve meal consumption and strengthen relationships between providers, families, and participants.

[95] According to the *Dietary Guidelines,* ''Almost 90 percent of the U.S. population does not meet the recommendation for vegetables. In addition, with few exceptions, the U.S. population does not meet intake recommendations for any of the vegetable subgroups.'' Further, according to the *Dietary Guidelines,* ''For most individuals, following a healthy eating pattern will require an increase in total vegetable intake and from all vegetable subgroups, shifting to nutrient-dense forms, and an increase in the variety of different vegetables consumed over time.'' See page 31. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans.* 9th Edition. December 2020. Available at: *https://www.dietaryguidelines.gov/.*

USDA appreciates public feedback on the menu planning options for American Indian and Alaska Native children. Overall, respondents expressed appreciation for USDA's efforts to improve the child nutrition programs for American Indian or Alaska Native children. In addition to these supportive comments, several respondents recommended that USDA expand the proposed menu planning option to more, or even all, child nutrition program operators. USDA acknowledges that additional schools, sponsors, institutions, and facilities may benefit from this provision and appreciates this feedback. However, as proposed, this provision was intended for certain schools, sponsors, institutions, and facilities. Other program operators that were not covered by the proposal, as well as State agencies responsible for program monitoring, did not have the opportunity to provide public comment on a potential broader change. With the exception of clarifying that this option may be applied at the school food authority level, this final rule does not expand this option to additional program operators, beyond those covered by the proposed rule.

This final rule is intended to support American Indian or Alaska Native participants in child nutrition programs and to uphold USDA's commitment to advancing equity, as detailed in the Department's Equity Action Plan.[96] In this plan, USDA outlines its commitment to advancing equity, including a focus on increasing Tribal trust. The Equity Action Plan highlights the importance of considering policy design and implementation to ensure Tribal communities have equitable access to Federal programs and services, including incorporating Indigenous values and perspectives in program design and delivery. While this final rule does not have as broad of a reach as some respondents requested, USDA remains committed to promoting equitable access to the child nutrition programs. USDA will continue to work with its partners to make the child nutrition programs more inclusive for all child and adult participants.

Accordingly, this final rule amends 7 CFR 210.10(c)(3) and 220.8(c)(3), to allow school food authorities and schools that are tribally operated, operated by the Bureau of Indian Education, and that serve primarily American Indian or Alaska Native children to the list of schools[97] that may serve vegetables to meet the grains requirement. For SFSP and CACFP, this final rule amends 7 CFR 225.16(f)(3) and 226.20(f) to allow sponsors, institutions, and facilities, as applicable, that serve primarily American Indian or Alaska Native participants to substitute vegetables for grains or breads. This final rule also amends 7 CFR 210.10(c)(3), 220.8(c)(3), 225.16(f)(3), and 226.20(f) to allow all schools, sponsors, institutions, and facilities in Guam and Hawaii to serve vegetables to meet the grains or breads requirement. These changes provide child nutrition program operators an optional menu planning flexibility. Program operators are not required to change menus or operations as a result of this provision.

Section 8: Traditional Indigenous Foods

Current Requirement

Information about crediting foods in the school meal programs is primarily shared with program operators through USDA guidance, not through regulation. While traditional Indigenous foods are not explicitly mentioned in the school lunch and breakfast program regulations, they may be served in reimbursable school meals in accordance with USDA guidance.

USDA does not define the term ''traditional foods;'' however, the Agriculture Improvement Act of 2014, as amended (25 U.S.C. 1685(b)(5)) defines traditional food as ''food that has traditionally been prepared and consumed by an [American] Indian tribe'' and includes the following example foods in its definition: wild game meat, fish, seafood, marine mammals, plants, and berries. USDA acknowledges that there are 574 federally recognized Tribes in the U.S. and appreciates the importance of recognizing the diversity of American Indian and Alaska Native cultures and traditions, including food traditions.

In 2015, USDA issued policy guidance[98] about serving traditional Indigenous foods in the child nutrition programs. This guidance explained that if a food is served as part of a reimbursable meal, but not listed in the *Food Buying Guide for Child Nutrition Programs (Food Buying Guide),* the yield information of a similar food or in-house yield[99] may be used to determine a food's contribution toward meal pattern requirements. The 2015 guidance also explained how to credit certain traditional foods, such as wild rice, blue cornmeal, and ground buffalo. In 2023, this guidance, titled *Crediting Traditional Indigenous Foods in Child Nutrition Programs,* was revised to further clarify how to credit traditional Indigenous foods and to expand the list of traditional Indigenous foods that credit similarly to products already listed in the *Food Buying Guide.* Additional resources, such as USDA's fact sheet, *Bringing Tribal Foods and Traditions into Cafeterias, Classrooms, and Gardens*[100] encourage schools to incorporate traditional Indigenous foods in school menus.

Proposed Rule

USDA proposed to explicitly state in regulation that traditional foods may be served in reimbursable school meals. The intent of this proposal was to emphasize USDA's support for integrating traditional Indigenous foods into the school meal programs. While many traditional Indigenous foods may already be served in the programs under existing USDA guidance, USDA expected that this regulatory change would help to address the perception that traditional foods are not creditable, draw attention to the option to serve traditional Indigenous foods, and support local efforts to incorporate traditional Indigenous foods into school meals.

Public Comments

USDA received over 200 comments on the proposal to add ''traditional foods'' to the regulatory text. Of these, 168 supported the proposal, including 68 unique comments. While only one respondent requested no changes, 70 respondents, including 50 unique comments, provided additional feedback on the proposal.

Many respondents, including State agencies, advocacy groups, a national organization representing tens of thousands of school nutrition professionals, school districts, a form letter campaign, and individuals, expressed support for the traditional foods provision and including traditional Indigenous foods in school meals. One proponent explained that including traditional foods in school

[96] U.S. Department of Agriculture, *USDA Equity Action Plan in Support of Executive Order (E.O.) 13985 Advancing Racial Equity and Support for Underserved Communities through the Federal Government,* February 10, 2022. Available at: *https://www.usda.gov/equity/action-plan.*

[97] As noted above, USDA currently allows schools in American Samoa, Puerto Rico, and the U.S. Virgin Islands to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains component. See 7 CFR 210.10(c)(3) and 220.8(c)(3).

[98] U.S. Department of Agriculture, *Child Nutrition Programs and Traditional Foods,* July 15, 2015. Available at: *https://www.fns.usda.gov/cn/child-nutrition-programs-and-traditional-foods.*

[99] Information on calculating in-house yield data may be found on page I–5 of the *Food Buying Guide.*

[100] U.S. Department of Agriculture, *Bringing Tribal Foods and Traditions Into Cafeterias, Classrooms, and Gardens,* August 2017. Available at: *https://www.fns.usda.gov/f2s/tribal-foods.*

meals allows Indigenous children to meet their nutritional needs in a way that connects them with their culture. Another proponent emphasized the importance of connecting children with traditional foods and supported greater inclusion of traditional foods to help address health disparities. An advocacy group suggested the proposal would provide clarity and support to schools that want to incorporate traditional foods into their menus. An individual stated the proposal is important because ''school meals should reflect the cultural heritage and values of the students they serve.'' Similarly, an advocacy group suggested that the proposal would encourage schools to offer more traditional foods, which can increase school meal participation and honor students' cultural traditions. Another advocacy group stated the proposal represents ''progress toward making school meals standards more equitable.''

Several respondents recommended that USDA broaden the scope of this provision. For example, a school district and an advocacy group recommended that USDA encourage all schools to offer foods considered traditional to all cultures, not just American Indian and Alaska Native communities. Similarly, several advocacy groups suggested that USDA consider additional ways meal pattern requirements can be more inclusive of all students' ethnicities and cultural backgrounds. One advocacy group encouraged USDA to provide training and technical assistance, such as guidance, menus, and recipes, to support the inclusion of foods traditional to a variety of cultures. Another advocacy group stated that more culturally relevant menu planning resources would ''support the breadth of diverse traditions and cultures across our nation.''

A few proponents offered suggestions to help schools fully realize the intent of this change. An advocacy group suggested that USDA seek broad input from community members to ensure culturally relevant foods are included in the school meal programs without unnecessary barriers. A form letter campaign encouraged USDA to engage American Indian and Alaska Native communities when implementing this provision and stated that the expansion of traditional and cultural meal options would advance racial equity. An advocacy group suggested USDA ensure that ''traditional foods are readily available in USDA foods, particularly through Tribal producers.''

In addition to requesting general feedback on the proposal, USDA requested public input on the following questions:

- USDA has provided guidance [101] on crediting certain traditional foods. Are there any other traditional foods that schools would like to serve, but are having difficulty serving? If so, what specific challenges are preventing schools from serving these foods?
- Which traditional foods should USDA provide yield information for and incorporate into the *Food Buying Guide?*
- Is ''traditional foods,'' as described in the Agriculture Improvement Act of 2014, as amended (25 U.S.C. 1685(b)(5)), an appropriate term to use, or do stakeholders recommend a different term?

A few respondents provided input on the first question regarding traditional foods that are challenging to serve. A State agency noted that hunted game, foraged fruits, and freshly caught fish are challenging to serve due to local, State, and Federal food safety requirements. Another State agency provided feedback from a Tribal school in their State; the Tribal school explained that they cannot purchase venison from their local vendor and cited challenges serving maple syrup harvested by community members. One school nutrition professional mentioned that they have no difficulty serving traditional foods in their local area.

Several respondents provided input on the second question, asking which traditional foods USDA should consider adding to the *Food Buying Guide.* A professional organization suggested USDA add wild game including moose, reindeer, and caribou; plants such as kelp and Eskimo potatoes; and fruits such as salmonberries. This respondent described these foods as nutritious and affirmed that these specific foods are important cultural foods for Alaska Native students. A State agency listed whitefish, walleye, and hickory nuts as traditional foods to be added to the *Food Buying Guide.* In a few cases, respondents recommended adding items that are already included in the *Food Buying Guide,* such as cranberries, chestnuts, venison, and bison.

Some respondents suggested adding foods traditional to other cultures to the *Food Buying Guide.* One advocacy group recommended USDA expand the definition of traditional foods to include all cultures and provided several suggestions of foods to add, including bacalao (dried and salted codfish), broccoflower, chorizo, crowder peas, huckleberries, naan, smoked eel, and ulu. A school nutrition professional suggested adding Caribbean, Indian, and Asian foods to the *Food Buying Guide.* A few advocacy groups recommended adding bone broth, nori (dried, edible seaweed), pupusas, arepas, yucca, and curry dishes. Another respondent suggested that USDA credit breadfruit and taro as grains and cited their nutritional benefits. An individual and an advocacy group provided a list of native Hawaiian foods to include, such as purple sweet potato, taro, poi, seaweed, and coconut. For clarification, coconut, seaweed, poi, breadfruit, and taro are already included in the *Food Buying Guide.*

A few respondents provided input on the third question, which asked whether ''traditional foods,'' as defined in the Agriculture Improvement Act of 2014, as amended (25 U.S.C. 1685(b)(5)), is an appropriate term to use in regulation. An advocacy group and a few State agencies expressed support for the term ''traditional foods'' as defined in the Agricultural Improvement Act of 2014. Another State agency acknowledged the importance of cultural foods in school meals but noted that foods considered to be ''traditional'' may have changed over time and questioned use of this term in the regulation. An individual recommended that foods traditional to Native Hawaiians be considered ''traditional foods'' for the purpose of the regulation. A professional organization encouraged USDA to expand its use of the term ''traditional foods'' to include other cultures, stating that ''traditional foods should not be limited to those consumed by an American Indian Tribe but be inclusive of other diverse cultures.'' A State agency supported inclusion of traditional foods and emphasized the importance of a clear explanation of what qualifies as a traditional food.

Oral comments were submitted during a Tribal Consultation conducted by USDA with Tribal leaders in spring 2023. During this session, many participants expressed support for the term ''traditional foods'' as defined in the Agricultural Improvement Act of 2014 and as used in this provision. One Tribal leader mentioned that this term is recognizable among many Tribes. Consultation participants provided additional input on school meals. One Tribal leader acknowledged the challenge in establishing nutrition requirements that accommodate all communities because all Tribes are different. Another participant expressed concerns about added sugars and risk for diabetes and other chronic diseases among the American Indian and Alaska

[101] U.S. Department of Agriculture, *Child Nutrition Programs and Traditional Foods,* July 15, 2015. Available at: *https://www.fns.usda.gov/cn/child-nutrition-programs-and-traditional-foods.*

Native populations. This participant claimed that in their view, improving the nutritional quality of school meals is a greater concern than serving traditional foods. Additionally, Tribal leaders cited meal costs and reimbursement rates as barriers to including more traditional foods in school menus.

Final Rule

This final rule codifies the proposal to explicitly state in regulation that traditional Indigenous foods may be served in reimbursable school meals. Regulations at 7 CFR 210.10(c)(7) and 220.8(c)(4) will include the definition of traditional foods from the Agriculture Improvement Act of 2014, as amended (25 U.S.C. 1685(b)(5)), which defines traditional food as ''food that has traditionally been prepared and consumed by an [American] Indian tribe,'' including wild game meat, fish, seafood, marine mammals, plants, and berries. As with all other foods offered in school meals, traditional Indigenous foods will continue to be subject to meal pattern requirements, including the weekly dietary specifications. While the proposed rule used the term ''traditional foods,'' in this final rule, USDA uses the term ''traditional Indigenous foods'' to better communicate the focus of this provision.

USDA appreciates public comments received in response to this provision and feedback that stakeholders provided on serving traditional Indigenous foods in school meals. USDA recognizes that stakeholders support diversity in the child nutrition programs, including offering foods that are significant to students of all cultural backgrounds. As discussed in *Section 14: Meal Modifications,* USDA supports efforts to consider participant preferences when planning and preparing meals, including cultural food preferences. However, for this specific provision, USDA will use the term ''traditional Indigenous foods'' and use the definition of ''traditional foods'' from the Agriculture Improvement Act of 2014 and as referenced in the proposed rule. Food sovereignty and traditional foodways are critical in empowering Tribal communities' self-determination and incorporating American Indian and Alaska Native perspectives into USDA's nutrition assistance programs. USDA will continue to encourage program operators to develop menus that are culturally appropriate for all populations and that meet the needs of their communities. USDA's partnership with the Institute of Child Nutrition offers resources, such as the *Child Nutrition Recipe Box* and additional training materials, to support the integration of cultural foods in child nutrition programs. Additionally, USDA Foods in Schools provides a list of Available Foods each school year for program operators to purchase locally grown and produced foods.[102]

USDA appreciates stakeholder suggestions for traditional Indigenous foods, as well as other cultural foods, that should be added to the *Food Buying Guide.* In 2023, USDA added new yield data for highly requested foods such as chokecherries and taro to the *Food Buying Guide.* Additional traditional Indigenous foods that respondents suggested, such as kelp, are described in the *Food Buying Guide* as similar to other food items with comparable yield information; this information can be used when crediting similar foods for a reimbursable meal. Input provided through public comment will be beneficial as USDA continues its long-term initiative to identify more traditional foods to incorporate into the *Food Buying Guide.* USDA also appreciates the importance of continuing to engage with Tribal leaders and community members to fully realize the intent of this change. Tribal stakeholders and leaders provided USDA with valuable input on this rulemaking through listening sessions and through Tribal Consultation. USDA greatly appreciates this input and recognizes the importance of continuing to work together on other initiatives to improve the child nutrition programs for American Indian and Alaska Native children.

Some respondents suggested that foods from other cultures be added to the *Food Buying Guide.* Many cultural foods, such as arepas and pupusas, are creditable in school meal programs if made with creditable ingredients, such as corn masa, masa harina, nixtamalized corn flour, and nixtamalized cornmeal. Respondents also suggested foods like curry dishes, which are often prepared with vegetables and meats/meat alternates that are already listed in the *Food Buying Guide.* USDA appreciates respondent feedback and continues to encourage program operators to develop diverse menus that meet the needs and preferences of the students they serve.

USDA understands that this change is just one part of a larger effort to support the service of traditional Indigenous foods in school meals and remains committed to promoting traditional foodways through its policies and guidance. USDA's website, *Serving Traditional Indigenous Foods in Child Nutrition Programs,*[103] hosts a collection of resources to support program operators working to incorporate traditional Indigenous foods in reimbursables meals, including fact sheets, recipes, crediting tip sheets, and other resources. This web page provides guidance on sourcing locally grown and raised traditional foods. USDA will continue to update this web page with additional tools and resources as they are developed.

Accordingly, this final rule amends 7 CFR 210.10(c)(7) and 220.8(c)(4) to explicitly state in regulation that traditional Indigenous foods, in accordance with current meal pattern requirements, may be served in reimbursable school meals. Schools are not required to change menus or operations as a result of this technical change.

Section 9: Afterschool Snacks

Current Requirement

Afterschool snacks may be offered to children through the NSLP (''NSLP snacks'') or through the CACFP (''CACFP snacks''). According to the National School Lunch Act (NSLA, 42 U.S.C. 1766a(d)), the nutrition requirements for CACFP snacks [104] also apply to NSLP snacks. However, current regulations at 7 CFR 210.10(o)(2) that outline the nutrition requirements for NSLP snacks served to K–12 children are outdated and do not reflect current statutory requirements. This preamble will refer to afterschool snacks served by schools under 7 CFR part 210 as ''NSLP snacks.''

Proposed Rule

USDA proposed to align the nutrition requirements for NSLP snacks served to K–12 children (ages 6 through 18) at 7 CFR 210.10(o) with the CACFP snack requirements, consistent with statute. Under the proposed rule, the existing nutrition requirements for NSLP snacks served to preschoolers and infants, which already follow CACFP requirements, would remain in effect. The proposed rule also included a terminology change, to remove all references to ''meal supplements'' in 7 CFR part 210 and replace them with the term ''afterschool snacks.''

Additionally, in the 2020 proposed rule, *Simplifying Meal Service and*

[102] U.S. Department of Agriculture. *USDA Foods Available Foods List for SY 2024.* January 9, 2023. Available at: *https://www.fns.usda.gov/usda-fis/usda-foods-available.*

[103] U.S. Department of Agriculture, *Serving Traditional Indigenous Foods in Child Nutrition Programs.* Available at: *https://www.fns.usda.gov/cn/serving-traditional-indigenous-foods.*

[104] The nutrition requirements for snacks served through the CACFP are found at 7 CFR 226.20(c)(3).

Monitoring Requirements in the National School Lunch and School Breakfast Programs,[105] USDA proposed to revise the definition of *Child* in 7 CFR 210.2, to clarify that children through the age of 18 may receive NSLP snacks. The proposal to update the definition of *Child* also sought to align program regulations with statutory requirements (NSLA, 42 U.S.C. 1766a(b)).

Public Comments

USDA received 117 comments on the NSLP snacks proposal in the 2023 rule, including 111 unique comments. Of these, 58 supported the proposal, 3 were opposed, and 56 were mixed. State agencies, advocacy groups, dietitians, and individuals submitted comments in response to this proposal. In addition, USDA received five comments in response to the 2020 proposal to revise the definition of *Child;* all five respondents supported the proposed change.

Regarding the NSLP snacks provision in the 2023 proposed rule, one dietitian suggested the proposal would streamline program requirements, describing it as a positive change. Another proponent agreed, noting the change would align two similar programs without creating administrative burden. A third respondent affirmed the benefits of aligning program requirements, stating that the proposed change would be beneficial for multi-program sponsors, and a school district that currently participates in multiple child nutrition programs agreed. An advocacy group supported the proposal and described the CACFP meal pattern as ''nutritious.'' Another advocacy group supported changing the term ''meal supplements'' to ''afterschool snacks,'' arguing that ''afterschool snacks'' is easier to understand. One proponent supported applying the product-based added sugars limits for yogurt and breakfast cereals to NSLP snacks; these limits are discussed further in *Section 2: Added Sugars.* While not directly related to the proposal, an advocacy group emphasized the importance of afterschool programs in general, noting that children need nutritional support during the hours after school.

One respondent questioned why it is necessary to align the NSLP snacks meal patterns with CACFP. An advocacy group opposed eliminating grain-based desserts from NSLP snacks, which they argued would greatly decrease options for schools. A few respondents raised concerns about specific items that are identified as grain-based desserts and are commonly served as afterschool snacks, such as granola and cereal bars. Several other respondents agreed, noting that schools could experience ''menu fatigue'' due to limited options if grain-based desserts are no longer permitted as NSLP snacks. A State agency cautioned that the proposal to serve at least one whole grain-rich grain each day may be challenging for NSLP snacks operators, given that there is already a whole grain-rich requirement for school meals. Similarly, another State agency questioned how the proposed NSLP snacks whole grain-rich requirement would interact with the existing whole grain-rich requirements for school lunch and breakfast. This State agency maintained that while they usually support efforts to align regulations, some of the differences between the school meal programs and CACFP—such as the whole grain-rich requirements—could lead to confusion. An industry respondent also encouraged USDA to reconsider the proposed NSLP snacks whole grain-rich requirement, citing concerns about requirements that are ''complicated'' and ''hard to follow.''

Other respondents requested clarification or offered suggestions. An advocacy group recommended that USDA reconsider the serving size requirements for fruits and vegetables in afterschool programs, especially for younger children. This respondent suggested that the current serving size for fruits and vegetables (¾ cup) is too large for elementary schoolchildren. Another advocacy group encouraged USDA to provide ''an adequate timeline'' for implementation, while an industry respondent supported training and technical assistance for schools.

Final Rule

This final rule updates NSLP snacks meal pattern requirements for K–12 children to reflect CACFP snack requirements, consistent with the intent of the National School Lunch Act (NSLA, 42 U.S.C. 1766a(d)). This change must be implemented by July 1, 2025. Program operators have the option, but are not required, to implement this change early. Additionally, this rule finalizes the provision from the 2020 proposed rule to revise the definition of *Child.* This change clarifies that children who are age 18 and under at the start of the school year may receive reimbursable NSLP snacks, consistent with statute (NSLA, 42 U.S.C. 1766a(b)). As with the proposed rule, this final rule changes all regulatory references in 7 CFR part 210 from ''meal supplements'' to ''afterschool snacks.'' This rule does not change requirements for NSLP snacks served to preschoolers and infants; existing requirements for NSLP snacks served to preschoolers and infants remain in effect.

In a public comment, one respondent asked why it is necessary for NSLP snacks meal pattern requirements to follow CACFP requirements. As noted in the proposed rule and above, this change is required by statute. According to the National School Lunch Act (NSLA, 42 U.S.C. 1766a(d)), the nutritional requirements for snacks served through the CACFP also apply to afterschool snacks served by schools. Consistent with statutory requirements, this final rule updates regulations at 7 CFR 210.10(o)(2) outlining the nutrition requirements for afterschool snacks served to K–12 children.

Under the final rule, by July 1, 2025, NSLP snacks served to K–12 children must include two of the following five components:

- Milk
- Meats/meat alternates
- Vegetables
- Fruits
- Grains

The following CACFP snack requirements for children 6 years and older also apply to NSLP snacks served to K–12 children. These requirements for NSLP snacks must be implemented by July 1, 2025:

- Only one of the two components served at snack may be a beverage.
- Milk must be fat-free or low-fat and may be unflavored or flavored.
- Grain-based desserts do not count toward the grains requirement.
- Foods that are deep-fat fried on-site are not reimbursable NSLP snacks.
- As detailed in *Section 2: Added Sugars,* breakfast cereals must contain no more than 6 grams of added sugars per dry ounce.[106]
- As detailed in *Section 2: Added Sugars,* yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce).[107]

[105] *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs* (85 FR 4094, January 23, 2020). Available at: *https://www.federalregister.gov/documents/2020/01/23/2020-00926/simplifying-meal-service-and-monitoring-requirements-in-the-national-school-lunch-and-school.*

[106] While existing CACFP regulations limit breakfast cereals to no more than 6 grams of *total* sugars per dry ounce, in this final rule, USDA has opted to delay implementation of the breakfast cereals limit in NSLP snacks to SY 2025–2026, when USDA will implement the *added* sugars limit for NSLP, SBP, CACFP, and NSLP snacks.

[107] While existing CACFP regulations limit yogurt to no more than 23 grams of *total* sugars per 6 ounces, in this final rule, USDA has opted to delay implementation of the yogurt limit in NSLP snacks to SY 2025–2026, when USDA will implement the *added* sugars limit for NSLP, SBP, CACFP, and NSLP snacks.

In the proposed rule, USDA proposed to apply the per day juice limit and the per day whole grain-rich requirement used in the CACFP to NSLP snacks served to K–12 children. USDA is not finalizing the proposed per day juice limit or the proposed per day whole grain-rich requirement for NSLP snacks served to K–12 children. Instead, this final rule applies the weekly juice limit and the weekly whole grain-rich requirement used in the school meal programs to NSLP snacks. This change, which results in NSLP snacks that are nutritionally similar to snacks offered through the CACFP, is due to operational differences in the requirements for lunches and breakfasts served to K–12 children compared to preschool children. For K–12 children, the NSLP and SBP require that no more than half of the weekly fruit or vegetable offerings may be in the form of juice. As discussed in *Section 4: Whole Grains,* the whole grain-rich requirements for NSLP and SBP meals served to K–12 students also apply on a weekly, rather than daily, basis. As pointed out in public comments, implementing an additional per day requirement, when existing juice limitations and whole grain-rich requirements for NSLP and SBP already apply per week, would be confusing for schools that offer students school meals and NSLP snacks. Therefore, this final rule instead applies the following weekly requirements to NSLP snacks:

- No more than half of the weekly fruit or vegetable offerings at NSLP snacks may be in the form of juice.
- At least 80 percent of the grains offered weekly in NSLP snacks must be whole grain-rich, based on ounce equivalents of grains offered.

USDA has determined that this approach will result in NSLP snacks that are nutritionally comparable to snacks offered through the CACFP, consistent with the intent of the statute, while avoiding operational complexity. For example, under this final rule, NSLP snacks may include juice, but will be required to offer fruits and vegetables in other forms. Regarding fruit juice, the final rule *Child and Adult Care Food Program: Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010* noted that, ''The *Dietary Guidelines* recommends that at least half of fruits should come from whole fruits and found that children age 1 to 3 years consume the highest proportion of juice to whole fruits.'' [108] The NSLP snacks juice limit finalized in this rulemaking incorporates *Dietary Guidelines* [109] recommendations for K–12 students and considers operational factors specific to NSLP snacks, as suggested by public comments. Specifically, this final rule considers that NSLP snacks operates alongside the school lunch and breakfast programs, which have weekly juice limits. Additionally, similar to CACFP requirements, this final rule includes a whole grain-rich requirement for NSLP snacks, while permitting enriched grains, provided that the whole grain-rich threshold is met. The intent of the CACFP whole grain-rich requirement is to ensure that participants receive at least one serving of whole grain-rich grains per day, across all eating occasions. When considering grain offerings at school lunch and breakfast, USDA expects that on most school days, K–12 children receiving school meals and NSLP snacks would meet or exceed one whole grain-rich grain per day. Consistent with statutory intent, the weekly whole grain-rich requirement finalized in this rule improves the nutritional quality of NSLP snacks and will result in snacks that are nutritionally comparable to those offered in the CACFP. It also responds to public comments that raised concerns with the operational feasibility of implementing a per day whole grain-rich requirement in NSLP snacks.

The changes for NSLP snacks served to K–12 children are reflected in the NSLP snacks meal pattern chart for K–12 children (ages 6 through 18) now included at 7 CFR 210.10(o)(2) of this final rule. Unlike the NSLP and SBP, which include three separate age/grade groups (K–5, 6–8, and 9–12), schools offering NSLP snacks to K–12 children will follow a single NSLP snacks meal pattern for all children ages 6 through 18. Schools are encouraged to serve larger portions to older children to meet their increased nutritional needs.

USDA appreciates public input regarding the serving sizes for fruits and vegetables in afterschool snacks. This final rule does not change the serving sizes for fruits and vegetables in the snack meal patterns. In CACFP snacks, for children ages 6 and older, the serving size for fruits and vegetables served as part of a snack will continue to be ¾ cup. In NSLP snacks, for children in grades K–12, the serving size for fruits and vegetables served as part of a snack will also continue to be ¾ cup. Schools are not required to serve fruits or vegetables as part of a reimbursable snack; these components are just two of five options available to schools. Schools offering NSLP snacks may choose to serve any combination of at least two of the five components (milk, meats/meat alternates, vegetables, fruits, and/or grains).

In response to requests for clarification about the changes in this final rule, the following chart summarizes the prior regulatory requirements for NSLP snacks served to K–12 children compared to the requirements implemented by this final rule:

[108] U.S. Department of Agriculture, *Child and Adult Care Food Program: Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010,* April 25, 2016. Available at: *https://www.federalregister.gov/documents/2016/04/25/2016-09412/child-and-adult-care-food-program-meal-pattern-revisions-related-to-the-healthy-hunger-free-kids-act.*

[109] ''Although 100% fruit juice without added sugars can be part of a healthy dietary pattern, it is lower in dietary fiber than whole fruit. Dietary fiber is a dietary component of public health concern. With the recognition that fruit should mostly be consumed in whole forms, the amount of fruit juice in the USDA Food Patterns ranges from 4 fluid ounces at the lower calorie levels and no more than 10 fluid ounces at the highest calorie levels.'' See page 87: U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/.*

Topic	OLD NSLP Snacks Requirements for K-12 Children	NEW NSLP Snacks Requirements for K-12 Children (Must be Implemented July 1, 2025)
Total number of snack components	Snacks must contain two different components out of four total components	Snacks must contain two different components out of five total components
Milk	No regulatory requirements for fat or flavoring in NSLP snacks	Milk must be fat-free or low-fat and may be unflavored or flavored
Fruit and vegetable	Fruits and vegetables are part of a single component	Fruits and vegetables are two separate components
Juice	No regulatory juice limits in NSLP snacks	No more than half (50 percent) of the weekly fruit and vegetable offerings in NSLP snacks are in the form of juice
Whole grain-rich	No regulatory requirements to offer whole grain-rich grains in NSLP snacks	At least 80 percent of the weekly grains offered in NSLP snacks must be whole grain-rich, based on ounce equivalents of grains offered
Grain-based desserts	No regulatory requirements for grain-based desserts in NSLP snacks	Grain-based desserts do not count toward the grains requirement
Deep-fat fried foods	No regulatory requirements for deep-fat fried foods in NSLP snacks	Foods that are deep-fat fried on-site are not reimbursable NSLP snacks
Added sugars	No regulatory added sugars limits in NSLP snacks	Breakfast cereals must contain no more than 6 grams of added sugars per dry ounce and yogurt must contain no more than 12 grams of added sugars per 6 ounces[110]

There are a few differences to point out for NSLP snacks served to *preschoolers:*[111]

- Milk fat requirements and flavoring limitations: milk must be unflavored whole milk for children age one and must be unflavored low-fat or unflavored fat-free milk for children ages two through five.
- Juice limitations: full-strength juice may only be offered to meet the vegetable or fruit requirement at one preschool meal or snack per day. For example, a school serves breakfast, lunch, and NSLP snack to preschoolers using the preschool meal patterns for all meals and snacks. If the school opts to serve juice to preschoolers at breakfast, juice may not be served to the preschoolers during the lunch or NSLP snack service on the same day.
- Whole grain-rich requirement: at least one serving of grains per day must be whole grain-rich. For example, a school serves a whole grain-rich item to preschoolers at lunch and chooses to serve a grain at NSLP snack. In this example, the grain served for NSLP snack would not be required to be whole grain-rich. However, schools that provide NSLP snacks to preschoolers may choose to serve additional whole grain-rich items, beyond the one serving per day requirement.

Accordingly, this final rule amends 7 CFR 210.2 to revise the definition of *Child* for consistency with statute. This final rule also amends 7 CFR 210.10(o) to align NSLP snacks meal pattern requirements for K–12 children with CACFP snack requirements, consistent with the intent of the statute. The updates to NSLP snack meal pattern requirements must be implemented by July 1, 2025.

[110] While existing CACFP regulations include *total* sugars limits for breakfast cereals and yogurt, in this final rule, USDA has opted to delay implementation of these limits for NSLP snacks to SY 2025–2026, when USDA will implement the *added* sugars limit for NSLP, SBP, CACFP, and NSLP snacks.

[111] Consistent with existing policy guidance, schools may choose to follow the K–5 NSLP snack meal pattern when preschoolers and K–5 students are co-mingled at meal service. See *Flexibility for Co-Mingled Preschool Meals: Questions and Answers,* June 30, 2017. Available at: *https://www.fns.usda.gov/cn/flexibility-co-mingled-preschool-meals-questions-and-answers.*

Section 10: Substituting Vegetables for Fruits at Breakfast

Current Requirement

Current regulations at 7 CFR 220.8(c) and (c)(2)(ii) allow schools to substitute vegetables for fruits at breakfast, provided that the first two cups per week are from specific vegetable subgroups: dark green, red/orange, beans and peas (legumes), or ''other'' vegetable subgroups.[112] However, in recent years, through Federal appropriations, Congress has provided schools the option to substitute any vegetable—including starchy vegetables—for fruits at breakfast, with no vegetable subgroup requirements. This Congressional flexibility has been offered on a temporary basis and has left schools without long-term certainty regarding menu planning options. For example, in calendar year 2019, schools were initially granted the flexibility to offer any vegetables in place of fruit at breakfast from February 15 through September 30. This flexibility was extended by Congress through a subsequent appropriations bill but was not granted permanently.[113] Most recently, Congress provided schools the same flexibility in SY 2022–2023 and SY 2023–2024, allowing any vegetable to credit in place of fruits in weekly breakfast menus.[114]

Proposed Rule

In the proposed rule, USDA acknowledged that it is confusing for State agencies and schools to have a requirement in regulation that is changed periodically through Federal appropriations. To permanently address this issue, USDA sought to establish a durable standard that continues to encourage vegetable variety at breakfast. USDA proposed to continue to allow schools to substitute vegetables for fruits at breakfast but to change the vegetable variety requirement. Under the proposal, schools choosing to offer vegetables in place of fruits at breakfast one day per school week would have the option to offer any vegetables, including a starchy vegetable. Schools that choose to substitute vegetables for fruits at breakfast on two or more days per school week would be required to offer at least two different vegetable subgroups during that weekly menu cycle. In other words, the requirement to offer a second, different vegetable subgroup would only apply in cases where schools choose to substitute vegetables for fruits at breakfast more than one day per school week.

In the proposed rule, USDA proposed to change the name of the ''legumes (beans and peas)'' vegetable subgroup to ''beans, peas, and lentils'' for consistency with the *Dietary Guidelines*. As discussed in *Section 20: Miscellaneous Changes* of this final rule, USDA is finalizing this proposed terminology change. Therefore, in the final rule portion of this section, USDA will refer to the ''beans, peas, and lentils'' vegetable subgroup.

Public Comments

USDA received hundreds of comments on the proposal to change the vegetable variety requirement when substituting vegetables for fruits at breakfast. Of these, 722 supported the proposal, including 51 unique comments. Seventeen respondents opposed the proposal, and 89 respondents provided mixed feedback, including 58 unique comments. Comments were submitted by State agencies, advocacy groups, industry respondents, school districts, and dietitians.

Several respondents, including school nutrition professionals and State agencies, supported this change, suggesting that it would allow greater menu flexibility at breakfast compared to the current regulatory requirement. One proponent noted that offering two different vegetable subgroups at breakfast during a weekly menu cycle is achievable and provided examples of how the proposal could be implemented during a school week. A couple of school nutrition professional organizations stated that this change would simplify regulations for menu planners and eliminate confusion. A State agency agreed and mentioned that this change would help school nutrition staff better understand when more than one vegetable subgroup is required at breakfast. An advocacy group supported the proposal and emphasized the importance of maintaining variety in vegetable subgroups offered at breakfast, particularly the inclusion of non-starchy vegetables. A professional organization supported the proposal, arguing that requiring a variety of vegetable subgroups at breakfast will prevent schools from offering the same vegetable every day. An advocacy group supported the proposal, describing it as a ''durable standard that encourages vegetable variety.''

Some respondents opposed the proposal, asserting that it would allow too much flexibility compared to the current regulatory requirement. One advocacy group did not agree with the proposal, suggesting it would allow schools to serve vegetables from a single subgroup up to four days per school week. For example, this respondent shared that if a school chose to substitute vegetables for fruits every day, the ''school could offer an omelet with spinach on Monday, but then serve hash browns, tater tots, or home fries the other four days of the week.'' While it is accurate that under the proposal, a school substituting vegetables for fruits at breakfast more than once per school week would only need to offer two vegetable subgroups, schools would still be required to meet the dietary specifications for calories, saturated fat, and sodium at breakfast.

Conversely, other respondents felt that the proposal was too restrictive and argued that schools should be able to offer any vegetable in place of fruit at breakfast, without any vegetable subgroup requirements. Some respondents suggested that fruits would continue to be a popular offering at breakfast, and when opting to substitute vegetables, schools should have maximum flexibility in planning their menus. One school nutrition professional organization asserted that having to monitor vegetable subgroups adds complexity to the program. This respondent maintained that when offering vegetables, schools should have the option to offer any vegetable without meeting a variety requirement. Other food service directors agreed, suggesting that USDA allow any vegetable to substitute for fruit at breakfast. A dietitian cautioned that requiring schools to offer a variety of vegetable subgroups throughout the week ''may disincentivize schools from the offering of vegetables at breakfast.'' One industry respondent expressed that all vegetables should be permitted to substitute for fruits at breakfast without limitations or restrictions, further stating that this flexibility would ''address the issue long-term, prevent confusion, and increase overall vegetable intake within the program.'' An individual stated that continuing to require vegetable variety would result in schools offering vegetables that children do not like at breakfast, increasing plate waste.

[112] See: ''Vegetables'' page 31. U.S. Department of Agriculture and U.S. Department of Health and Human Services. 2020–2025 Dietary Guidelines for Americans. 9th Edition. December 2020. Available at: *https://www.dietaryguidelines.gov/*.

[113] See: U.S. Department of Agriculture, *School Breakfast Program: Substitution of Vegetables for Fruit,* March 18, 2019. Available at: *https://www.fns.usda.gov/sbp/substitution-vegetables-fruit* See also: U.S. Department of Agriculture, *School Breakfast Program: Continuation of the Substitution of Vegetables for Fruit Flexibility,* January 22, 2020. Available at: *https://www.fns.usda.gov/sbp/school-breakfast-program-continuation-substitution-vegetables-fruit-flexibility.*

[114] See: U.S. Department of Agriculture, *Consolidated Appropriations Act, 2023: Effect on Child Nutrition Programs,* March 3, 2023. Available at: *https://www.fns.usda.gov/cn/consolidated-appropriations-act-2023-effect-programs.*

However, this respondent also maintained that the most popular vegetables at breakfast are potatoes and sweet potatoes, which USDA notes are from two different subgroups: starchy and red/orange. Therefore, a school that chooses to substitute vegetables for fruits could meet the proposed variety requirement for the school week by offering these two popular vegetable options.

Other respondents recommended alternative approaches or requested clarification. For example, a professional organization supported the proposal to require a variety of vegetables at breakfast, when schools choose to substitute vegetables for fruits, but suggested that USDA limit starchy vegetables to avoid increasing sodium. A few advocacy groups recommended that, in addition to the proposed variety requirement, USDA should also require that a single vegetable subgroup cannot make up more than half of the vegetable offerings at breakfast per week. These respondents asserted that this alternative standard would be less restrictive than the current regulatory standard, continue to encourage a variety of vegetable subgroups, and ensure that no single vegetable dominates SBP menus. An industry respondent opposed allowing any vegetables to substitute for fruits at breakfast, arguing that ''fruits contribute different nutrients than vegetables.'' Another respondent requested clarification about the requirements for vegetable offerings after a school meets the variety requirement. This respondent shared that their school usually offers vegetables as an ''extra item'' at breakfast and requested that this continue to be an option.

A few respondents provided other comments on the potential impact of the proposal. For example, an advocacy group suggested that substituting vegetables for fruits could help to reduce the overall sugar content of school breakfasts. A State agency noted that school menu planners and State agency staff would need guidance, training, and monitoring resources if this proposal is finalized. Similarly, an individual suggested that USDA provide sample menus with ideas to incorporate a variety of vegetables into the breakfast program. One respondent raised concerns that the proposed change would add paperwork for school nutrition staff. Conversely, one State agency maintained that they do not expect the change to be administratively burdensome.

Final Rule

This final rule continues to allow schools to substitute vegetables for fruits in the SBP and codifies the proposal to simplify the vegetable variety requirement. Under this final rule, schools choosing to offer vegetables at breakfast one day per school week have the option to offer any vegetable, including a starchy vegetable. Schools that choose to substitute vegetables for fruits at breakfast on two or more days per school week are required to offer vegetables from at least two different subgroups. The vegetable subgroups that schools may choose from include the following, a defined at 7 CFR 210.10(c)(2)(iii):

- Dark green
- Red/orange
- Beans, peas, and lentils
- Starchy
- ''Other'' vegetables

USDA acknowledges that some stakeholders preferred a different approach. A few respondents requested that USDA limit how often any one vegetable subgroup could be offered at breakfast, with some advocating for a specific limit on starchy vegetables. Other respondents encouraged USDA to remove the vegetable variety requirement altogether. However, USDA has determined that it is important to continue to encourage vegetable variety when schools choose to offer vegetables at breakfast. As noted in the proposed rule, while the *Dietary Guidelines* recommend increasing consumption of vegetables in general, they note that starchy vegetables are more frequently consumed by children and adolescents than the red/orange, dark green, or beans, peas, and lentils vegetable subgroups, underscoring the need for variety. The proposed requirement, finalized in this rulemaking, provides a straightforward and durable approach to support children consuming a variety of vegetables.

USDA appreciates respondent requests for clarification about implementation of this provision, such as one respondent who requested that USDA explain what vegetable subgroup requirements would apply after a school offers two different subgroups at breakfast. Under this final rule, after a school offers vegetables from two different subgroups, the school can choose to offer any vegetables at breakfast—including vegetables from a subgroup the school has already offered that school week. For example, a school can substitute a starchy vegetable for fruit at breakfast on Monday, then substitute a dark green vegetable for fruit at breakfast on Tuesday. The rest of the week the school may choose to substitute any vegetables, including a dark green or a starchy vegetable, for fruit at breakfast, since it would have met the variety requirement by Tuesday. As requested by comments, USDA will provide guidance and resources to support successful implementation of this provision and to assist schools in their efforts to offer a variety of vegetables as part of nutritious school breakfasts.

This final rule continues to require schools opting to serve vegetables at breakfast to offer a variety of subgroups, and in a way that is less restrictive compared to the previous regulatory standard. Consistent with current regulations, schools are not required to offer vegetables at breakfast and may choose to offer only fruits at breakfast to meet this component requirement. Schools may also continue to offer vegetables at breakfast as an extra item, subject to the weekly dietary specifications for calories, saturated fat, sodium, and upon implementation, added sugars. As suggested by comments, USDA expects that fruit will continue to be a popular offering in reimbursable school breakfasts. While USDA acknowledges feedback received about potential administrative burden, this final requirement does not add any additional administrative requirements beyond menu documentation and production records required for Administrative Reviews, for schools that choose to substitute vegetables for fruits at breakfast.

Accordingly, this final rule amends 7 CFR 220.8(c)(2)(i) and (ii) to change the vegetable variety requirement for substituting vegetables for fruits at breakfast. This change provides schools with more menu planning flexibility at breakfast when compared to the current regulation. Schools that are following the current regulatory requirement are not required to change menus or operations as a result of this provision. Schools that are using the Congressional flexibility [115] will need to offer at least two vegetable subgroups at breakfast, if offering vegetables in place of fruit at breakfast more than once per week.

Section 11: Nuts and Seeds

Current Requirement

Current regulations allow nuts and seeds, and nut and seed butters, as a meat alternate in the child nutrition programs. In all child nutrition

[115] See: U.S. Department of Agriculture, *Consolidated Appropriations Act, 2023: Effect on Child Nutrition Programs,* March 3, 2023. Available at: *https://www.fns.usda.gov/cn/consolidated-appropriations-act-2023-effect-programs.*

programs, nut and seed butters may credit for the full meats/meat alternates component. However, current regulations limit the crediting of whole nuts and seeds (or nut and seed pieces) in some child nutrition programs. Current lunch and supper regulations limit nut and seed crediting to 50 percent of the meats/meat alternates component (7 CFR 210.10(c)(2)(i)(B), 225.16(d)(2) and (e)(5), 226.20(a)(5)(ii) and (c)(2)). SBP regulations include the same limit (7 CFR 220.8(c)(2)(i)(B)). CACFP regulations for breakfast do not explicitly include the 50 percent limit for nuts and seeds, but refer to USDA guidance, which includes the 50 percent limit (7 CFR 226.20(a)(5)(ii)). Snack regulations and USDA guidance on snacks do not include the 50 percent limit; nuts and seeds may credit for the full meats/meat alternates component when offered as part of a snack (7 CFR 210.10(o)(2)(ii), 225.16(e)(5), and 226.20(c)(3). For programs where nut and seed crediting is limited to 50 percent of the meats/meat alternates component, program operators choosing to serve nuts and seeds must serve them alongside another meat/meat alternate to fully meet the component requirement.

Proposed Rule

USDA proposed to allow nuts and seeds to credit for the full meat/meat alternate component in all child nutrition programs and meals. This proposal would remove the 50 percent crediting limit for nuts and seeds at breakfast, lunch, and supper.

Public Comments

USDA received 389 comments on the proposed change to allow nuts and seeds to credit for the full meats/meat alternates component, including 217 unique comments. Of these, 310 supported the proposal, including 158 unique comments, 10 were opposed, and 69 were mixed, including 49 unique comments. State agencies, advocacy groups, industry respondents, school districts, dietitians, and individuals provided input on this proposal.

Several respondents supported the proposal, including a national organization representing tens of thousands of school nutrition professionals. One proponent applauded the proposal, noting that nuts and seeds are good sources of protein, vitamin E, fiber, and many minerals. A dietitian agreed, maintaining that nuts and seeds are healthy proteins that would provide variety throughout the week. An advocacy group added that nuts and seeds provide healthy fats. Another advocacy group representing the CACFP community indicated that 85 percent of its members supported the proposal. Several respondents, including dietitians, school districts, and a State agency, suggested that this change would allow more vegan and vegetarian options in child nutrition program meals. An advocacy group described plant-based entrées that operators could serve under this change, such as walnut and mushroom-based ''taco meat,'' rice pilaf with pistachios, and salad with sunflower seeds. In addition to plant-based options, an advocacy organization and a State agency noted that this proposal would allow more shelf-stable foods to be served in afterschool and summer meals. Another State agency suggested that this proposed change would allow program operators to offer healthier versions of popular bistro or snack boxes. An individual stated that the proposal would allow operators greater latitude to develop menus that reflect participant preferences; other respondents agreed, citing increased demand for vegetarian meals.

One opponent argued that nuts and seeds are not adequate to meet the full meats/meat alternates component requirement. A few industry respondents also opposed the proposal, arguing that in their view, animal products are more nutritious than vegetarian foods. However, this respondent also supported greater menu planning flexibility and opposed ''mandatory federal limits'' in the meal patterns. Another respondent raised concern about oils in nuts and seeds and the potential for nuts and seeds to cause ''digestive distress'' among some participants. One respondent suggested students at their school would not be interested in meals that include nuts and seeds as the full meats/meat alternates component.

Other respondents requested clarification or offered alternatives to the proposal. One respondent asked if nuts would be mandatory, citing food allergy concerns. Another respondent supported the change, but recommended capping the number of times per week operators could offer nuts and seeds to promote variety. One advocacy group suggested that USDA update its crediting guidance for nuts and seeds and nut and seed butters, asserting that the current requirements are too high. For example, this respondent argued that the current requirements result in sandwiches filled with an inedible amount of nut butter, making them difficult to chew and swallow. A State agency recommended targeting this provision to older children, citing concerns about choking hazards for young children. Similarly, an advocacy group raised concerns about the safety and appropriateness of offering nuts and seeds to very young children. This respondent also noted that nut and seed products may be glazed or sugar coated. An industry respondent noted that offering nuts may create menu planning complications due to the sodium content of some nuts. However, this respondent still supported the proposal. Another respondent requested sample menus and recipe ideas to support implementation of this change.

Final Rule

This final rule codifies the proposal to allow nuts and seeds to credit for the full meats/meat alternates component in all child nutrition programs and meals, removing the 50 percent crediting limit for nuts and seeds at breakfast, lunch, and supper. USDA expects this change to reduce complexity by making the requirements consistent across programs and to provide more menu planning options for program operators.

Child nutrition operators are not required to make any changes to their menus to comply with this standard. Nuts and seeds are not required in child nutrition program meals, but rather, continue to be an option for operators. When offering nuts and seeds, child nutrition operators may offer them to meet the full meats/meat alternates component but are not required to; operators may choose to offer nuts and seeds toward only a portion of the component, alongside another meat/meat alternate. Although USDA recognizes that many child nutrition program operators will continue to offer nuts and seeds in snacks, or in small amounts in meals alongside other meats/meat alternates, this final rule gives operators increased flexibility to offer nuts and seeds for the full meats/meat alternates component in all meals and snacks.

USDA appreciates comments regarding the importance of variety in meals and snacks and expects that operators will continue to offer a variety of foods toward the meats/meat alternates meal component. Additionally, according to the *Dietary Guidelines,* more than half of Americans do not meet the recommendations for the nuts, seeds, and soy products subgroup.[116] Therefore, USDA has

[116] See ''Protein Foods,'' page 34. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at *https://www.dietaryguidelines.gov/.*

determined that it is not necessary to limit the number of times nuts and seeds may be served per week in order to promote variety within the meats/meat alternates meal component. As suggested in public comments, USDA expects that this change will expand options for vegetarian and vegan meals that include nuts, seeds, and nut and seed butters. As noted in the *Dietary Guidelines,* a healthy vegetarian dietary pattern can be achieved by incorporating protein foods from plants, including nuts and seeds; beans, peas, and lentils; tofu and other soy products; and whole grains.[117]

USDA appreciates input regarding the serving sizes for nuts, seeds, and their butters. Many factors are considered when determining crediting amounts for foods in the child nutrition programs, including the FDA *Standards of Identity, Dietary Guidelines,* and the USDA Food Safety and Inspection Service *Food Standards and Labeling Policy.* USDA's *Food Buying Guide for Child Nutrition Programs* also assists in determining the contribution that each food makes toward meal pattern requirements. In this final rule and corresponding guidance, USDA will maintain current crediting amounts for nuts and seeds and their butters. In cases where an operator determines a portion is too large for a child or adult participant, it is recommended that nuts and seeds and their butters be served in combination with another meat/meat alternate to meet the full component requirement.

USDA is mindful of respondent concerns about choking hazards and has provided guidance on reducing the risk of choking in young children.[118] As noted in the proposed rule, nuts and seeds are generally not recommended to be served to children ages 1 to 3 because they present a choking hazard. If served to very young children, nuts and seeds should be finely minced. Program operators should also be aware of food allergies among participants and take the necessary steps to prevent exposure. *Section 14: Meal Modifications* provides more information about requirements to provide meal modifications for participants with disabilities, which may include food allergies. Finally, as noted in the proposed rule, USDA encourages program operators to offer nuts, seeds, and their butters in their most nutrient-dense form, without added sugars and salt, and schools must consider the contribution of these foods to the weekly limits for calories, saturated fat, and sodium.

Accordingly, this final rule amends 7 CFR 210.10(c)(2)(iv)(B), 220.8(c)(2)(iv)(B), 225.16(d)(2) and (e)(5), 226.20(a)(5)(ii) and (c)(2) to allow nuts and seeds to credit for the full meats/meat alternates component in all child nutrition program meals, removing the 50 percent crediting limit for nuts and seeds at breakfast, lunch, and supper. This change provides child nutrition program operators more menu planning flexibility. Program operators are not required to change menus or operations as a result of this provision.

Section 12: Beans, Peas, and Lentils at Lunch

Current Requirement

Consistent with the *Dietary Guidelines,* the school lunch meal pattern includes five vegetable subgroups: dark green, red/orange, beans and peas (legumes), starchy, and ''other'' vegetables. Current NSLP regulations at 7 CFR 210.10(c)(2)(iii) require school food authorities to offer vegetables from all five subgroups each school week. Specifically for the beans and peas (legumes) vegetable subgroup, schools must offer ½ cup over the course of the week at lunch to meet the vegetable subgroup requirement.

In addition to crediting toward the vegetable meal component, legumes may also credit toward the meats/meat alternates meal component (7 CFR 210.10(c)(2)(i)(E)). Legumes may count toward either the vegetable meal component or meats/meat alternates meal component, but not both components in the same meal (7 CFR 210.10(c)(2)(iii)). This limit applies when legumes are offered in a single dish. When a school offers legumes in two separate dishes as part of the same meal, one serving may count toward the vegetable meal component and one serving may count toward the meats/meat alternates meal component, at menu planners' discretion.[119]

Proposed Rule

In the 2020 proposed rule, USDA proposed to allow legumes offered toward the meats/meat alternates meal component to also count toward the weekly requirement to offer ½ cup of the legumes vegetable subgroup per week at lunch, while maintaining the total vegetables requirement. As with the current requirement, under the proposal, legumes would not count toward two meal components (vegetable component and meats/meat alternates component) at the same time. If a school opts to count legumes toward the meats/meat alternates meal component, the school would need to serve another vegetable to count toward the daily and weekly vegetable meal component requirements. However, under the proposal, legumes could count toward the legumes *vegetable subgroup requirement* when offered toward the meats/meat alternates meal component.

Later, in the 2023 proposed rule, USDA proposed to change the name of the beans and peas (legumes) vegetable subgroup in school meal and CACFP regulations to align with the *Dietary Guidelines, 2020–2025,* which changed the terminology for the vegetable subgroup to ''beans, peas, and lentils.''[120] As discussed in *Section 20: Miscellaneous Changes,* USDA is finalizing this proposed terminology change. Therefore, when discussing the final standard in this section, USDA will use the term ''beans, peas, and lentils'' in place of ''beans and peas (legumes).''

Public Comments on 2020 Proposed Rule

USDA received 103 comments on the 2020 proposed rule about the proposal to allow beans and peas (legumes) offered toward the meats/meat alternates meal component to count toward the weekly legumes subgroup requirement, all of which were unique comments. Of these, 61 supported the proposal, 28 were opposed, and 14 were mixed.

One proponent emphasized that the proposal would not reduce the total amount of vegetables at lunch, but would instead help schools offer legumes. A school district suggested that this change would allow more

[117] See ''Protein Foods,'' page 33. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/.*

[118] U.S. Department of Agriculture, *Reducing the Risk of Choking in Young Children at Mealtimes.* September 2020. Available at: *https://www.fns.usda.gov/tn/reducing-risk-choking-young-children-mealtimes.*

[119] See Question 35. U.S. Department of Agriculture. *Meal Requirements Under the National School Lunch Program and School Breakfast Program: Questions and Answers for Program Operators Updated to Support the Transitional Standards for Milk, Whole Grains, and Sodium Effective July 1, 2022,* March 2, 2022. Available at: *https://www.fns.usda.gov/cn/sp052022-questions-answers-program-operators.*

[120] The *Dietary Guidelines, 2020–2025,* changed the terminology for the ''legumes (beans and peas)'' vegetable subgroup to ''beans, peas, and lentils.'' The foods within this vegetable subgroup did not change. See ''About Beans, Peas, and Lentils,'' page 31. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/.*

menu planning flexibility. Other proponents agreed, saying this proposal would help schools offer legumes as part of an entrée, as opposed to a side dish. Some proponents, including an advocacy group, maintained that legumes offered as entrées are more appealing to children and help reduce food waste. For example, one dietitian advised that children may be more likely to consume a bean and cheese burrito, and less likely to consume a scoop of beans from a salad bar. Similarly, a school district noted that students at their school prefer bean dishes such as pupusas, tacos, and chilis (which they offer as meats/meat alternates) compared to side dishes like baked beans and bean salads.

Some opponents seemed to misunderstand the proposal, assuming that it would lessen the overall amount of vegetables offered in school lunch. To be clear, schools would be required to offer a separate vegetable to count toward the daily and weekly vegetable component requirements when offering legumes as a meat/meat alternate. One State agency opposed the proposal, arguing that it could decrease the total amount of legumes offered in cases where schools are currently offering legumes as a meat/meat alternate in an entrée, along with offering legumes in a side dish as a vegetable. A few State agencies expressed concern that this proposal could lead to confusion among schools, resulting in meal pattern errors. Several respondents, including State agencies and an advocacy group, emphasized that training and technical assistance would be critical to ensure this provision is implemented correctly.

One proponent emphasized the benefits of legumes, which they described as versatile, inexpensive, sustainable, and nutritious. Other respondents, including industry respondents, agreed, suggesting legumes are a good source of several important nutrients, including dietary fiber and potassium. In general, many respondents expressed support for increasing consumption of legumes, which are currently underconsumed by children and adolescents (and all other age groups).[121]

Final Rule

This final rule codifies the option for schools to count beans, peas, and lentils offered as a meat alternate at lunch toward the weekly beans, peas, and lentils vegetable subgroup requirement. Under this option, as with the current requirement, schools would determine which overall meal component the beans, peas, and lentils would count toward: the vegetable meal component, or the meats/meat alternates meal component. This new option will permit beans, peas, and lentils offered as a meat alternate to count toward the weekly beans, peas, and lentils vegetable subgroup requirement. However, beans, peas, and lentils offered as a meat alternate would not also count toward the *daily* or *weekly* overall vegetable meal component requirements; schools using this option would be required to offer additional vegetables to meet the daily and weekly vegetable meal component requirements.

For example, a school offers a wrap with chickpeas, fresh tomatoes, and lettuce. In this example, the menu planner opts to count the chickpeas toward the meats/meat alternates meal component. In addition to counting toward the daily and weekly meats/meat alternates meal component requirements, the menu planner could also count the chickpeas toward meeting the weekly vegetable subgroup requirement to offer at least ½ cup of beans, peas, and lentils; the school would not need to offer another vegetable from this subgroup during that week. However, during this meal, because the chickpeas are already counting toward the meats/meat alternates meal component, they cannot also count toward the vegetable meal component. The menu planner would instead count the other vegetables offered in the wrap (tomatoes and lettuce) toward the daily and weekly total vegetable meal component requirements and their respective vegetable subgroups.

In a different example, a school offers a black bean and cheese quesadilla. In this example, the menu planner opts to count the cheese toward the meats/meat alternates meal component, and to count the black beans toward the vegetable meal component. In this case, the black beans could count toward the weekly requirement to offer ½ cup of beans, peas, and lentils (vegetable subgroup requirement), as well as the daily and weekly total vegetable meal component requirements, since the school is offering the beans as a vegetable and not as a meat alternate.

USDA is mindful of concerns, particularly from State agencies, that this provision could be implemented incorrectly. Public comments from State agencies expressed concern that when implementing this provision, schools may incorrectly double-count beans, peas, and lentils toward both the meats/meat alternates component and vegetable component in the same meal, resulting in a missing meal component at lunch. USDA recognizes the importance of providing thorough training and technical assistance to support implementation of this provision. Additionally, schools are not required to use this option and may instead continue with their current menu planning approach for beans, peas, and lentils. This new option is intended to support schools that wish to offer more plant-based and vegetarian options toward the meats/meat alternates meal component.

Accordingly, this final rule amends 7 CFR 210.10(c)(2)(ii)(C) and (c)(2)(iv)(E) to allow beans, peas, and lentils offered toward the meats/meat alternates meal component to also count toward the requirement to offer ½ cup of the beans, peas, and lentils vegetable subgroup each week. Beans, peas, and lentils offered toward the meats/meat alternates meal component would not count toward the daily or weekly overall vegetable meal component requirements. This change provides schools with more menu planning flexibility at lunch. Schools are not required to change menus or operations as a result of this provision.

Section 13: Competitive Foods: Bean Dip Exemption

Current Requirement

Current regulations at 7 CFR 210.11 establish requirements for all foods sold in schools outside of the school meal programs. These requirements, known as competitive food standards, or ''Smart Snacks in School'' standards, help to promote healthy food choices throughout the school day. To comply with these standards, hereafter referred to as the Smart Snacks standards, foods must meet nutrition standards, including the standards for total fat established at 7 CFR 210.11(f).

Proposed Rule

USDA proposed to add hummus to the list of foods exempt from the total fat standard in the Smart Snacks regulations. Hummus would continue to be subject to all other Smart Snacks standards, including limits for saturated fat, total sugars (by weight of product), calories, and sodium. This change would allow hummus, which is already permitted as a contributing (creditable) part of a reimbursable school meal, to be sold as a Smart Snack to students on campus throughout the school day, provided all other Smart Snacks nutrition standards are met.

[121] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans, 2020–2025*. 9th Edition. December 2020. Available at: *https://www.dietaryguidelines.gov/*.

Because there is currently no FDA standard of identity for hummus, USDA proposed to add the following definition of ''hummus'' to the Smart Snacks regulations: *Hummus means, for the purpose of competitive food standards implementation, a spread made from ground pulses (beans, peas, and lentils), and ground nut/seed butter (such as tahini [ground sesame], peanut butter, etc.) mixed with a vegetable oil (such as olive oil, canola oil, soybean oil, etc.), seasoning (such as salt, citric acid, etc.), vegetables and juice for flavor (such as olives, roasted pepper, garlic, lemon juice, etc.). Manufactured hummus may also contain certain ingredients necessary as preservatives and/or to maintain freshness.*

Public Comments

USDA received 200 comments on the proposal to exempt hummus from the Smart Snacks total fat standard, including 174 unique comments. Of these, 145 supported the proposal, including 119 unique comments, 1 was opposed, and 54 were mixed. Comments were submitted by State agencies, advocacy groups, industry respondents, school districts, and individuals.

Respondents, including a national organization representing tens of thousands of school nutrition professionals, overwhelmingly supported the proposal. One proponent noted that hummus provides many nutrients, including fiber, protein, iron, and magnesium. Another proponent described hummus as a nutritious snack option and maintained that hummus is filling and high in protein. An advocacy group noted that hummus provides healthy fats and is often served alongside other nutrient-dense foods, such as vegetables or whole grains, while other respondents, including a State agency, maintained this proposal would help children incorporate more legumes into their diets. Another State agency asserted that this proposal would allow schools to add a healthy à la carte option to their cafeterias. An advocacy group suggested this proposal would expand à la carte options for vegans and vegetarians.

A few proponents sought confirmation that the proposed exemption was limited to the total fat standard and that other Smart Snacks standards would continue to apply to hummus. For example, an advocacy group supported the proposal, provided that hummus would continue to be subject to the saturated fat standard for Smart Snacks. A State agency requested clarification that the Smart Snacks sodium limits would continue to apply to hummus. To clarify, under the proposed rule, hummus would continue to be subject to all other Smart Snacks standards, including limits for saturated fat, total sugars (by weight of product), calories, and sodium.

A few respondents opposed the proposal or provided other comments. One opponent cited concerns about processed foods, especially those containing soybean or canola oil. An advocacy group did not oppose the change, but suggested children would not eat hummus. One respondent wondered if schools could serve carrots with hummus as a Smart Snacks compliant combination food.

Although not directly related to the hummus proposal, other respondents recommended that USDA exempt other foods from the Smart Snacks total fat standard. For example, a few respondents encouraged USDA to provide an exception for avocados or guacamole. Another encouraged an exemption for salads with dressings, arguing that salad dressing has a high percentage of calories from fat, even if the overall calories in the salad are low. An industry respondent recommended that USDA exempt other condiments from Smart Snacks standards, suggesting that condiments promote the consumption of nutrient-dense foods. One school district suggested that USDA exempt nut butters from the total fat standard; to clarify, nuts and seeds and nut/seed butters are already exempt from the total fat and saturated fat Smart Snacks standards (7 CFR 210.11(f)(3)(ii)). This exemption does not apply to combination foods that contain nuts and seeds or nut/seed butters with other ingredients, such as peanut butter and crackers, trail mix, or chocolate covered peanuts.

A few respondents provided feedback on the proposed definition of hummus. A State agency described the proposed definition as ''reasonable.'' Another respondent pointed out that the word ''hummus'' has a culturally significant meaning and suggested USDA use a different term, such as ''ground bean-based dip.'' An advocacy group noted that some types of hummus do not include ground nut or seed butters. This respondent noted schools may prefer to sell hummus without nut or seed butter as an ingredient, given the potential for nut or seed allergies. Because of this, the advocacy group recommended making nut or seed butter an optional ingredient in the definition of hummus. A school district requested that USDA clarify whether the definition applies only to hummus made from chickpeas, or alternatively, if dips that include other types of beans would qualify for the exemption.

Final Rule

In this final rule, USDA is revising the terminology for this provision based on public comment. Instead of referring to ''hummus'' in regulation, this final rule will refer to ''bean dip.'' This change reflects input received through a public comment, which noted that the word ''hummus'' already has a culturally significant meaning and is traditionally made from chickpeas (rather than any variety of beans, peas, or lentils). The change also addresses a school district's question about whether this exemption is limited to hummus made with chickpeas, or if it can include products made from other types of beans. Based on these comments, USDA has determined a more general term is preferred. Therefore, this final rule adds *bean dip* to the list of foods exempt from the total fat standard in the Smart Snacks regulations. This exemption applies to products marketed as hummus, as well as bean dips made from any variety of beans, peas, or lentils. Bean dip would continue to be subject to the saturated fat standard for Smart Snacks, as well as all other Smart Snacks requirements.

This final rule also codifies the following definition of ''bean dip'' in the Smart Snacks regulations. Under this definition, bean dip can be made from chickpeas as well as other varieties of beans, peas, and lentils: *Bean dip means, for the purpose of competitive food standards, a spread made from ground pulses (beans, peas, and/or lentils) along with one or more of the following optional ingredients:*

- *Ground nut/seed butter (such as tahini [ground sesame] or peanut butter;*
- *Vegetable oil (such as olive oil, canola oil, soybean oil);*
- *Seasoning (such as salt, citric acid);*
- *Vegetables and juice for flavor (such as olives, roasted peppers, garlic, lemon juice); and*
- *For manufactured bean dip, ingredients necessary as preservatives and/or to maintain freshness.*

USDA appreciates input that stakeholders provided on the proposed definition. In this final rule, USDA has adjusted the definition to clarify that bean dip does not need to include all of the ingredients listed in the definition to qualify for this exemption. To qualify for the exemption, a bean dip must include ground pulses (beans, peas, and/or lentils), but the remaining ingredients listed in the definition are not required. The final definition clarifies that these remaining ingredients are *optional.* A bean dip may include any combination of one or more of the remaining optional

ingredients listed in the definition. For example, hummus made with chickpeas, water, tahini, sunflower oil, lemon juice, and spices (such as garlic, salt, and crushed red pepper) could be sold a la carte as a bean dip under this final rule provided that the product as packaged meets the Smart Snacks standards for calories, sodium, saturated fat, and total sugars by weight.

This change applies to bean dip as a standalone product; it does not apply to combination foods that include bean dip. For example, the exemption does not apply to hummus packaged with pretzels, pita, or other snack-type foods. Applying this exemption only to bean dip as a standalone product ensures that the other foods that are offered for sale to children at school alongside the bean dip remain subject to the Smart Snacks total fat standard, as well as all other Smart Snacks standards. Under this change, schools have the option to sell bean dip as a standalone product, or along with other standalone products that also meet the Smart Snacks standards, such as carrots or celery. As detailed at 7 CFR 210.11(d)(2), fresh vegetables, such as carrots and celery, with no added ingredients are exempt from Smart Snacks standards. Schools may also sell bean dip along with whole grain-rich pita bread, whole grain-rich crackers, or other products, provided those products meet the Smart Snacks standards.

As a reminder, when a product that is exempt from the Smart Snacks standards is paired with another product that is exempt, both exemptions are maintained when the products are paired and no other ingredients are added. For example, the celery, peanut butter, and raisins included in ''ants on a log'' sold a la carte would maintain their respective exemptions when paired together with no other ingredients. Additionally, combination foods with at least ¼ cup of fruit and/or vegetable (for example, ¼ cup of grapes with enriched pretzels) can be sold to students on campus throughout the day, provided the combination food, as packaged, meets all Smart Snacks standards for calories, sodium, total fat, saturated fat, and total sugars (by weight of product).

USDA appreciates public input on other foods and products that stakeholders would like to exempt from the Smart Snacks total fat standard. However, this new exemption is limited to bean dips, as defined at 7 CFR 210.11(a)(7). As noted, certain other products already have an exemption to the total fat standard, or the total fat and saturated fat standards, for Smart Snacks. These exemptions remain in place under this rule and are listed at 7 CFR 210.11(f).

Accordingly, this final rule amends 7 CFR 210.11(a)(7) to codify the definition of ''bean dip'' and 7 CFR 210.11(f)(2)(ii) to exempt bean dip, including hummus, from the total fat standard in the Smart Snacks regulations. This change provides schools the option to sell bean dip as a Smart Snack. Schools are not required to change operations as result of this provision.

Section 14: Meal Modifications

Current Requirement

Current regulations require schools, institutions, and facilities to make meal modifications to ensure participants with disabilities have an equal opportunity to participate in, and benefit from, the NSLP, SBP, and CACFP (7 CFR 210.10(m)(1), 220.8(m), and 226.20(g)(1)). The regulations allow, but do not require, schools, institutions, and facilities to make substitutions for ''medical or other special dietary needs'' that are not disabilities but that prevent a participant from consuming the regular reimbursable meal or snack. Under current NSLP and SBP regulations, substitutions for disability reasons must be supported by a written statement signed by a licensed physician. Under current CACFP regulations, the written statement must be signed by a licensed physician or licensed healthcare professional who is authorized by State law to write medical prescriptions. Under the current NSLP, SBP, and CACFP regulations, substitutions for ''medical or other special dietary needs'' must be supported by a written statement signed by a recognized medical authority (7 CFR 210.10(m)(2), 220.8(m), and 226.20(g)(2)). An exception is fluid milk substitutes for ''medical or special dietary needs'' that are not disabilities. Fluid milk substitutes for ''medical or special dietary needs'' must be supported by a written request; however, the written request may come from a parent or guardian or from a medical authority (7 CFR 210.10(m)(2)(ii)(B) and 226.20(g)(3)).[122] Fluid milk substitutes are discussed in greater detail in *Section 3B: Fluid Milk Substitutes: Responses to Request for Input* and *Section 3C: Fluid Milk Substitutes: Nutrient Requirements.*

Current NSLP and SBP regulations also encourage schools to consider ''ethnic, religious, or economic'' factors when planning or preparing meals, provided the variations meet the meal pattern requirements (7 CFR 210.10(m)(3) and 220.8(m)). CACFP regulations allow institutions and facilities—with USDA approval—to vary meal components on an experimental or continuing basis, if the variations are nutritionally sound and necessary to meet ''ethnic, religious, economic, or physical'' needs (7 CFR 226.20(h)).

In September 2016, USDA updated its school meal modification policy guidance[123] to reflect passage of The Americans with Disabilities Act (ADA) Amendments Act of 2008. Later, in June 2017, USDA issued updated CACFP and SFSP meal modification policy guidance.[124] The ADA Amendments Act clarified the meaning and interpretation of the ADA definition of ''disability'' to ensure that it would be broadly construed and applied without extensive analysis. Therefore, rather than focusing on if a child or adult participant has a disability, USDA's updated policy guidance stated that program operators should focus on working collaboratively with parents, guardians, participating adults, or a person acting on behalf of an adult participant to ensure equal opportunity to benefit from the programs. Notably, USDA's updated policy guidance[125] allowed a State licensed healthcare professional, such as a nurse practitioner or physician's assistant, to submit a medical statement on behalf of a child or adult participant with a disability. It also clarified that program operators may accommodate requests related to a disability that are not supported by a medical statement if the requested modification can be accomplished within the program meal patterns and encouraged operators to use this option when possible. At the

[122] As noted in the proposed rule, based on statutory requirements, USDA regulations include several other requirements for fluid milk substitutions for non-disability reasons, such as specific nutrition standards. See page 8061: *Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans* (88 FR 8050, February 7, 2023). Available at: *https://www.federalregister.gov/d/2023-02102/p-208.*

[123] U.S. Department of Agriculture, *Modifications to Accommodate Disabilities in the School Meal Programs,* September 27, 2016. Available at: *https://www.fns.usda.gov/cn/modifications-accommodate-disabilities-school-meal-programs.*

[124] U.S. Department of Agriculture, *Policy Memorandum on Modifications to Accommodate Disabilities in the Child and Adult Care Food Program and Summer Food Service Program,* June 22, 2017. Available at: *https://www.fns.usda.gov/cn/modifications-accommodate-disabilities-cacfp-and-sfsp.*

[125] See Question 16. U.S. Department of Agriculture, Accommodating Disabilities in the School Meal Programs: Guidance and Questions and Answers (Q&As). April 25, 2017. Available at: *https://www.fns.usda.gov/cn/accommodating-disabilities-school-meal-programs-guidance-qas.*

same time, the updated policy guidance explained that program operators may choose to obtain a written medical statement for all disability meal modifications, even those that fall within the meal patterns. This updated guidance addressed modifications required to accommodate disabilities that restrict a participant's diet; it did not address dietary preferences or other non-disability requests, which program operators are encouraged—but not required—to meet.

Proposed Rule

In the 2020 rule, USDA proposed a variety of regulatory changes to reflect the updated policy guidance and to improve access to modified meals for participants who need them. The rule proposed to codify in regulation that State licensed healthcare professionals may write medical statements to request modifications on behalf of participants with disabilities in the school meal programs and CACFP. It also proposed to define a State licensed healthcare professional as an individual authorized to write medical prescriptions under State law. Regarding child and adult participant food preferences, the 2020 rule proposed to revise existing regulatory text to encourage schools, institutions, and facilities to meet participants' cultural, ethical, Tribal, or religious preferences when preparing meals in the school meal programs and CACFP.[126] The rule also proposed reorganizing the regulatory text to distinguish between disability and non-disability requests more clearly. The 2020 rule did not propose changes to SFSP regulations.

Public Comments on 2020 Proposed Rule

USDA received 120 comments on the meal modifications provision of the 2020 proposed rule, including 83 unique comments. Of these, 69 supported the proposed changes, including 32 unique comments, 6 were opposed, and 45 were mixed.

Many respondents supported USDA's proposal to codify the existing policy guidance in regulation and appreciated the clarification that a medical statement is only required for modifications that fall outside the meal patterns. Respondents also emphasized the importance of ensuring participants who need meal modifications can easily access them and encouraged USDA to take steps to minimize burden for families in the modification request process.

Respondents provided input on the requirement for program operators to obtain a medical statement when the meal modification does not meet the meal pattern requirements. One State agency maintained that the meal patterns provide enough flexibility to meet a variety of needs and preferences. In cases where a child or adult participant requires a modification outside the scope of the meal patterns, this State agency agreed it should be supported by formal documentation. A few other State agencies asserted that requiring a medical statement protects children's health and is not too burdensome. Another State agency agreed, adding that the medical statement helps program staff ensure that a child or adult participant's health needs are met. Similarly, an advocacy organization noted that child nutrition professionals work diligently to meet non-disability dietary requests and preferences, and when making a disability-related meal modification, they benefit from a complete written medical statement. An individual suggested that program operators obtain a medical statement for all meal modifications, regardless of whether they fall within or outside of the meal patterns.

USDA requested specific input on the proposed definition of State licensed healthcare professional, and whether additional healthcare professionals should be permitted to submit a medical statement on behalf of a child or adult participant with a disability. Most respondents supported USDA's proposal to codify in regulation the authority allowing State licensed healthcare professionals to submit a medical statement on behalf of a participant with a disability. However, respondents shared a variety of perspectives on whether this authority should be expanded further. For example, one State agency did not support expanding the scope of who can submit a medical statement beyond State licensed healthcare professionals, noting that obtaining the medical statement is an important step in ensuring that all participant's needs are met with professionalism and sound medical guidance. An advocacy group agreed, stating that they do not support expanding the definition to include additional professionals; this respondent maintained that ''State licensed healthcare professional'' as defined in the proposed rule is the appropriate level of authority to ensure a child or adult participant's health.

One State agency suggested that allowing registered and licensed dietitians to write medical statements to support meal modifications seems very reasonable given this is their field of expertise. A second State agency agreed, noting that dietitians may be more accessible to families, reducing the burden of obtaining the necessary documentation for a meal modification, while a third State agency argued that dietitians may be better suited than the currently approved professionals to determine whether a child or adult participant has a disability that affects their ability to consume certain foods. Another respondent noted that dietitians tend to be available at the district level working directly with schoolchildren who could benefit from disability-related meal modifications. However, several respondents noted that dietitians are not licensed in all States.

One State agency recommended accepting medical statements from registered dietitians, speech pathologists, licensed clinical social workers, and psychologists. Another State agency agreed, noting that registered dietitians and speech pathologists have extensive training and are often consulted to develop modification requests for children with disabilities. Others, including school districts and individuals who work in schools, agreed, noting expanding the scope of who can submit a medical statement would facilitate access to meal modifications for children who need them. However, a few State agencies expressed concern that adding additional titles would confuse non-disability preferential requests with medically necessary requests. Others agreed, cautioning against expanding this authority to professionals who are not trained in science-based nutrition therapy. One State agency noted that, within their State, at least 10 types of professionals already meet the definition of ''State licensed healthcare professionals.'' This State agency maintained that program operators have not struggled to obtain the required documentation needed to provide meal modifications for disability-related needs.

Final Rule

This final rule codifies in regulation that State licensed healthcare professionals may write medical statements to request modifications on behalf of child or adult participants with disabilities in the school meal programs and CACFP. It also defines a

[126] For comparison, current regulations at 7 CFR 210.10(m)(3) state that, ''Schools should consider ethnic and religious preferences when planning and preparing meals . . . Any variations must be consistent with the food and nutrition requirements specified under this section and needed to meet ethnic, religious, or economic needs.''

State licensed healthcare professional as an individual authorized to write medical prescriptions under State law. Based on public input, this final rule also permits registered dietitians to write medical statements to request modifications on behalf of child and adult participants with disabilities in the school meal programs and in CACFP. The requirement to accept medical statements from registered dietitians must be implemented by July 1, 2025, for NSLP and SBP, and by October 1, 2025, for CACFP. Schools, institutions, and facilities have the option, but are not required, to implement this change prior to the implementation date. This final rule also encourages schools, institutions, and facilities to meet participants' non-disability dietary preferences when planning and preparing school and CACFP meals.

This final rule updates and reorganizes the regulatory text to distinguish between disability and non-disability requests more clearly. Because a dietary need that restricts a participant's diet could be considered a disability, this final rule removes the regulatory language regarding participants ''without disabilities who cannot consume the regular lunch or afterschool snack because of medical or other special dietary needs.'' [127] This change reflects that participant requests for modifications or variations would fall into one of two categories: disability or non-disability requests. Additionally, in NSLP regulations, the final rule moves the regulatory text related to fluid milk substitutes for non-disability reasons to the section of the regulation that discusses fluid milk requirements (7 CFR 210.10(d)). This change is expected to help clarify the requirements for fluid milk substitutions for non-disability reasons. The final rule also adjusts the regulatory language regarding written requests for fluid milk substitutes, replacing ''medical authority'' with ''State licensed healthcare professional or registered dietitian.'' This reflects the approach used for fluid milk substitutes in the proposed rule, which changed ''medical authority'' to ''State licensed healthcare professional,'' except that this final rule also includes registered dietitians. This supports USDA's efforts to use consistent terminology across program regulations. As with prior regulations and the proposed rule, a child or adult participant's parent or guardian may also submit a written request for a non-disability fluid milk substitute in NSLP, SBP, or CACFP. Lastly, this final rule updates the regulatory definitions of *Child* in NSLP and SBP regulations, *Child with a disability* in NSLP regulations, and *Persons with disabilities* in CACFP regulations.

Along with State licensed healthcare professionals, USDA is authorizing registered dietitians to submit medical statements for disability meal modifications in response to public comment, and due to the specific education and training requirements they receive. Registered dietitians are not required to have a State license to submit medical statements for meal modifications under this rule. USDA agrees that registered dietitians are well-positioned to determine specific, nutritionally sound meal modifications to support participants with disabilities. Registered dietitians are credentialed professionals, and according to the Commission on Dietetic Registration, registered dietitians are food and nutrition experts who have met the Commission on Dietetic Registration's (CDR) criteria to earn the registered dietitian credential.[128] USDA acknowledges that other skilled professionals—such as speech therapists, psychologists, and social workers—have extensive knowledge in their fields and serve critical roles in the care of children and adults. While USDA does not authorize acceptance of medical statements for disability meal modifications beyond State licensed healthcare professionals and registered dietitians, USDA expects that State licensed healthcare professionals and registered dietitians will continue to coordinate with other key professionals, depending on the specific needs of participants with disabilities. With this rule, USDA is balancing the importance of improving participant access to meals that meet their individual needs with the importance of ensuring that schools, institutions, and facilities have the information they need to keep participants with disabilities that restrict their diet safe.

USDA recognizes that some respondents are concerned about dietary requests that are not medically necessary. Schools, institutions, and facilities are not obligated to meet requests that are not related to a participant's disability. Additionally, USDA reminds schools, institutions, and facilities that their obligation is to provide a meal modification to accommodate a participant's disability, not to provide an exact product listed on the medical statement. For example, if a medical statement lists an expensive, brand-name product as a substitution for a participant with a disability, the school, institution, or facility should engage in an interactive process with the participant's parent or guardian to see if it would be safe and appropriate to provide a lower-cost, generic brand item. In most instances, a generic brand is sufficient, unless the brand name item is medically necessary. In general, if a school, institution, or facility has concerns about a request, they are responsible for working with the parent or guardian to develop an appropriate modification and, as applicable, suitable alternatives.

This final rule also codifies changes related to non-disability meal variations in the school meal programs and CACFP. The prior NSLP regulations encouraged schools to consider variations for ''ethnic, religious, or economic reasons.'' In CACFP, the prior regulations noted potential variations for ''ethnic, religious, economic, or physical needs'' at the institution or facility level but did not encourage variations to meet participant preferences. This final rule changes the school meal and CACFP regulations to encourage program operators to meet child and adult participant preferences when planning and preparing meals. As noted in the proposed rule, meeting non-disability dietary preferences is encouraged, but not required. Although the proposed rule specifically listed several categories of non-disability dietary preferences, in the final rule, USDA has instead opted to refer to ''preferences'' generally. This is not intended to diminish the importance of the dietary preferences listed in the proposed rule, but rather, to allow the regulation to be applied broadly to the range of child and adult participant dietary preferences. These preferences include, but are not limited to, the non-disability dietary preferences included in the proposed rule: cultural, ethical, Tribal, and religious preferences. The *Dietary Guidelines* emphasize the importance of considering dietary preferences and cultural traditions and provide a framework to be customized to reflect the foodways of the diverse

[127] This language reflects regulatory language formerly included in NSLP regulations at 7 CFR 210.10(m)(2). Similar language was also previously included in CACFP regulations at 7 CFR 226.20(g)(2).

[128] The Commission on Dietetic Registration is the credentialing agency for the Academy of Nutrition and Dietetics. See: Commission on Dietetic Registration. *Registered Dietitian (RD) or Registered Dietitian Nutritionist (RDN) Certification.* Available at: *https://www.cdrnet.org/RDN.*

cultures in the U.S.[129] Similarly, the NSLP, SBP, and CACFP allow schools, institutions, and facilities to choose specific foods to offer at each meal, provided the meal meets the overarching meal pattern requirements. USDA acknowledges that, due to operational and budgetary constraints, program operators may not be able to meet all participant preferences at each meal service; however, USDA encourages program operators to strive for an inclusive meal service.

Consistent with the proposed rule, these changes do not apply to SFSP. USDA acknowledges that many stakeholders would like to see SFSP included with these changes. However, USDA instead intends to address SFSP meal pattern requirements separately and comprehensively in future rulemaking. The existing policy guidance [130] for SFSP meal modifications for disabilities remains in effect.

Accordingly, this final rule amends 7 CFR 210.2, 210.10(d)(2) and (m), 215.7a(b), 220.8(m), 226.2, and 226.20(g) to revise regulatory requirements for meal modifications for disability and non-disability reasons for the school meal programs and CACFP. The change requiring program operators to accept medical statements from registered dietitians must be implemented by July 1, 2025, for NSLP and SBP, and by October 1, 2025, for CACFP.

Section 15: Clarification on Potable Water Requirements

Current Requirement

Current NSLP regulations at 7 CFR 210.10(a)(1)(i) require schools to make potable water available and accessible without restriction to children at no charge in the places where lunches are served during the meal service. When breakfast is served in the cafeteria, current SBP regulations at 7 CFR 220.8(a)(1) require schools to make potable water available and accessible without restriction to children at no charge. USDA issued policy guidance to support implementation of this provision in July 2011. In that policy guidance, USDA specified that schools must serve *plain* water to meet the potable water requirement.[131]

Proposed Rule

In the 2020 proposed rule, USDA proposed to allow schools to offer calorie-free, naturally flavored, noncarbonated water to meet the potable water requirement. Under the proposed rule, schools would have the option to continue to offer plain water to meet the potable water requirement but could also meet the requirement by offering naturally flavored water.

Public Comments on 2020 Proposed Rule

USDA received 85 comments on the potable water provision of the 2020 proposed rule; all were unique comments. Of these, 37 supported the proposal, 29 were opposed, and 19 were mixed.

Proponents, including State agencies, school districts, and industry respondents, argued that offering naturally flavored water would increase water appeal and consumption. For example, one advocacy group suggested that water infused with lemons, berries, cucumbers, or mint would boost student water consumption. A State agency agreed that water with cucumber, lemon, or herbs would be a low-cost way to improve the palatability of water.

A few respondents supported expanding potable water options, but only to water flavored with fresh or frozen fruits or vegetables. Other respondents argued that this provision should not permit water with food additives or sweeteners. Some respondents requested clarification on the type of water schools could offer to meet the potable water requirement under this provision.

One opponent argued children's mealtime beverage options should be limited to plain water, milk, and limited amounts of 100 percent fruit or vegetable juice. Another opponent suggested consuming flavored water would adapt children's palates toward sweeter beverages, moving them away from the natural taste of water. Several respondents were opposed to water flavored with certain ingredients, such as ''artificial sweeteners'' and other additives. One advocacy group argued that the goal of the potable water provision is to ensure clean drinking water for children and maintained there is no reason to revise the current standard.

Some respondents offered alternatives or suggestions for implementation. For example, one State agency did not oppose allowing water flavored with fruits, vegetables, and herbs, but emphasized this option should be in addition to plain potable water. This State agency was concerned about food allergies and indicated that maintaining plain potable water during mealtimes would be important for children who cannot consume water with fruits, vegetables, or herbs. Regarding water with fruits or vegetables added, a few advocacy groups suggested clarifying that fruits or vegetables used to flavor water may not count toward the meal pattern requirements. Several respondents, including proponents and opponents, noted the importance of following food safety guidelines when offering fruit- or vegetable-infused water.

Respondents also highlighted the importance of water consumption and hydration. One advocacy group emphasized the importance of ensuring schools have safe drinking water. Another respondent suggested investing in basic plumbing, as well as installing water bottle filling stations in schools. A few advocacy organizations stated support for policies and efforts that expand safe water options for students.

Final Rule

This final rule will not adopt the 2020 proposal to allow schools to offer calorie-free, naturally flavored, noncarbonated water to meet the potable water requirement. This decision is supported by public comments, which noted that some children may have food allergies that prevent them from consuming water with fruits, vegetables, or herbs. It is also responsive to public comments that raised concerns about other ingredients, such as sweeteners or additives. Under this final rule, schools will continue to be required to make plain potable water available and accessible without restriction to children at no charge during the meal service. To clarify this requirement, this final rule adds the word ''plain'' to the regulations requiring potable water to be offered with school meals at 7 CFR 210.10(a)(1)(i) and 220.8(a)(1). As with current regulations, this requirement applies in places where lunches are served during the meal service, including lunches served outside of the cafeteria. For breakfast, as with current regulations, this requirement applies when breakfast is served in the cafeteria.

[129] According to page ix of the *Dietary Guidelines,* ''A healthy dietary pattern can benefit all individuals regardless of age, race, or ethnicity, or current health status. The *Dietary Guidelines* provides a framework intended to be customized to individual needs and preferences, as well as the foodways of the diverse cultures in the United States.'' U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans, 2020–2025.* 9th Edition. December 2020. Available at: *DietaryGuidelines.gov.*

[130] U.S. Department of Agriculture, *Policy Memorandum on Modifications to Accommodate Disabilities in the Child and Adult Care Food Program and Summer Food Service Program,* June 22, 2017. Available at:*https://www.fns.usda.gov/cn/modifications-accommodate-disabilities-cacfp-and-sfsp.*

[131] U.S. Department of Agriculture. *Water Availability During NSLP Meal Service.* July 12, 2011. Available at: *https://www.fns.usda.gov/cn/water-availability-during-nslp-meal-service.*

Maintaining the requirement to offer plain potable water responds to public comments that emphasized the importance of prioritizing access to plain water for children who prefer it, or who cannot consume water with fruits, vegetables, or herbs due to food allergies. However, USDA wishes to clarify that the requirement to offer plain potable water does not limit schools' ability to also offer potable water with fruits, vegetables, and herbs added, in addition to the required plain water. For example, a school may offer fruit-infused water at lunch provided children also have access to plain potable water during the meal service. State agencies and schools are reminded that reasonable costs associated with providing potable water are an allowable cost to the nonprofit school food service account. Additionally, based on public comment, USDA clarifies that fruits, vegetables, and herbs added to plain potable water do not count toward the meal pattern requirements for fruits or vegetables. Schools also are not required to count the negligible calorie content of water infused with fruits, vegetables, or herbs toward the weekly calorie limits.

USDA also appreciates public comments regarding the importance of food safety when offering water with fruits, vegetables, or herbs. Regulations at 7 CFR 210.13(a) require school food authorities to ensure that food storage, preparation, and service is in accordance with the sanitation and health standards established under State and local law and regulations. School food authorities must also develop a written food safety program that covers any facility or part of a facility where food is stored, prepared, or served (7 CFR 210.13(c)). Schools opting to offer water with fruits, vegetables, or herbs must continue to follow the food safety requirements as detailed in 7 CFR 210.13(c), as well as applicable State and local requirements.

Accordingly, this final rule amends 7 CFR 210.10(a)(1)(i), 210.18(h)(2)(v), and 220.8(a)(1) to add the word ''plain'' to the potable water requirements. Schools are not required to change menus or operations as a result of this technical change.

Section 16: Synthetic Trans Fats

Current Requirement

Current regulations prohibit synthetic *trans* fat in the school lunch and school breakfast programs, and in foods sold to children on campus during the school day (7 CFR 210.10(f)(4), 220.8(f)(4), and 210.11(g)). This requirement was included in *Nutrition Standards in the National School Lunch and School Breakfast Programs* [132] and in *National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010.*[133] The synthetic *trans* fat prohibition was phased in, beginning with the NSLP, in SY 2012–2013.

In 2015, the FDA determined that partially hydrogenated oils, the major source of artificial (synthetic) *trans* fat in the food supply, were no longer ''Generally Recognized as Safe,'' or GRAS. Based on this determination, the FDA took regulatory action to eliminate partially hydrogenated oils (and, therefore, synthetic *trans* fats) from the United States food supply. While the compliance date for certain uses was extended, the compliance date for most uses of partially hydrogenated oils was June 18, 2018.[134] As of January 2020, food manufacturers were no longer allowed to sell foods containing *trans* fats. This FDA action effectively banned *trans* fats from being added to foods made or sold in the U.S., making additional regulations prohibiting synthetic *trans* fats in school meals unnecessary.

Proposed Rule

In the 2020 proposed rule, USDA proposed to remove the synthetic *trans* fat prohibition for NSLP, SBP, and foods sold to children on campus during the school day. The proposed rule stated that under this change, schools would not have to comply with, and State agencies would not have to monitor, synthetic *trans* fat requirements. As noted in the proposed rule, based on the FDA's action to remove synthetic *trans* fat from the United States food supply, USDA determined that school meal regulations prohibiting synthetic *trans* fat were no longer necessary. Because FDA took action to remove synthetic *trans* fats from the food supply, USDA concluded that maintaining additional regulations to prohibit synthetic *trans* fats in school meals was unnecessary.

Public Comments on 2020 Proposed Rule

USDA received 29 comments on the synthetic *trans* fat provision of the 2020 proposed rule; all were unique comments. Of these, 14 supported the proposal, 14 were opposed, and 1 was mixed.

Proponents, including industry respondents and advocacy groups, supported removing the synthetic *trans* fat prohibition due to the FDA's actions to remove synthetic *trans* fat from the food supply. One industry respondent supported the change but questioned how *trans* fat that occurs naturally in foods would be monitored. However, another industry respondent noted that naturally occurring *trans* fat, which is present in some meat and dairy products, occurs at very low levels. A few State agencies supported the proposal. One State agency noted that synthetic *trans* fat would not be a concern in school meals after its elimination from the U.S. food supply. Another State agency agreed but noted that the FDA's compliance date could be extended; this State agency recommended that USDA delay implementation of its regulation until synthetic *trans* fat is fully eliminated from the food supply.

A few opponents cited general health concerns related to synthetic *trans* fat consumption, without acknowledging the elimination of synthetic *trans* fat from the food supply. Several other opponents, including State agencies and Attorneys General from several States, cited concerns about the FDA's compliance date for the elimination of synthetic *trans* fat. One State agency provided mixed feedback, recommending that USDA align its final standard with the FDA's compliance date. Another State agency opponent cited concerns about synthetic *trans* fat in non-domestic foods.

Final Rule

This final rule removes the dietary specification prohibiting synthetic *trans* fat in the school lunch and breakfast programs and in foods sold to children on campus during the school day. Under this change, schools will no longer need to include the synthetic *trans* fat prohibition in their procurement documentation, and State agencies will no longer need to review product labels or manufacturer specifications for compliance with the synthetic *trans* fat dietary specification. This change reduces burden by

[132] U.S. Department of Agriculture. *Nutrition Standards in the National School Lunch and School Breakfast Programs.* (77 FR 4088, January 26, 2012). Available at: *https://www.federalregister.gov/documents/2012/01/26/2012-1010/nutrition-standards-in-the-national-school-lunch-and-school-breakfast-programs.*

[133] U.S. Department of Agriculture. *National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010.* (81 FR 50132, July 29, 2016). Available at: *https://www.federalregister.gov/documents/2016/07/29/2016-17227/national-school-lunch-program-and-school-breakfast-program-nutrition-standards-for-all-foods-sold-in.*

[134] U.S. Food and Drug Administration. *Final Determination Regarding Partially Hydrogenated Oils (Removing Trans Fat).* Available at: *https://www.fda.gov/food/food-additives-petitions/final-determination-regarding-partially-hydrogenated-oils-removing-trans-fat.*

eliminating a requirement that USDA determined is no longer necessary due to the FDA's actions to eliminate synthetic *trans* fat from the U.S. food supply.

USDA acknowledges respondent concerns about the compliance date for the FDA's order eliminating synthetic *trans* fat from the U.S. food supply. While implementation of the FDA's order began in June 2018, at the time the 2020 proposed rule published, the compliance date for certain uses of partially hydrogenated oils had been extended. The final compliance date of January 2021, which extended the compliance date for specific, limited petitioned uses of partially hydrogenated oils, has now been in effect for several years.[135]

USDA appreciates concerns one respondent raised regarding synthetic *trans* fat in non-domestic foods. The elimination of synthetic *trans* fat applies to all foods sold in the U.S food supply, including non-domestic foods. Additionally, school food authorities are required by law to purchase domestic commodities or products to the maximum extent practicable. This rulemaking strengthens the existing Buy American requirements and establishes a new threshold limit for non-domestic food purchases (see *Section 18: Buy American*). Further, USDA data from SY 2017–2018 found that fruits and vegetables are by far the most common non-domestic food purchases for school food authorities.[136] Therefore, USDA does not expect the limited use of non-domestic foods in the NSLP and SBP to result in an increase in synthetic *trans* fats in school meals.

Finally, USDA acknowledges public comments about naturally occurring *trans* fat. The FDA notes that *trans* fat occurs naturally in small amounts in some meat and dairy products and is present at very low levels in other edible oils.[137] In the 2012 rule, USDA clarified that the *trans* fat prohibition for school meals would not apply to naturally occurring *trans* fat present in some meat and dairy products. Rather, it would apply to synthetic *trans* fat, which the 2012 rule preamble noted ''are found in partially hydrogenated oils used in some margarines, snack foods, and prepared desserts.'' [138] This final rule does not impact naturally occurring *trans* fat, which continue to be permitted in school meals.

Accordingly, this final rule amends 7 CFR 210.10(a)(3), (b)(1), (c), (f), (g), (h), and (j), 210.11(f) and (g)(2), 210.18(l)(2)(iii), and 220.8(a)(3), (b)(1), (c), (f) through (h), and (j). This change reduces burden on State agencies and schools. Schools are not required to change menus or operations as a result of this change.

Section 17: Professional Standards: Hiring Exception for Medium and Large Local Educational Agencies

Current Requirement

Current regulations at 7 CFR 210.30(b)(1) describe the hiring standards for school nutrition program directors; the standards vary for directors operating in small, medium, and large local educational agencies. Specifically, the hiring requirements for school nutrition program directors in medium (2,500 to 9,999 students) and large (10,000 or more students) local educational agencies are as follows:

- According to 7 CFR 210.30(b)(1)(ii), school nutrition program directors with local educational agency enrollment of 2,500 to 9,999 students (*i.e.,* a medium local educational agency) must have:
- A bachelor's degree, or equivalent educational experience, with an academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;
- A bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, and a State-recognized certificate for school nutrition directors;
- A bachelor's degree in any academic major and at least two years of relevant experience in school nutrition programs; or
- An associate's degree, or equivalent educational experience, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field and at least two years of relevant school nutrition program experience.
- According to 7 CFR 210.30(b)(1)(iii), school nutrition program directors with local educational agency enrollment of 10,000 or more students (*i.e.,* a large local educational agency) must have:
- A bachelor's degree, or equivalent educational experience, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;
- A bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, and a State-recognized certificate for school nutrition directors; or
- A bachelor's degree in any major and at least five years of experience in management of school nutrition programs.

Proposed Rule

USDA proposed to allow State agency discretion to approve the hiring of an individual to serve as a school nutrition program director in a medium or large local educational agency, for individuals who have 10 or more years of school nutrition program experience but who do not hold a bachelor's or an associate's degree. Additionally, USDA proposed to clarify in regulation that State agencies may determine what counts as ''equivalent educational experience'' for the hiring standards. The proposed rule suggested that this change would allow highly experienced individuals to advance their careers in school food service. Additionally, the proposal could help to ease hiring challenges that USDA understands some medium and large local educational agencies experience.

Public Comments

USDA received 297 comments on the proposed changes for professional standards including 169 unique comments. Of these, 173 supported the proposal, including 106 unique comments, 23 were opposed, all of which were unique comments, and 101 were mixed, including 40 unique comments. State agencies, school nutrition professionals, advocacy groups, industry respondents, school

[135] See: ''Implementation.'' U.S. Food and Drug Administration. *Final Determination Regarding Partially Hydrogenated Oils (Removing Trans Fat).* Available at: *https://www.fda.gov/food/food-additives-petitions/final-determination-regarding-partially-hydrogenated-oils-removing-trans-fat.*

[136] Of the 26 percent of school food authorities that reported using exceptions to the Buy American provision in SY 2017–2018, 93 percent reported using them to purchase fruit, while 53 percent reported using them to purchase vegetables. By comparison, 18 percent reported using them to purchase ''other'' foods, such as yeast, oils, and spices, and less than 10 percent each reported using them to purchase grains or meat/meat alternates. See *Exhibit 4: Among SFAs that Reported Using an Exception to the Buy American Provision, Reasons for Using an Exception and Products Purchased.* U.S Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *Child Nutrition Program Operations Study (CN–OPS–II): SY 2017–18.* Beyler, Nick, Jim Murdoch, and Charlotte Cabili. Project Officer: Holly Figueroa. Alexandria, VA: November 2022.

[137] U.S. Food and Drug Administration. *Final Determination Regarding Partially Hydrogenated Oils (Removing Trans Fat).* Available at: *https://www.fda.gov/food/food-additives-petitions/final-determination-regarding-partially-hydrogenated-oils-removing-trans-fat.*

[138] U.S. Department of Agriculture. *Nutrition Standards in the National School Lunch and School Breakfast Programs.* (77 FR 4088, January 26, 2012). Available at: *https://www.federalregister.gov/d/2012-1010/p-161.*

districts, dietitians, and individuals submitted comments.

One school district proponent described the proposal as a ''solid move'' that would benefit capable professionals with relevant work experience; this proponent affirmed such individuals are an asset to school nutrition programs. Another school district agreed, stating that the leadership and achievements of experienced candidates should be valued. Several respondents suggested that this proposal would allow knowledgeable professionals to use their skills to benefit schools and students, with some citing their personal experiences in the field of school nutrition. An individual maintained this change would be especially useful in rural communities with small applicant pools and limited ability to hire directors that meet the current education requirements. A school district agreed, stating that any change to expand the pool of candidates would be welcome.

An individual proponent affirmed that the proposal would expand opportunity for school districts to hire qualified candidates from within their district. Similarly, an industry respondent suggested the proposal would allow candidates in assistant director positions to advance in their careers. A State agency agreed, asserting that this change would allow school districts to promote experienced employees who may be the best candidate for the job. A school district suggested the proposal would allow a path for growth in the field of child nutrition while still requiring the experience needed to do the job.

An advocacy group cited a Congressional Research Service report which indicated that 94 percent of foodservice employees in U.S. elementary and secondary schools are women. This respondent suggested that the degree requirement creates an inequity to advancement in school nutrition, citing the cost of obtaining a degree as an example of a barrier. While this respondent supported the proposal, they also urged USDA to promote greater economic opportunity for the school nutrition workforce, including support for professional development. Similarly, a State agency acknowledged that the ability to obtain a degree is ''often a benefit of class and economic privilege'' and supported valuing experience equally. One respondent, citing their personal experience, described working toward an advanced degree as ''time consuming and extremely expensive.'' This respondent also raised concerns about student loan debt, particularly for individuals who have already been working in child nutrition for decades. A school district agreed, stating that experience should matter just as much as a degree, particularly given barriers many people face in obtaining a degree.

A national organization representing tens of thousands of school nutrition professionals noted that the professional standards requirements ensure that school nutrition directors have the education and skills necessary to excel in their roles and to work alongside principals, superintendents, and other highly credentialed individuals. At the same time, this organization supported allowing a minimum of 10 years of school nutrition program experience to substitute for a degree due to hiring and recruitment issues that some schools are experiencing. Similarly, another respondent cited concerns about staffing and workload challenges, and suggested the proposal would benefit schools. An advocacy group emphasized that this proposal could help to address hiring issues by expanding access to promotion opportunities within school nutrition. A State agency agreed, suggesting this proposal would reward dedicated school nutrition staff and encourage career growth.

Other respondents opposed the proposal. One school district argued that a college degree is necessary for the director position in medium and large districts. This respondent noted that this position requires knowledge of food safety, personnel management, and how to ''run a business.'' A few other school districts agreed, arguing higher education is necessary to succeed as a director in medium and large districts. A dietitian maintained that years of experience should not substitute for a degree; along with formal education, this respondent emphasized the importance of ongoing learning. Another opponent argued that the requirements placed on school nutrition professionals have not lessened; therefore, USDA should not provide flexibility to the hiring standards. A school district opponent described their education credentials, maintaining that their advanced degree provided them with skills to balance budgets and develop menus for students with special diets. This respondent urged USDA to uphold the current standards. Another school district argued that the current degree requirement gives school nutrition directors credibility when interacting with school administrators, staff, and families.

In addition to general feedback on the proposed changes, USDA requested public input on the following questions:

- Is it reasonable to allow medium and large local educational agencies to substitute 10 years of school nutrition program experience for a bachelor's or an associate's degree when hiring a school nutrition program director?
- Should USDA also consider allowing medium and large local educational agencies to substitute other types of experience, such as experience in other food service sectors?
- How often do State agencies and school districts anticipate using the hiring exception?
- What strategies do local educational agencies currently use to recruit qualified school nutrition program directors?

A handful of respondents provided feedback in response to the first question, which was about the number of years of experience that USDA should allow to substitute for a degree when hiring a director in a medium or large local educational agency. A dietitian argued that 10 years of real-world experience would provide an individual the knowledge needed to succeed as a director. An advocacy group asserted that a school nutrition professional with 10 years of experience would have participated in many hours of training, in addition to their regular job duties, making them ''very capable of doing an excellent job as a director.'' An industry respondent agreed that 10 or more years of child nutrition program experience ''is a suitable alternative to traditional education.'' One respondent suggested 10 years of experience is appropriate for large school districts and suggested 5 to 7 years could be appropriate for medium school districts, provided the candidate had experience with procurement, menu planning, and personnel management. A few school districts suggested that USDA consider lowering the number of years from 10 to 5 years for medium and large school districts. A State agency agreed, maintaining that allowing 5 years of school nutrition program experience to substitute for a degree would further ease hiring challenges faced by some school districts. Another State agency suggested that it would be reasonable to require 4 years of child nutrition program experience, rather than 10 years, given it typically takes about 4 years to complete a bachelor's degree. A school district respondent did not provide a specific number of years of experience needed, but emphasized the value of institutional knowledge, which they conveyed is the result of ''many years spent doing the work.''

Respondents also addressed whether USDA should allow other types of experience, such as experience in other

food service sectors, to substitute for a degree. One school district encouraged USDA to allow other food service experience, including military food service, to count when assessing a candidate's potential. A State agency agreed, provided the work experience includes duties similar in size and scope to the role of a school nutrition program director. This State agency noted that other food service sectors may provide similar experience in procurement, menu planning, ordering, receiving, invoicing, and inventory control. Conversely, given the specific requirements of school meal programs, a national organization representing tens of thousands of school nutrition professionals maintained that only school nutrition program experience should be allowed to substitute for a degree. This organization further suggested that this experience should include managing or supervising personnel and overseeing school meal programs at the district level for multiple sites. A school district proponent also emphasized the importance of child nutrition program experience, as opposed to commercial food service experience. A State agency agreed, noting that other sectors are not as regulated as USDA food service programs, which may make the transition from another area of food service to school nutrition difficult for a new director.

A few respondents provided input on the third question regarding how often the proposed hiring exception would be used. One State agency noted that they receive at least two requests for hiring exceptions for medium and large school districts per year; this respondent supported the proposal. A second State agency proponent expected to receive about four requests for an exception per year, with the potential for more, should the proposal be finalized. A third State agency did not directly address the question, but shared one real-world example where this exception could have been used to hire a highly qualified candidate with 20 years of experience in their State. This State agency supported the proposal, describing it as ''reasonable.'' On the other hand, one State agency did not anticipate the flexibility would be used often, suggesting that medium and large school districts would opt to require a bachelor's or an associate's degree for director positions.

A few respondents shared strategies that school districts use to recruit qualified school nutrition program directors. One State agency noted that school districts recruit qualified candidates through advertisements on websites, search engines, and social media, and by holding job fairs. Another State agency suggested that partnerships with career tech centers and college programs have helped some school districts, while acknowledging that recruiting directors can be a challenge. One respondent stated that school districts post position openings through ''normal recruitment channels.''

Some respondents offered alternatives to the proposal, or suggested changes. For example, a few respondents recommended that USDA outline specific types of experience candidates must have to qualify for the hiring exception, in addition to their years of experience. A school district emphasized the importance of understanding finances, which they argued is crucial for making strategic decisions. An advocacy group suggested that USDA require experience in a supervisory role and in counting, claiming, menu development, and other areas of program administration. This respondent also suggested requiring a certain number of technical school or college credits to qualify for this exception. A dietitian recommended requiring management skills and emphasized the importance of ensuring directors can interpret regulations, plan menus, oversee a budget, and coach staff. Another respondent suggested that USDA specify whether the years of experience would need to be consecutive for a candidate to qualify for the exception.

Other respondents suggested that USDA narrow the scope of the proposed change or add other requirements to the process. One respondent recommended that medium and large school districts should only be allowed to use this exception if they implement a plan for the candidate to earn a degree. A State agency recommended limiting this exception to instances when there is documentation that no candidates who applied for the position met the education criteria. An advocacy group recommended the exception only be allowed in rural areas, arguing that urban school districts can find candidates that meet the existing standards. However, another advocacy group acknowledged differences in local needs based on school district size and urbanicity, and suggested State agencies should have discretion to approve the hiring of a director based on specific local context. Going further, an individual recommended that it should be the school district's decision whether to use the hiring exception, presumably as opposed to requiring State agency approval. Another respondent suggested eliminating the education requirements entirely, arguing if someone can do the job based on their skills, they should be eligible. A form letter campaign supported the proposal but suggested that USDA seek guidance from school nutrition professionals to make sure the change is implemented in a way that is ''as helpful as possible.''

A few respondents provided feedback on school nutrition hiring and training requirements in general. One advocacy group acknowledged the importance of the professional standards requirements, noting that they ensure school nutrition program personnel have the knowledge and skills they need to operate the programs successfully. This respondent suggested that the professional standards have supported improvements in meal quality in their State and nationwide. A few respondents noted the value of mentoring for a successful career in school nutrition. Another emphasized the important role of their State agency, adding that they feel well supported by their State agency in their continued learning.

Final Rule

This final rule codifies the proposal to allow State agency discretion to approve the hiring of an individual to serve as a school nutrition program director in a medium or large local educational agency, for individuals who have 10 or more years of school nutrition program experience but who do not hold a bachelor's or an associate's degree. Directors hired under this exception must have a high school diploma or GED. USDA expects that this change will allow highly experienced and qualified individuals to advance their careers in school nutrition. This change is also expected to ease hiring challenges which USDA understands are experienced by some medium and large local educational agencies.

USDA appreciates public input on the number of years of experience, and the type of experience, that should qualify a candidate for this exception. Several respondents acknowledged the importance of experience in school nutrition, including experience developing menus that meet the regulatory meal pattern requirements, counting and claiming meals, and maintaining compliance with other program rules. USDA agrees with public comments that suggested a candidate should have school nutrition experience to qualify for this exception. Further, USDA agrees with public comments stating that 10 years is an appropriate amount of time to substitute for a degree. The candidate's experience does not need to be in consecutive years; a

candidate only needs to accrue a total of 10 years of experience in school nutrition to qualify for this exception.

This final rule also codifies in regulation that State agencies may determine what counts as ''equivalent educational experience'' for the hiring standards. USDA provided the following examples in the proposed rule, which were supported by a national organization representing tens of thousands of school nutrition professionals:

- If a candidate for a director position in a medium local educational agency does not have an associate's degree, but has more than 60 college credits in a relevant field, the State agency would have the discretion to approve the hiring of that candidate.
- If a candidate for a director position in a large local educational agency does not have a bachelor's degree, but has an associate's degree, is a School Nutrition Specialist certified by the School Nutrition Association, and is a Nutrition and Dietetics Technician, Registered (NDTR) [139] certified by the Academy of Nutrition and Dietetics, then the State agency has the discretion to approve the hiring of that candidate.

These are just two possible scenarios where a State agency may choose to count a candidate's experience toward the hiring requirements as ''equivalent educational experience.'' State agencies have discretion to determine that other types of experience should count toward ''equivalent educational experience'' on case-by-case basis.

As described in 7 CFR 210.15(b)(7), school food authorities must maintain records to demonstrate compliance with the professional standards for school nutrition program directors, managers, and personnel, including the hiring requirements. This final rule does not change the overall recordkeeping requirements for professional standards. However, to demonstrate compliance when using this exception, the school food authority and State agency would need to maintain documentation of the exception. For example, the school food authority and State agency could maintain documentation of the school food authority's request for the exception, and documentation of the State agency's approval. Similarly, this final rule does not change the Administrative Review requirements for professional standards. Professional standards will continue to be evaluated as part of the General Areas of Review, as described at 7 CFR 210.18(h)(2)(ix).

USDA appreciates respondent feedback about the importance of ensuring school nutrition program directors in medium and large districts have the skills needed to succeed in their jobs. Respondents emphasized that obtaining a bachelor's or an associate's degree is an effective way for candidates to demonstrate they have the knowledge and skills needed to succeed as a director, which respondents stressed can be a challenging position. Directors hired under this provision are encouraged, but not required, to work toward a degree in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field. While USDA acknowledges the value in obtaining a degree, USDA has determined that hands-on experience in the school nutrition programs is also an effective way for candidates to demonstrate they have the knowledge and skills needed to succeed as a director in a medium or large school district. USDA also recognizes the importance of providing an alternative option for school nutrition professionals to advance in their careers, even if they are unable to obtain a degree due to financial or other barriers. This exception is available at the discretion of the State agency. School districts and State agencies are encouraged to work together to apply this exception on case-by-case basis as needed and as deemed appropriate.

In public comments, respondents recommended that USDA require candidates to meet specific criteria, in addition to the candidate's years of experience, to qualify for this exception. In this final rule, USDA will not require candidates to meet specific criteria, beyond the required years of experience. However, school districts and State agencies may choose to require candidates to have specific types of experience in order to qualify under this exception. For example, a school district could require candidates to have experience managing a budget or supervising staff to qualify for the director position. As this exception is available at the State agency's discretion, State agencies may also apply additional criteria when using the exception.

As proposed, this final rule removes the existing table at 7 CFR 210.30(b)(2), which provided a summary of the school nutrition program director hiring standards. USDA determined the amount of information within the table was excessive, and instead of maintaining the table in regulations, will develop a more user-friendly table summarizing the hiring standards to be posted on the USDA Food and Nutrition Service public website. The hiring standards remain in regulation at 7 CFR 210.30(b)(1); therefore, this change—which only removes the summary table—is not substantive. In this final rule, USDA also made corrections to current paragraph leveling in 7 CFR 210.30 and reprinted the table summarizing required annual training with non-substantive changes to improve usability.

USDA acknowledges and appreciates public comments from school nutrition directors and staff regarding the importance of their job duties. School nutrition professionals are incredibly hardworking individuals who care deeply about the children they serve. Many school nutrition professionals, some of whom have worked in school nutrition for decades, submitted public comments describing the great pride they take in their work. USDA also recognizes that school nutrition professionals have faced many challenges in their work over the past several years, including serving as essential, front-line workers during the COVID–19 pandemic and more recently, responding to supply chain disruptions and high food costs. USDA remains committed to supporting school nutrition professionals throughout implementation of this final rule and beyond. Additionally, Team Nutrition's Professional Standards Resources website [140] provides a variety of resources which support school nutrition professionals with implementing and meeting the professional standards requirements. These include the Guide to Professional Standards, the Professional Standards Training Database, and the Professional Standards Training Tracker Tool, among others. More information regarding USDA's efforts to support schools and school nutrition professionals may be found in *Section 1: Background* of this preamble.

Accordingly, this final rule amends 7 CFR 210.30(b)(1) to allow State agency discretion to approve the hiring of an individual to serve as a school nutrition program director in a medium or large local educational agency, for individuals who have 10 years or more of school nutrition program experience but who do not hold a bachelor's or an

[139] Nutrition and dietetics technicians, registered (NDTRs) are educated and trained at the technical level of nutrition and dietetics practice for the delivery of safe, culturally competent, quality food and nutrition services. See: Academy of Nutrition and Dietetics, *What is a Nutrition and Dietetics Technician Registered?* Available at: *https://www.eatrightpro.org/about-us/what-is-an-rdn-and-dtr/what-is-a-nutrition-and-dietetics-technician-registered.*

[140] U.S. Department of Agriculture. *Professional Standards.* Available at: *https://www.fns.usda.gov/cn/professional-standards.*

associate's degree. At the discretion of the State agency, this change provides local educational agencies an optional hiring flexibility. Schools are not required to change menus or operations as a result of this provision.

Section 18: Buy American

This section includes the following sub-sections:

- Section 18A describes limited exceptions to the Buy American requirement.
- Section 18B details Buy American exception documentation and reporting requirements.
- Section 18C explains procurement procedures.
- Section 18D defines the term ''substantially'' as it relates to the Buy American requirements.
- Section 18E clarifies requirements for harvested farmed and wild caught fish.

Section 18A: Limited Exceptions to the Buy American Requirement

Current Requirement

The Buy American provision established under the National School Lunch Act (NSLA, 42 U.S.C. 1760(n)) and program regulations at 7 CFR 210.21(d)(2) and 220.16(d)(2) requires school food authorities to purchase domestic commodities or products ''to the maximum extent practicable.'' This provision supports the mission of the child nutrition programs, which is to serve children nutritious meals and support American agriculture. Through policy guidance, USDA has detailed limited exceptions to the Buy American requirements.[141] These limited exceptions apply when the purchase of domestic foods is not practicable and include the following:

- The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

Currently, no regulations establish a definition of ''significantly higher'' when using an exception to the Buy American provision. The school food authority is responsible for determining the dollar amount or percentage which constitutes a significantly higher cost for a domestic product, thus permitting the use of an exception.

The Buy American provision is applicable to school food authorities located in the 48 contiguous United States. Although Alaska, Hawaii, and the U.S. territories are exempt from the Buy American provision, school food authorities in Hawaii and Puerto Rico are required to purchase food products produced in their respective State or territory in sufficient quantities, as determined by the school food authority, to meet school meal program needs, per 7 CFR 210.21(d)(3) and 42 U.S.C. 1760(n)(4)).

Proposed Rule

USDA proposed to strengthen the Buy American requirement by maintaining the current limited exceptions and establishing a new threshold limit for school food authorities that use these exceptions. USDA proposed to codify the following exceptions, previously issued through guidance, for when non-domestic foods may be purchased by school food authorities:

- The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

Additionally, USDA proposed to institute a 5 percent ceiling on the non-domestic commercial foods a school food authority may purchase per school year, based on total commercial food costs. Section 12 of the NSLA (42 U.S.C. 1760) mandates that the Secretary require school food authorities to ''purchase, to the maximum extent practicable, domestic commodities or products.'' Under the statute, this requirement applies to school food authorities located in the contiguous United States and a purchase of a domestic commodity or product for the school lunch or school breakfast program. By proposing a cap on when school food authorities may procure non-domestic commercial foods, USDA is balancing the statutory mandate to Buy American and the intent of the Buy American provision at Section 2 of the NSLA (42 U.S.C. 1751) to ''. . . encourage the domestic consumption of nutritious agricultural commodities and other foods . . .'' while also recognizing that there are times when purchasing domestic foods is not practicable for schools. Finally, consistent with current guidance, USDA proposed to clarify in regulation that school food authorities have discretion to determine whether an exception applies.

Public Comments

USDA received 138 comments on the proposed limited exceptions to the Buy American requirement. Of these, 20 supported the proposed standard, 72 were opposed, and 46 were mixed. Most respondents supported codifying the current exceptions for products not available domestically, but some requested that the significant cost differential be defined or eliminated. Most expressed concern that the 5 percent cap on non-domestic commercial foods is too restrictive.

Importance of Supporting American Agriculture

Several respondents, including, State agencies, Federal elected officials, advocacy groups, and individuals, supported strengthening the Buy American provision. One respondent stated that the proposal supports local farmers and the economy while also protecting the environment by reducing emissions from transporting food long distances. Another respondent affirmed that strengthening the Buy American provision would increase sourcing from local and regional producers. Other respondents supported the proposal for economic reasons. For example, a trade association stated that the 5 percent cap would disincentivize the use of U.S. taxpayer dollars to purchase non-domestic food products. An advocacy group stated that strengthening the provision would maximize public dollars spent on our nation's food and farm economy.

Implementation Challenges: Loss of Variety for Students

Some respondents opposed the proposal, including professional organizations, school districts, dietitians, and individuals. One professional organization asserted that the proposed 5 percent of total costs per school year ceiling on non-domestic commercial foods is too restrictive and could limit students' access to a wide variety of fresh and appealing produce throughout the school year. This respondent mentioned that the proposed changes may place a significant administrative burden on school meal programs and complicate an already complex, challenging procurement process. A State agency agreed, adding that the proposed changes may cause unnecessary stress for menu planners. This State agency expressed that the proposal would affect States located in the north that have shorter growing seasons.

Implementation Challenges: Supply Chain Issues

Some respondents discussed the current supply chain issues, stating that the proposal would make the procurement process more difficult and

[141] U.S. Department of Agriculture. SP 38–2017 *Compliance with and Enforcement of the Buy American Provision in the NSLP.* June 2017. Available at: *https://www.fns.usda.gov/nslp/compliance-enforcement-buy-american.*

burdensome while decreasing variety for students. One respondent asserted that the droughts in California, damaged grain crops in the Midwest, and unseasonably cold weather in the south have impacted the availability of domestic food. A respondent mentioned that the Buy American provision states that schools should purchase domestic products to the maximum extent ''practicable,'' but with the current supply chain challenges, purchasing 95 percent of food domestically is not ''practicable.'' One respondent stated that the 5 percent ceiling is not reasonable while another questioned if the 5 percent ceiling is possible to maintain.

Implementation Challenges: Administrative Burden

Some respondents raised concerns about tracking non-domestic costs. A State agency asserted that maintaining documentation would be burdensome for schools and State agencies, especially for small school food authorities with limited staff. Another State agency agreed with the intent of the proposal but argued that the proposed limitation of 5 percent on non-domestic food purchases, is too restrictive. This State agency said as proposed, this provision will place significant administrative burden on school meal operators and State agencies, adding to an already complex, challenging Federal procurement process.

Alternative Approaches Suggested by Comments

A few trade associations appreciated USDA's efforts to strengthen the Buy American provision for school nutrition programs and supported the proposed 5 percent of total costs cap for non-domestic food. However, these respondents suggested that USDA apply the 5 percent cap to categories and/or product type,[142] established by the USDA's Agricultural Marketing Service, instead of total commercial food purchases. Some of these trade associations suggested that USDA eliminate or define the ''significant cost differential'' exception, stating that it is a vague standard with inconsistent application and that it creates a loophole for distributors.

In addition to general feedback on the proposal, USDA requested input on the following questions:

- Is the proposed 5 percent of total costs per school year ceiling on the non-domestic commercial foods a school food authority may purchase a reasonable ceiling, or should a different percentage be used? Would the 5 percent cap encourage those school food authorities using exceptions to reduce the amount of non-domestic products they purchase? USDA requests that respondents include justification and reasons behind their response.
- How feasible would tracking and documenting the total amount of non-domestic food purchases be? Would purchasing and record keeping processes need to be altered? Does the documentation of total non-domestic purchases alleviate burden associated with documenting each limited exception that is used? And any additional information about how school food authorities would document the total amount of non-domestic food purchases versus total annual food purchases.

About 34 respondents provided input on the first question, regarding the 5 percent of total costs per school year ceiling on non-domestic purchasing. Many respondents stated the proposed 5 percent cap is too restrictive and that the data used to determine the proposed cap is outdated. One respondent stated that there have been supply chain disruptions, inflation, increased procurement challenges due to natural disasters that impact school meal programs, and a pandemic. Due to these factors, this respondent did not feel the proposed 5 percent cap accurately represents the current procurement landscape and does not apply lessons learned from the pandemic. This respondent also stated that the 5 percent cap is significantly lower than current procurement trends. In developing this new requirement, FNS used the most recent data available which was collected in SY 2017–2018 and showed school food authorities spent, on average, 8.5 percent of food costs on non-domestic products.

An individual asserted that the proposed 5 percent cap would increase burden for school nutrition professionals. State agencies suggested that the 5 percent cap would make procurement more cumbersome and add complexity to the oversight process. State agency respondents also argued that mandating a 5 percent cap on non-domestic food products would create additional burden on schools.

Some respondents provided alternatives to the 5 percent cap for non-domestic food purchases. For example, one individual suggested a 10 percent cap. A State agency recommended an exemption list for items like bananas, in addition to the 5 percent cap. Another State agency urged USDA to require school food authorities to develop a system to track non-domestic food products but noted that this would take time. This State agency suggested that USDA create an exception list of food products that have been determined as not produced in the U.S. in sufficient and reasonable available commercial quantities of satisfactory quality, such as canned oranges, canned pineapple, and fresh bananas.

Regarding the second question, 27 respondents provided input on the feasibility of the proposed recordkeeping process. Some respondents affirmed that tracking non-domestic food purchases would be an administrative burden. One individual argued that the recordkeeping process would contribute to administrative burden because items would need separate invoices for a successful audit and tracking purposes. Another respondent asserted maintaining documentation would require vendors and distributors to provide information about non-domestic food products.

A State agency agreed, asserting that school food authorities do not have adequate time and resources for additional paperwork.

Final Rule

This final rule changes the current limited exceptions for the Buy American provision and codifies the two limited circumstances when school food authorities may purchase non-domestic foods:

1. The product is listed on the Federal Acquisitions Regulations (FAR) 25.104 Nonavailable articles list and/or is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or

2. Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

USDA notes that when a school food authority purchases a food item found on the FAR 25.104 Nonavailable articles list, no further documentation is required. The Nonavailable articles list is a list of items that have been deemed not available in the U.S. and excepted from the Buy American statute.[143] The

[142] AMS used the following list as product types: Beef, Cotton, Dairy Products, Eggs, Fish & Seafood, Flowers & Plants, Fruits, Goat, Grain, Lamb, Nuts, Pork, Organic, Poultry, Rabbits, Rice & Pulses, Vegetables, Specialty Products, Tobacco, Wool & Mohair. Also available at: *https://www.ams.usda.gov/grades-standards.*

[143] 41 U.S.C chapter 83 is the Buy American statute that requires public agencies to procure articles, materials, and supplies that were mined, produced, or manufactured in the United States, substantially all from domestic components. Available at: *https://www.acquisition.gov/far/part-25.*

list of items on the FAR 25.104 is non exhaustive. Food products from the FAR Nonavailable articles list must be included in the calculation of the non-domestic cap.

This rulemaking does not define ''significantly higher'' for the definition exception and instead USDA maintains that the definition of ''significantly higher'' is at the discretion of school food authorities. Allowing school food authority discretion acknowledges that school food authorities of various sizes have different resources, and reflects the appropriate flexibility needed for purchases given the diverse needs of school food authorities.

USDA acknowledges that some respondents requested such an exemption list of non-domestic foods to help reduce administrative burden associated with documenting the two exceptions to the Buy American requirements. USDA expects that the inclusion of the FAR 25.104 Nonavailable articles will reduce administrative burden. This list is readily available, reliable, and widely used by the other Federal agencies. Additionally, the inclusion of this list will improve procurement practices, support American agriculture, and contribute toward increased Program integrity.

In response to public comments that suggested a 5 percent cap is too restrictive under current procurement conditions and that FNS data is not representative of current procurement practices, USDA will use a phased approach to gradually reach the proposed 5 percent of total costs per school year cap on non-domestic food purchases. USDA agrees with other respondents who were in support of the 5 percent cap, because it will help support American agriculture and industry, and will use 5 percent as the final cap on non-domestic food costs. The cap on non-domestic food costs is for total commercial food costs purchased. Through a phased-in implementation, USDA intends to help schools, State agencies, and other stakeholders adjust to the new requirement and achieve compliance with the Buy American provision. This phased-in approach will allow schools to gradually adjust to the new requirement and will allow USDA to continue to collect data on use of the Buy American exceptions.

In the proposed rule, USDA asked respondents if the proposed 5 percent cap was too restrictive or if a different cap should be used. Through public comment a 10 percent cap was suggested as an alternative to the 5 percent cap. Using this suggestion, the phased approach will be as follows:

- Beginning in SY 2025–2026, the non-domestic food cost cap will be 10 percent.
- Beginning in SY 2028–2029, the non-domestic food cost cap will be 8 percent.
- Beginning in SY 2031–2032, the non-domestic food cost cap will be 5 percent.

School food authorities will be required to maintain documentation supporting the use of an exception, except when the item is found on the FAR 25.104 Nonavailable articles list. USDA recognizes that the addition of the cap may pose issues for some school food authorities as it requires additional burden to assess the amount of non-domestic purchases. However, USDA notes that the Buy American requirement is mandated by the statute as discussed above. It is also an important aspect of the school meal programs to ''. . . encourage the domestic consumption of nutritious agricultural commodities and other foods . . .'' (42 U.S.C. 1751). In response to comments, USDA has carefully considered how that requirement can be appropriately balanced with when the purchase of domestic foods is not practicable for schools as well as the associated administrative burden. There still may be individual school food authorities that cannot meet the threshold. USDA will work in concert with State agencies during implementation to provide needed technical assistance and guidance, and if appropriate, an accommodation for temporary relief from the requirement as the State agency works with the school food authority on increasing their domestic purchases.

Compliance with the non-domestic cap will be reviewed by State agencies in line with 7 CFR 210.18 during the school meal programs Administrative Review process. Regulations were recently updated through the *Child Nutrition Program Integrity* final rule [144] to specifically add the Buy American requirements in 7 CFR 210.21(d) and 220.16(d) to the General Areas of Review requirements. The process for the General Areas during the review is first technical assistance, followed by corrective action if there are instances of non-compliance. The review of the Buy American requirement will follow this process that is already familiar to State agencies and schools and is meant to simplify administrative burden in response to comments. This process will allow school food authorities and States to work together to achieve compliance. As indicated in the proposed rule, the primary mechanism for collecting information on the Buy American provision is via the Child Nutrition Operations (CN–OPS) study. USDA notes that the CN–OPS study showed that the vast majority of exceptions were used for fruit and technical assistance may center around helping school food authorities to better monitor their contracts and/or track their non-domestic expenses; an example of corrective action is to modify future menus to replace non-domestic items with domestic items. There may be circumstances outside of the school food authority's control that make compliance with the Buy American requirements challenging. These could include nationwide supply chain issues or another pandemic, and USDA will provide guidance and direction with respect to the Buy American requirements.

In addition, in response to respondent concerns about burden, USDA notes that in accordance with a recent Government Accountability Office audit,[145] USDA is committed to creating a template for documenting Buy American exceptions. USDA plans to provide guidance and technical assistance to support school food authority implementation of the cap and tracking of expenses.

Lastly in response to comments suggesting that the non-domestic expenditure cap be based on food categories (*e.g.,* fruit, etc.) already established by the USDA's Agriculture Marketing Service instead of total commercial food purchases, USDA has concluded that this would only add administrative burden for school food authorities. Given the feedback received in public comments, in this final rule USDA is clarifying that the cap will apply to total commercial food costs.

Accordingly, this final rule amends 7 CFR 210.21(d)(5) and 220.16(d)(5) to codify the two limited circumstances when school food authorities may purchase non-domestic foods and to gradually phase in a cap on when school food authorities may procure non-domestic food. Additionally, this final rule amends 7 CFR 210.21(d)(8) and 220.16(d)(8) to codify an

[144] *Child Nutrition Program Integrity* (88 FR 162, August 23, 2023). Available at *https://www.govinfo.gov/content/pkg/FR-2023-02-07/pdf/2023-02102.pdf.*

[145] U.S Government Accountability Office. *USDA Could Enhance Implementation of the Buy American Provision.* April 2023. Available at: *https://www.gao.gov/assets/gao-23-105884.pdf.*

accommodation for schools unable to meet the phased-in cap.

Section 18B: Exception Documentation and Reporting Requirements

Current Requirement

Currently, the primary mechanism for collecting information on the Buy American provision is via the CN–OPS study. The CN–OPS study is a multi-year study that provides USDA with current information on various aspects of school meals programs operations. USDA uses results from this study to help inform program management practices and policy development.

School food authorities document each use of an exception to the Buy American requirements.[146] However, there is no requirement for school food authorities to request a waiver from the State agency or USDA in order to purchase a non-domestic food product.

Proposed Rule

USDA proposed to require school food authorities to maintain documentation supporting use of one of the two limited exceptions and documentation to demonstrate that no more than 5 percent of total annual commercial food costs per school year are for non-domestic foods.

Public Comments

USDA received 24 comments on the proposed Buy American exception documentation and reporting requirements. Of these, one supported the proposal, 21 were opposed, and two were mixed. State agencies, trade agencies, vendors, school food authorities, and individuals submitted comments on the proposal.

The supportive comment came from a trade agency. This respondent stated that they agreed with the proposal and that the proposal would make food distributors more aware of the Buy American requirements.

Many respondents stated that requiring school food authorities to maintain documentation showing no more than 5 percent of their total annual commercial food costs were spent on non-domestic foods will add to administrative burden and stated that school food authorities are already overwhelmed with documentation requirements. Another respondent asserted that the documentation requirement would require time-consuming activities such as reviewing all invoices to determine the total costs and non-domestic costs and calculating the percentage on a regular basis, on top of all the other program requirements that must be monitored.

Respondents stated that they did not see any issues with the current Buy American requirements and suggested USDA leave the provision as is. One State agency claimed that the Buy American provision has not been excessively abused and that adding an additional layer of recordkeeping to an already overwhelmed staff would create unnecessary burden. One respondent mentioned that their vendor is already documenting their use of the Buy American exception, and it only would add another layer of tracking for them. Another respondent recommended that USDA leave the provision as is, asserting that schools understand the importance of limiting non-domestic purchases to special circumstances.

Some respondents provided alternatives or asked for clarification about the proposed documentation and tracking requirements. A State agency noted that while the provision is not difficult to comprehend, if USDA has specific expectations for how tracking and maintenance of documentation should occur, those expectations should be established in the rulemaking. This respondent also suggested that USDA should include what fiscal action, if any, would result if those expectations are not met. Another respondent suggested that schools could meet the documentation and tracking requirements, but it would be difficult.

USDA requested public input on the following questions related to the proposals for exception documentation and reporting requirements of the Buy American requirements:

- Is the proposal to require school food authorities to maintain documentation showing that no more than 5 percent of their total commercial food costs per school year were for non-domestic foods feasible and is the regulatory language clear enough for school food authorities and State agencies to implement and follow?
- For oversight purposes, USDA is considering requiring school food authorities to maintain an attestation statement to attest that any non-domestic foods purchased under the 5 percent cap met one of the two limited exceptions. Would this approach assist school food authorities with the burden associated with documentation requirements? Does it help ensure that any non-domestic food purchase under the 5 percent cap was only a result of utilizing one of the current limited exceptions that USDA proposes to codify through this rulemaking?

About five respondents provided input on the first question about the feasibility of the proposal for documentation showing 5 percent cap for non-domestic food purchases. One respondent stated that the proposed rule would increase administrative burden by imposing additional tracking requirements for school food authorities. This respondent suggested that the documentation requirements would especially impact large school districts.

Regarding the second question, nine respondents, including State agencies, trade associations, and individuals provided input on the possible approach of maintaining an attestation statement that non-domestic food purchases were less than the 5 percent cap. Respondents provided mixed feedback on this question. A State agency and a few individuals expressed that the attestation would help with the documentation burden. However, some respondents were confused on who the attestation statement is intended for, and whether school food authorities or distributors would attest that any non-domestic foods purchased under the 5 percent cap met one of the two limited exceptions.

A State agency suggested that the use of an attestation statement, without backup documentation, is not an effective method of ensuring compliance. This State agency argued that the attestation statement would create additional paperwork that would not actually impact school food authorities' purchasing practices. Lastly, one respondent stated the attestation seems unnecessary.

Final Rule

This final rule requires school food authorities to maintain documentation to demonstrate use of one of the two limited exceptions and institutes a phased-in cap on non-domestic food purchases. In response to public comments, USDA is exempting products found on the FAR 25.104 Nonavailable articles list from the documentation requirement. School food authorities may use this list to deem a product as not domestically available without further documentation. Food products that are found on the FAR Nonavailable articles list will be included in the non-domestic expenditure ceiling calculation. While this was not included in the proposed rule, USDA requested public comment on the feasibility of a non-domestic cap, tracking of purchases, and documentation requirements, and gave notice to the

[146] U.S. Department of Agriculture, *Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program,* June 30, 2017. Available at: *https://www.fns.usda.gov/nslp/compliance-enforcement-buy-american.*

public that changes may be incorporated into a final rule based on public input. Public comments requested that USDA develop a non-domestic product exception list. Allowing the exception of products on the FAR 25.104 Nonavailable articles list from the Buy American documentation requirement addresses these public comments and reduces administrative burden for schools.

In addition, as stated above, in response to respondent concerns about burden, USDA notes that in accordance with a recent Government Accountability Office audit, *USDA Could Enhance Implementation of the Buy American Provision (April 2023),*[147] USDA has committed to creating a template for documenting Buy American exceptions. USDA will also explore any technical assistance resources that will better help school food authorities document non-domestic food purchases.

Accordingly, this final rule amends 7 CFR 210.21(d)(5)(iii) and 220.16(d)(5)(iii) to require school food authorities to maintain documentation to demonstrate use of one of the two limited exceptions to the Buy American provision.

Section 18C: Procurement Procedures

Current Requirement

School lunch and breakfast program regulations do not currently require school food authorities to include any Buy American provisions in required documented procurement procedures,[148] solicitations, or contracts. However, USDA guidance has strongly advised school food authorities to include safeguards in solicitation and contract language to ensure Buy American requirements are followed.[149] Additionally, school food authorities are required to monitor solicitation and contract language to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders (2 CFR 200.318(b)).[150]

Proposed Rule

USDA proposed to require school food authorities to include the Buy American provision in documented procurement procedures, solicitations, and contracts for foods and food products procured using informal and formal procurement methods, and in awarded contracts.

Public Comments

USDA received 30 comments on the proposals to include Buy American requirements in procurement procedures. Of these, 14 supported the proposal and 16 were mixed. State agencies, school districts, advocacy groups, trade associations, dietitians, and individuals submitted comments on the proposal.

Many respondents supported the proposal requiring school food authorities to include the Buy American provision in documented procurement procedures, solicitations, and contracts. Some respondents affirmed that they have these proposed requirements in their procurement procedures.

Other respondents provided mixed feedback. While these respondents agreed with the proposed provision, some suggested expanding it. For example, one respondent suggested that solicitations and contracts require distributors to attest to the domestic or non-domestic origin of delivered products. A professional organization stated that all Federal nutrition assistance programs should adopt the Buy American provision. Another respondent suggested that USDA bar distributors who substitute non-domestic products for domestic products without justification.

Final Rule

USDA agrees with respondents that Buy American provisions should be included in all procurement procedures. This final rule requires school food authorities to include the Buy American requirements in documented procurement procedures, solicitations, and contracts for foods and food products procured for school breakfast and school lunch programs using informal and formal procurement methods, and in awarded contracts.

State agencies are required to verify the inclusion of this language when conducting Procurement oversight and Administrative Reviews. USDA expects that this requirement will ensure vendors are aware of expectations at all stages of the procurement process, in addition to providing contractual protection for school food authorities if vendors fail to meet Buy American obligations.

Accordingly, this final rule amends 7 CFR 210.21(d)(3) and 220.16(d)(3) to require that Buy American provisions be included in all procurement procedures.

Section 18D: Definition of ''Substantially''

Current Requirement

The National School Lunch Act (NSLA, 42 U.S.C. 1760(n)(1)(B)) defines a domestic product as ''[a] food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.'' The current regulatory language at 7 CFR 210.21(d)(1) and 220.16(d)(1) is identical to the statutory language. To satisfy the statutory and regulatory requirements, food products purchased for child nutrition programs must be processed in the United States.[151] However, USDA understands that the meaning of the term ''substantially'' is not clearly defined.

Congressional report language accompanying the original legislation noted that ''substantially means over 51 percent from American products.'' [152] Therefore, USDA has stated in guidance that ''substantially'' means over 51 percent of the final processed product (by weight or volume) consists of agriculture commodities that were grown domestically, as determined by the school food authority.[153] The guidance also states that products ''from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are considered domestic products under this provision as these products are from the territories of the U.S.''

Proposed Rule

USDA proposed to codify a definition of the statutory phrase ''substantially using agriculture commodities.'' The

[147] U.S Government Accountability Office. *USDA Could Enhance Implementation of the Buy American Provision.* April 2023. Available at: *https://www.gao.gov/assets/gao-23-105884.pdf.*

[148] School food authorities are required to have documented procurement procedures, as per 2 CFR 200.318(a).

[149] U.S. Department of Agriculture, *Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program,* June 30, 2017. Available at: *https://www.fns.usda.gov/nslp/compliance-enforcement-buy-american.*

[150] ''Monitoring is also accomplished by reviewing products and delivery invoices or receipts to ensure the domestic food that was solicited and awarded is the food that is received. SFAs also need to conduct a periodic review of storage facilities, freezers, refrigerators, dry storage, and warehouses to ensure the products received are the ones solicited, and awarded, and comply with the Buy American provision.'' U.S. Department of Agriculture, *Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program,* June 30, 2017. Available at: *https://www.fns.usda.gov/nslp/compliance-enforcement-buy-american.*

[151] See also section 4207(b) of the Agriculture Improvement Act of 2018, Public Law 115–334 (42 U.S.C. 1760).

[152] U.S. House of Representatives. *Child Nutrition and WIC Reauthorization Amendments of 1998—House Report 105–633.* July 20, 1998. Available at: *https://www.govinfo.gov/content/pkg/CRPT-105hrpt633/html/CRPT-105hrpt633.htm.*

[153] U.S. Department of Agriculture, *Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program,* June 30, 2017. Available at: *https://www.fns.usda.gov/nslp/compliance-enforcement-buy-american.*

definition, which USDA would codify at 7 CFR 210.21(d)(1)(ii)(A) and 220.16(d)(1)(ii)(A), was proposed as follows: ''*Substantially using agriculture commodities that are produced in the United States*'' *means over 51 percent of a food product must consist of agricultural commodities that were grown domestically.*

Public Comments

USDA received 11 comments on the proposal to codify the definition of ''substantially using agriculture commodities.'' Of these, six supported the proposal, one was opposed, and four were mixed. State agencies, advocacy groups, professional organizations, dietitians, and individuals submitted comments on the proposal.

Most respondents supported the clarification. Some respondents stated that the proposed clarification made sense to them, and that the language provided was welcome. One State agency already requires school food authorities to use this definition based on its use in USDA guidance.

One State agency opposed the proposal and stated that the proposed definition does not meet the intent of other Federal agencies' Buy American requirements as it allows for up to 49 percent of a food product to be non-domestic.

Mixed comments were generally supportive but wanted USDA to go further than the proposed 51 percent threshold. A few respondents wanted the threshold to be raised higher, potentially up to 80 or 90 percent instead of 51 percent. One respondent wanted USDA to clarify that domestic water does not count toward the 51 percent. Another respondent requested that USDA consider that the term ''substantial'' is relative, open to interpretation, and should be further clarified in order to achieve desired results.

USDA requested public input on the following question related to codifying the definition of substantially:

• Does the proposed definition of ''substantially using agriculture commodities that are produced in the United States'' meet the intent of the Buy American requirements? If not, what other suggestions do stakeholders have for the definition?

Approximately three respondents provided input on this question regarding the intent of the Buy American requirements. Respondents generally agreed that the proposed definition is consistent with the intent of Buy American requirements.

Final Rule

This final rule codifies the proposed definition of ''substantially'' in the Buy American provision at 7 CFR 210.21(d)(1)(ii)(A) and 220.16(d)(1)(ii)(A). Consistent with the proposed rule, this definition reads as follows: ''*Substantially using agriculture commodities that are produced in the United States*'' *means over 51 percent of a food product must consist of agricultural commodities that were grown domestically.*

Although USDA acknowledges that some respondents recommended a threshold higher than 51 percent, this definition reflects the Congressional report language and USDA guidance as mentioned above. USDA agrees with supportive respondents and codifies the proposed definition for ''substantially'' in this final rule.

Accordingly, this final rule amends 7 CFR 210.21(d)(1)(ii) and 220.16(d)(1)(ii) to codify the definition of ''substantially'' in the Buy American regulations.

Section 18E: Clarification of Requirements for Harvested Farmed and Wild Caught Fish

Current Requirement

Current regulations do not include language specific to the applicability of the Buy American requirements to fish or fish products. However, in 2019, section 4207 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334) clarified the Buy American provision applies to fish harvested ''within the Exclusive Economic Zone of the United States, as described in Presidential Proclamation 5030 (48 FR 10605; March 10, 1983), or . . . by a United States flagged vessel.'' USDA published *Buy American and the Agricultural Improvement Act of 2018* [154] and explained how to treat harvested fish under the Buy American requirement. The guidance stated that, ''[i]n order to be compliant:

• Farmed fish must be harvested within the United States or any territory or possession of the United States.

• Wild caught fish must be harvested within the Exclusive Economic Zone of the United States or by a United States flagged vessel.''

Prior to the publication of the 2019 guidance, the Buy American provision applied to fish as it would to any other food.

[154] U.S. Department of Agriculture. *Buy American and the Agriculture Improvement Act of 2018.* August 15, 2019. Available at: *https://www.fns.usda.gov/cn/buy-american-and-agriculture-improvement-act.*

Proposed Rule

USDA proposed to add language to the regulations to codify how Buy American applies to fish and fish products in the school lunch and breakfast programs. The proposed change would be consistent with current statutory requirements and existing USDA policy guidance. USDA expects that codifying these existing requirements in regulation will improve awareness of, and compliance with, program requirements.

Public Comments

USDA received 11 comments on the proposal to codify how Buy American applies to fish and fish products in the school lunch and breakfast programs. Of these, four supported the proposed standards and seven were mixed. State agencies, professional associations, industry respondents, and dietitians submitted comments on the proposal.

Proponents generally stated the clarification is acceptable to add to the regulations. Other respondents appreciated the clarification on what criteria must be met for fish and fish products to meet the Buy American requirements but were concerned with the challenges of identifying whether fish were harvested within the Exclusive Economic Zone and/or whether the vessel used to catch the fish was a ''United States flagged vessel.''

Final Rule

USDA agrees with respondents that making the proposed change will improve the understanding of program requirements. This final rule codifies language in regulations regarding how the Buy American requirements apply to fish and fish products offered in the school lunch and breakfast programs. In order to be compliant with Buy American requirements, under this final rule:

• Farmed fish must be harvested within the United States or any territory or possession of the United States.

• Wild caught fish must be harvested within the Exclusive Economic Zone of the United States or by a United States flagged vessel.

This change is consistent with current statutory requirements and existing USDA policy guidance.

Accordingly, this final rule amends 7 CFR 210.21(d)(6) and 220.16(d)(6) to codify language regarding how the Buy American requirements apply to fish and fish products offered in the school lunch and breakfast programs.

Section 19: Geographic Preference

Current Requirement

Section 4302 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) [155] amended the National School Lunch Act to direct the Secretary of Agriculture to encourage institutions operating child nutrition programs to purchase unprocessed locally grown and locally raised agricultural products. Effective October 1, 2008, institutions receiving funds through the child nutrition programs could apply an optional geographic preference for the procurement of unprocessed locally grown or locally raised agricultural products. This provision applies to institutions operating any of the child nutrition programs, including the NSLP, SMP, SBP, Fresh Fruit and Vegetable Program, SFSP, and CACFP, as well as to purchases made for these programs by the USDA Department of Defense Fresh Fruit and Vegetable Program. The provision also applies to State agencies making purchases on behalf of any of the aforementioned child nutrition program operators.

The *Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs* final rule (75 FR 20316, April 4, 2011) [156] went into effect on May 23, 2011. This final rule incorporated the geographic preference option in program regulations and defined the term ''unprocessed locally grown or locally raised agricultural products,'' which does allow for some minimal processing, food handling, and preservation techniques as defined, to facilitate implementation by institutions operating the child nutrition programs. Language included in that final rule indicates that ''local'' cannot be used as a procurement specification (a written description of the product or service that the vendor must meet to be considered responsive and responsible).

Currently, Federal regulations do not prescribe the way that geographic preference should be applied, or how much preference can be given to local products. Federal regulations also do not define ''local'' for the purpose of procuring local foods for use in child nutrition programs. However, producers located in a specified geographic area can be provided additional points or credit calculated during a program operator's evaluation of proposals or bids received in response to a solicitation.[157]

Proposed Rule

USDA proposed to expand the geographic preference option by allowing locally grown, raised, or caught as procurement specifications for unprocessed or minimally processed food items in the child nutrition programs. This proposal intended to increase the procurement of local foods by child nutrition program operators and ease procurement challenges for operators interested in sourcing food from local producers.

Public Comments

USDA received 389 comments referencing the geographic preference proposal, including 176 unique comments. Of the total comments, 351 supported the proposal, including 138 unique comments, one was opposed, and 37 were mixed. State agencies, school nutrition professionals, advocacy groups, industry respondents, dietitians, elected officials, and individuals submitted comments. Many respondents mentioned that the geographic preference proposal would support local producers. Comments from advocacy groups, State agencies, and an academic institution indicated that the proposal would allow local producers to be more competitive and encourage local and smaller-scale producers to submit bids to sell local foods to child nutrition program operators. A State agency noted that the proposal would help larger school districts and cooperatives of smaller school districts coordinate with small-scale producers to procure locally without relying on the micro-purchase procurement method. A couple of advocacy groups and an individual mentioned that the proposal would be economically beneficial for local producers and communities. Similarly, a professional association suggested the proposal would stimulate local economies and keep money in school communities. Advocacy groups, State agencies, a professional organization, and a dietitian expressed that the proposal would make it easier for child nutrition program operators to procure local products for their meal programs and reduce administrative barriers.

Some respondents shared other potential benefits of the proposal, such as mitigating supply chain disruptions and fostering healthier communities. A food manufacturer and an advocacy group stated that they received positive feedback from child nutrition operators about the proposal. A few advocacy groups also noted that schools that had pre-existing relationships with local suppliers reported fewer supply chain disruptions and more reliable product availability during the COVID–19 pandemic. One advocacy group and one individual suggested that the proposal would support more nutritious school meals and foster connections between students, local producers, and communities. An individual stated that local food procurement can also support schools offering foods that better reflect students' food cultures and heritage. A group of Federal elected officials stated that the proposal would improve domestic sourcing, relieve procurement challenges, and allow more local foods to be incorporated into school meals.

Some respondents provided mixed feedback on the proposal or provided suggestions. One State agency noted that the proposal would make it easier for program operators to procure local foods but recommended that USDA provide guidance on using a definition of ''local'' that does not reduce the number of potential vendors that can respond to a solicitation to a non-competitive level. This respondent also recommended guidance to support program operators in conducting market research and requests for information prior to issuing solicitations. A State agency affirmed this guidance would help program operators avoid delays in awarding contracts to qualified local vendors and prevent program operators from having to reissue solicitations. Another State agency requested that USDA define the term ''local'' in a way that clarifies ''local'' should be based on the source of the agricultural product being procured rather than the bidder's location. Multiple advocacy groups and an individual recommended that the proposed geographic preference language be updated to allow for, or encourage, other procurement specifications to support varied procurement values such as organic certification, independent animal welfare certifications, products produced by historically underserved producers, and more.

Several respondents supported the proposal but raised concerns about the potential increased costs of local foods. An individual noted that the cost of procuring local foods could be a barrier for smaller schools and school districts. Another respondent warned that a lack of locally produced food in their area,

[155] *The Food, Conservation, and Energy Act of 2008* (Pub. L. 110–246). June 18, 2008. Available at: *https://www.congress.gov/110/plaws/publ246/PLAW-110publ246.pdf*.

[156] *Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs* (75 FR 20316, April 4, 2011). Available at: *https://www.federalregister.gov/documents/2011/04/22/2011-9843/geographic-preference-option-for-the-procurement-of-unprocessed-agricultural-products-in-child*.

[157] U.S. Department of Agriculture. *Procurement Geographic Preference Q&As*. February 1, 2011. Available at: *https://www.fns.usda.gov/cn/procurement-geographic-preference-qas*.

and food safety concerns, would hinder local purchasing. An advocacy group stated that vendors should be required to substantiate that local production requirements are met and recommended that cost incentives be provided to support procurement of local food products. A union, school food service staff member, and an advocacy group agreed that additional funding is needed to make local procurement viable for many program operators, especially in certain States and territories. A State agency and an advocacy group expressed concerns about cost as a barrier to local procurement among CACFP operators.

USDA requested public input on the following questions related to the geographic preference expansion proposal:

- Do respondents agree that this approach would ease procurement challenges for child nutrition program operators interested in sourcing food from local producers?
- Do respondents agree that this approach would encourage smaller-scale producers to submit bids to sell local foods to child nutrition programs?

Several respondents provided input on the first question, regarding whether the proposed approach would ease procurement challenges. Many respondents indicated that expanding school food authorities' options for geographic preference in procurement would streamline local purchasing for child nutrition program operators. Advocacy groups, a trade association, and a State agency noted that the proposal would remove uncertainties and facilitate clear, predictable procurement processes. An academic institution stated that not all program operators are willing and able to apply geographic preference in its current form due to its complexity. This respondent noted that the proposal would ease procurement challenges and enable program operators to spend less time on the administrative aspects of the procurement process and more time incorporating local foods into program menus. A professional organization and dietitian expressed that the proposal would help program operators that operate smaller-scale programs more easily purchase local products.

In response to the second question, many respondents agreed that the proposed approach would encourage smaller-scale producers to submit bids to sell foods to child nutrition programs. Respondents emphasized that expanding geographic preference options would make local and small-scale producers more competitive in the bidding process. A couple of advocacy groups and a State agency asserted that the proposal would simplify bid writing. One advocacy group suggested that local and smaller food producers have a hard time competing against larger producers and distributors, and multiple individuals and advocacy groups emphasized that the proposal could provide smaller local producers a ''competitive edge''. An academic institution stated that the proposal would encourage local producers to submit bids and provide a steady market for smaller-scale producers.

Final Rule

This final rule codifies, without changes, USDA's proposal to expand the geographic preference option by allowing child nutrition program operators to use ''locally grown'', ''locally raised'', or ''locally caught'' as procurement specifications (a written description of the product or service that the vendor must meet to be considered responsive and responsible) for unprocessed or minimally processed food items in the child nutrition programs. The definition of unprocessed, and the minimal food handling and processing techniques allowed within that definition, remains unchanged in this final rule (7 CFR 210.21(g)(2), 220.16(f)(2), 225.17(e)(2), and 226.22(c)(1). USDA agrees with comments that suggested this provision will support increased procurement of local foods by child nutrition program operators. This change may encourage smaller-scale producers to submit bids to sell local foods to child nutrition programs and may ease procurement challenges for program operators interested in sourcing food locally.

USDA will provide guidance and resources on implementing this final standard, including but not limited to: updating the geographic preference section of the *Procuring Local Foods for the Child Nutrition Programs* guide,[158] *the Geographic Preference Fact Sheet,*[159] and *Geographic Preference Q&As Part I*[160] and *Part II.*[161] These resources and guidance respond to comments citing the need for program operators to adopt a definition of ''local'' that will support fair and open competition in the procurement and bidding process. Updates to these resources will also help program operators choose appropriate procurement methods; conduct market research, requests for information, and producer outreach as needed; and retain appropriate documentation while implementing this final standard. USDA will continue to allow State agencies and program operators to adopt their own definition of ''local'' and will not prescribe a Federal definition for the purpose of procuring local foods for child nutrition programs. Program operators are encouraged to adopt definitions of ''local'' that best suit their distinct needs and goals, for example based on their community's unique geography and climate, the availability of local producers and manufacturers, and program participants' interest in local products.

In response to comments requesting that USDA allow procurement values beyond local, such as certified organic or certified by an independent animal welfare program as procurement specifications, USDA will clarify in updated guidance and resources that these and other similar production standards are already allowable as specifications in program operators' procurement solicitations as long as they do not overly restrict competition. USDA will also continue to provide training, technical assistance, and, under certain circumstances as available, financial support, to program operators to help them mitigate costs and other barriers to local food procurement. Since January 2021, USDA has provided:

- $200 million for States to purchase local foods for schools through the Local Food for Schools Cooperative Agreement Program;
- Nearly $3.8 billion in Supply Chain Assistance funds for schools to purchase domestic foods, including $1.3 billion for SY 2023–2024;
- $140 million for Equipment Assistance Grants to help schools buy kitchen equipment, which can help them process local foods; and
- $94 million to provide children with nutritious, local foods and agricultural education through expanded Farm to School engagement.[162]

Accordingly, this final rule amends 7 CFR 210.21(g)(1), 215.14a(e),

[158] U.S. Department of Agriculture. *Procuring Local Foods for the Child Nutrition Programs.* Available at: *https://fns-prod.azureedge.us/sites/default/files/resource-files/June22F2SProcurementGuide508.pdf.*

[159] U.S. Department of Agriculture. *Geographic Preference Fact Sheet.* Available at: *https://www.fns.usda.gov/f2s/geographic-preference.*

[160] U.S. Department of Agriculture. *Procurement Geographic Preference Q&As.* February 1, 2011. Available at: *https://www.fns.usda.gov/cn/procurement-geographic-preference-qas.*

[161] U.S. Department of Agriculture. *Procurement Geographic Preference Q&As: Part II.* October 9, 2012. Available at: *https://www.fns.usda.gov/cn/procurement-geographic-preference-qas-%E2%80%93-part-ii.*

[162] U.S. Department of Agriculture. *USDA Support for School Meals.* Available at: *https://www.fns.usda.gov/cn/support-schools.*

220.16(f)(1), 225.17(e)(1), and 226.22(c)(1), to codify the expansion of the geographic preference option to allow ''locally grown'', ''locally raised'', or ''locally caught'' as procurement specifications. Program operators may begin implementing the expanded geographic preference option in their procurement processes immediately following this rule's effective date. Program operators remain responsible for complying with all Federal, State, and local procurement regulations. NSLP and SBP program operators' compliance with Federal procurement regulations will continue to be monitored through State agency oversight of procurement.

Section 20: Miscellaneous Changes

In addition to the major provisions of this rulemaking, USDA is finalizing a variety of miscellaneous changes to the child nutrition program regulations. The miscellaneous changes update terminology used in the regulations, remove outdated information, and correct cross references. However, as detailed below, this rule does not finalize the proposed terminology change for the meats/meat alternates component. Additionally, USDA is finalizing a severability clause in this rulemaking, as detailed below. In the event any changes made by this rulemaking are to be held invalid or unenforceable, USDA intends that the other changes will remain. USDA has further specified what requirement would replace the invalidated change.

Terminology Change: Protein Sources Component [Not Finalized]

Current child nutrition program regulations use the term ''meats/meat alternates'' for the meal component that includes beans and peas, whole eggs, tofu, tempeh, meat, poultry, fish, cheese, yogurt, soy yogurt, peanut butter and other nut or seed butters, and nuts and seeds. USDA proposed to change the name of the meats/meat alternates meal component in the NSLP, SBP, and CACFP regulations to ''protein sources.'' Under this proposal, all references in 7 CFR parts 210, 220, and 226 to ''meats/meat alternates'' would change to ''protein sources.'' The foods within this meal component would remain unchanged.

Public Comments

USDA received 240 comments on this proposed terminology change, including 131 unique comments. Of these, 57 supported the proposal, all of which were unique comments, 120 were opposed, including 31 unique comments, and 63 were mixed, including 43 unique comments. Comments were submitted by State agencies, school nutrition professionals, advocacy groups, industry respondents, dietitians, and CACFP sponsoring organizations.

A dietitian argued that the proposed meal component name of ''protein sources'' sounded ''much more appealing'' than meats/meat alternates. Another respondent suggested protein sources ''makes more sense'' as a meal component name compared to meats/meat alternates. An advocacy group supported the change, maintaining that the term ''meats/meat alternates'' creates a negative perception of plant-based foods and is confusing to child nutrition operators, families, and students. A school district agreed, suggesting the proposed terminology change would help in communications with families. Similarly, an advocacy group suggested that ''terminology has changed'' and renaming the component would improve understanding for school nutrition professionals and families. A school district noted that children struggle to understand the current term and maintained that ''protein'' is a universally understood term that better describes the component. A State agency supported the change, but requested USDA consider the burden some States may face to revise and reprint resources due to the change.

Opponents argued that the change would require costly updates to materials, would require significant retraining, and would make it difficult to determine which foods are creditable under the protein source meal component. For example, an industry respondent stated that renaming the meats/meat alternates component to the protein sources component is akin to renaming the milk component to the calcium component, describing the proposal as inaccurate and misleading. An advocacy group agreed, citing concerns about potential confusion with protein-labeled food items, or specific products such as protein bars and protein shakes, which do not credit toward the meats/meat alternates component (and would not credit toward the protein sources component, if the change is finalized). This respondent argued that implementing this change would require significant technical assistance. Further, the same advocacy group maintained that the proposed terminology change would create financial burden for retraining providers and developing new documents and materials. A State agency provided similar feedback, asserting that the proposed terminology change would require a ''tremendous'' number of staff hours to update documents. Another State agency also cited concerns about the burden of implementing this change and noted that they have not encountered problems with the current terminology.

Conversely, one school district acknowledged that updating and reprinting materials may be costly, but still supported the change. This respondent saw renaming the component as an opportunity to ''update and refresh'' the program with terms participants would understand. An industry respondent suggested that phasing in the change over several years would allow industry to plan label inventories and resource allocation to minimize the anticipated impact of making the terminology change.

A few respondents offered mixed feedback or alternative suggestions. One State agency recommended keeping the meal component names ''simple'' and suggested aligning with MyPlate, which includes the following food groups: fruits, vegetables, grains, protein foods, and dairy. However, this respondent noted that, due to the requirement to offer milk with school meals, the MyPlate dairy group would need to be replaced with a milk group. An industry respondent suggested that USDA name the meal component ''proteins'' instead of ''protein sources'' for brevity. An advocacy group recommended that USDA allow quinoa to credit toward the protein sources component. Additionally, this respondent recommended that tofu and soy products and beans, peas, and lentils be allowed to credit as protein sources even if they are not visually recognizable. An advocacy group encouraged USDA to provide ''a national list of definitive protein sources'' for child nutrition program operators. A different advocacy group stated that making this change in some child nutrition programs, but not SFSP, would create confusion for operators that participate in multiple programs. A State agency, school district, and another respondent strongly encouraged USDA to prioritize making similar changes in SFSP to address inconsistencies and align terminology across all child nutrition programs.

Final Rule

In response to public comments, USDA is not finalizing the proposal to change the name of the meats/meat alternates meal component in the NSLP, SBP, and CACFP regulations to ''protein sources.'' USDA appreciates concerns that respondents raised with the proposed terminology change, including the challenge of updating State and

local materials to reflect the change. Although these changes could have been accomplished over time, and State and local operators would not have been penalized for using the prior terminology, USDA will not finalize this proposed change given respondent concerns. In addition, many respondents from the CACFP community recommended that USDA assess the potential impacts of terminology changes on all child nutrition program operators prior to making them. USDA will consider this suggestion when considering potential terminology changes in the future.

USDA also appreciates comments regarding potential confusion about foods that would credit toward the ''protein sources'' component. Although the proposed terminology change would not have changed current guidelines regarding foods that may credit toward the existing meats/meat alternates component,[163] [164] USDA appreciates that use of the word ''source'' in the proposed component name could have created confusion for operators. The child nutrition programs use a food-based menu planning approach, which helps to ensure that children are offered (and learn to build) meals that include key food groups recommended by the *Dietary Guidelines*. In the near term, based on input from respondents, USDA has determined the meats/meat alternates component name better reflects the food-based menu planning approach.

USDA appreciates respondent suggestions for other potential component names, such as ''proteins'' and ''protein foods.'' USDA also appreciates respondent feedback on other changes USDA could make to the meal components, including which meal component certain foods credit toward. However, for the reasons detailed above, this final rule maintains the meats/meat alternates component name and does not make any changes to food crediting guidelines for this component.

[163] For information on crediting the meat/meat alternate component, see the *Food Buying Guide for Child Nutrition Programs,* available at: *https://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs*.

[164] Exceptions include certain smoothie ingredients and pasta products made from vegetable flours. See Question 104: U.S. Department of Agriculture, *Meal Requirements Under the NSLP & SBP: Q&A for Program Operators Updated to Support the Transitional Standards Effective July 1, 2022,* March 2, 2022. Available at: *https://www.fns.usda.gov/cn/sp052022-questions-answers-program-operators*.

Terminology Change: Beans, Peas, and Lentils

The *Dietary Guidelines, 2020–2025,* changed the terminology for the ''legumes (beans and peas)'' vegetable subgroup to ''beans, peas, and lentils.'' [165] The foods within this vegetable subgroup did not change. USDA proposed to change the name of the ''legumes (beans and peas)'' vegetable subgroup in the school meal pattern regulations to align with the *Dietary Guidelines*. Under this proposal, all references in 7 CFR parts 210 and 220 to ''legumes (beans and peas)'' would change to ''beans, peas, and lentils'' for consistency with the terminology used in the *Dietary Guidelines*. The foods within this vegetable subgroup and the related requirements would remain unchanged. USDA also proposed to change references to ''beans and peas (legumes)'' in 7 CFR part 226 to ''beans, peas, and lentils''.

Public Comments

USDA received 134 comments on this proposed terminology change, including 45 unique comments. Comments were submitted by State agencies, advocacy groups, and individuals. An advocacy group stated that the proposed change ''brings the school nutrition language into alignment with the language used in the *Dietary Guidelines*.'' A State agency agreed, suggesting that this change would improve ''consistency with terminology used in the *Dietary Guidelines*.'' A few other respondents, including advocacy groups and individuals, expressed support for the terminology change.

While fewer respondents opposed the ''beans, peas, and lentils'' terminology change compared to the ''protein sources'' terminology change, those who did gave similar reasons for their opposition. For example, a State agency opposed the change, suggesting that terminology changes would require all materials that use the terms to be redone and redistributed which would be costly and time consuming. A few respondents, including a State agency, did not oppose the change, but suggested adding ''dry'' in ''beans, peas, and lentils'' to avoid confusing vegetables in this subgroup with fresh green beans and peas, which count toward the ''other'' vegetable subgroup and the starchy vegetable subgroup, respectively.

Final Rule

USDA is finalizing the proposal to change the name of the ''legumes (beans and peas)'' vegetable subgroup in the school meal pattern regulations and to change references to ''beans and peas (legumes)'' in CACFP regulations. This final rule will instead refer to ''beans, peas, and lentils,'' consistent with the terminology used in the *Dietary Guidelines*. Additionally, USDA is extending this change to SFSP based on public input encouraging consistent terminology across child nutrition programs.

USDA acknowledges that some respondents recommended including the word ''dry'' before the NSLP vegetable subgroup name ''beans, peas, and lentils,'' to differentiate from green peas and green beans. However, USDA has opted to maintain the proposed terminology change without modification. As noted, the vegetable subgroup name in the *Dietary Guidelines* is ''beans, peas, and lentils.'' Therefore, the terminology for the NSLP vegetable subgroup name finalized in this rule aligns with the *Dietary Guidelines*. To clarify, the vegetables that count toward this subgroup in the school meal programs have not changed; only the name of the subgroup has changed. Green peas will continue to count toward the starchy vegetable subgroup, and fresh green beans will continue to count toward the ''other'' vegetable subgroup.[166]

While USDA encourages stakeholders to update materials to reflect this change, USDA anticipates a transition period and does not expect these updates to happen immediately. State and local operators will not be penalized for using the prior terminology.

Accordingly, this final rule amends 7 CFR parts 210, 220, 225, and 226 to change references to ''legumes (beans and peas)'' and ''beans and peas (legumes)'' to ''beans, peas, and lentils.'' Child nutrition program operators are not required to change menus or

[165] See ''About Beans, Peas, and Lentils,'' page 31. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/*.

[166] According to the *Dietary Guidelines,* ''Green peas and green (string) beans are not counted in the beans, peas, and lentils subgroup because the nutrient content of these vegetables is more similar to vegetables in other subgroups.'' The *Dietary Guidelines* consider green peas to be a starchy vegetable, and green beans to be part of the ''other'' vegetable subgroup. NSLP regulations for the vegetable subgroups reflect the *Dietary Guidelines*. See ''About Beans, Peas, and Lentils,'' page 31. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *2020–2025 Dietary Guidelines for Americans. 9th Edition.* December 2020. Available at: *https://www.dietaryguidelines.gov/*.

operations as a result of this terminology change, but are encouraged to proactively transition to the new terminology.

Technical Corrections

This final rule makes several additional technical corrections to the regulations, which are outlined by regulatory section below. These proposed technical corrections would not make substantive changes to the child nutrition programs. Instead, the proposed corrections, which are reflected in the proposed amendatory language, generally fall into the following categories:

- Removing outdated terminology or updating terminology and definitions for consistency across regulations.
- Removing outdated implementation dates.
- Removing requirements that are no longer in effect.
- Reordering the school meal pattern meal component paragraphs to reflect the order used in the meal pattern tables.
- Revising meal pattern tables to improve usability.
- Correcting erroneous cross-references.

Please see *Note about Amendatory Instructions,* below, for information about how these changes are addressed in the amendatory instructions.

7 CFR part 210: National School Lunch Program

7 CFR 210.2 Definitions

- Remove definition of *CND,* which is no longer in use.
- Replace the definition of *Food component* with the definition of *Meal component.*
- Redesignate paragraphs to use numbers instead of letters (*e.g.,* (1) and (2) instead of (a) and (b)) in the definitions of *Reduced price lunch, School, State agency,* and *State educational agency.*
- Remove outdated language in the definition of *Residential child care institution.*
- Revise the definition of *Yogurt* to reflect changes to the FDA standard of identity of yogurt.

7 CFR 210.3 Administration

- 7 CFR 210.3(a): Remove sentence referring to ''the CND,'' a term no longer in use.

7 CFR 210.4 Cash and Donated Food Assistance to States

- 7 CFR 210.4(b)(3): Remove incorrect cross-reference to afterschool snacks section of regulations (§ 210.10(n)) and add the correct cross-reference (§ 210.10(o)).

7 CFR 210.7 Reimbursement for School Food Authorities

- 7 CFR 210.7(d): Remove erroneous cross-reference to § 220.23, which is no longer in effect.
- 7 CFR 210.7(e): Correct erroneous cross-reference to afterschool snacks section of regulation (from § 210.10(n)(1) to § 210.10(o)(1)).

7 CFR 210.9 Agreement With State Agency

- 7 CFR 210.9(b)(21): Remove outdated implementation date.
- 7 CFR 210.9(c): Remove incorrect cross-reference to afterschool snacks section of regulations (§ 210.10(n)(1)) and add the correct cross-reference (§ 210.10(o)(1)).

7 CFR 210.10 Meal Requirements for Lunches and Requirements for Afterschool Snacks

- Change all references from ''food components'' to ''meal components''.
- 7 CFR 210.10(c): Add minimum creditable amount for all meal components in meal pattern table footnotes.
- In meal pattern tables, add or revise titles for clarity.
- In meal pattern tables, change footnotes to use numbers instead of letters and combine related footnotes to improve readability.

7 CFR 210.11 Competitive Food Service and Standards

- 7 CFR 210.11(m) (redesignated to paragraph (l)): Combine fluid milk and milk alternatives paragraphs and cross-reference § 210.10(d)(1) and (2) instead of repeating milk standards in § 210.11.
- 7 CFR 210.11(m) (redesignated to paragraph (l)): Adjust punctuation to improve readability.
- 7 CFR 210.11(i) and (n): Remove outdated implementation dates.

7 CFR 210.12 Student, Parent, and Community Involvement

- 7 CFR 210.12(e): Correct erroneous cross-reference to local school wellness policies by replacing § 210.30(d) with § 210.31(d).

7 CFR 210.14 Resource Management

- 7 CFR 210.14(e): Remove outdated implementation date.
- 7 CFR 210.14(e)(5)(ii)(D): Remove outdated implementation date.
- 7 CFR 210.14(e)(6)(iii): Remove outdated language.
- 7 CFR 210.14(f): Remove outdated implementation date.

7 CFR 210.15 Reporting and Recordkeeping

- 7 CFR 210.15(b)(9): Correct erroneous cross-reference to local school wellness policies by replacing § 210.30(f) with § 210.31(f).

7 CFR 210.18 Administrative Reviews

- 7 CFR 210.18(h)(2)(x): Correct erroneous cross-reference to local school wellness policies by replacing § 210.30 with § 210.31.

7 CFR 210.19 Additional Responsibilities

- 7 CFR 210.19(f): Remove outdated implementation date.

7 CFR 210.20 Reporting and Recordkeeping

- 7 CFR 210.20(a)(6) and (7): Remove requirements that are no longer in effect.
- 7 CFR 210.20(b)(10): Remove requirement that is no longer in effect.

7 CFR 210.29 Management Evaluations

- 7 CFR 210.29(d)(3): Remove incorrect physical address for the Food and Nutrition Service.

7 CFR Part 220: School Breakfast Program

7 CFR 220.2 Definitions

- Remove erroneous cross-references to § 220.23, which is no longer in effect.
- Remove definitions of *CND, OA,* and *OI,* which are no longer in use.
- Revise definitions of *Department, Distributing agency, Fiscal year, FNS, FNSRO, Free breakfast, Reduced price breakfast, Reimbursement, School Food Authority,* and *State agency* for consistency with definitions in 7 CFR 210.2.
- Remove the definition of *Food component* and instead add the definition of *Meal component.*
- Remove the definitions of *Menu item* and *Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning,* which are no longer in use under food-based menu planning.
- Remove the second definition of *Non-profit,* which is duplicative and outdated.
- Remove outdated language in the definition of *Residential child care institution.*
- Revise the definition of *Yogurt* to reflect changes to the FDA standard of identity of yogurt.

7 CFR 220.3 Administration

- 7 CFR 220.3(a): Remove sentence referring to ''the CND,'' a term no longer in use.

7 CFR 220.7 Requirements for Participation

- 7 CFR 220.7(e)(2), (4), (5), (9), and (13): Revise language for clarity and remove outdated references.
- 7 CFR 220.7(h): Correct erroneous cross-reference to local school wellness policies by replacing § 210.30 with § 210.31.

7 CFR 220.8 Meal Requirements for Breakfasts

- Change all references from ''food components'' to ''meal components''.
- 7 CFR 220.8(a)(2): Change reference from ''reimbursable lunch'' to ''reimbursable breakfast''.
- 7 CFR 210.10(c): Add minimum creditable amount for all meal components in meal pattern table footnotes.
- In meal pattern tables, add or revise titles for clarity.
- In meal pattern tables, change footnotes to use numbers instead of letters and combine related footnotes to improve readability.
- 7 CFR 210.10(c)(2)(i)(A): Remove reference to crediting enriched macaroni at lunch.
- 7 CFR 210.10(c)(2)(v): Add fluid milk as a listed meal component in paragraph (c)(2).

7 CFR 220.13 Special Responsibilities of State Agencies

- 7 CFR 220.13(b)(3): Remove requirements that are no longer in effect.
- 7 CFR 220.13(c): Remove outdated references to ''OI''.
- 7 CFR 220.13(f)(3): Remove erroneous cross-reference to § 220.23, which is no longer in effect.
- 7 CFR 220.13(l): Remove requirement that is no longer in effect.

7 CFR 220.14 Claims Against School Food Authorities

- Remove references to the term ''CND'', which is no longer in use.

7 CFR Part 225: Summer Food Service Program

7 CFR 225.16 Meal Service Requirements

- Change all references from ''food components'' to ''meal components''.

7 CFR part 226: Child and Adult Care Food Program

7 CFR 226.2 Definitions

- Remove outdated language in the definition of ''Functionally impaired adult''.
- Add definition for ''meal component''.

7 CFR 226.20 Requirements for Meals

- Change all references from ''food components'' to ''meal components''.
- Change all references from ''grains'' to ''grain items'' within the footnotes to meal pattern tables.
- Update the meats/meat alternates row at 7 CFR 226.20(c) in the Meal Patterns for Children Age 1 through 18 and Adult Participants to use ounce equivalents and refer to meats/meat alternates sources generally, instead of listing specific foods within the category.
- In meal pattern tables, revise certain footnotes for clarity and combine related footnotes to improve readability.

Note About Amendatory Instructions

As detailed above, USDA is making a variety of minor technical changes in this rulemaking. For example, this rule removes outdated implementation dates and makes minor wording changes throughout the school meal program regulations to reflect current terminology. At the direction of the Office of the Federal Register,[167] instead of drafting the specific and targeted amendatory instructions to make these individual changes, USDA is providing full context for these changes by including not only the revised content, but also the unchanged content that appears adjacent to the changed text. As such, large sections of the existing regulations are reprinted in the amendatory instructions of this rule without change, beyond the minor technical corrections detailed above. All substantive changes made by this rulemaking are explained in this preamble.

Severability

USDA is finalizing a severability clause for changes to the meal pattern requirements made by this rulemaking. In the event any changes made by this rulemaking were to be held invalid or unenforceable, USDA intends the remainder of the changes to remain in place. USDA further specifies what requirement would replace the invalidated change. This final rule adds a new paragraph (r) to 7 CFR 210.10 (NSLP meal pattern requirements) providing that if any provision of such section is held to be invalid or unenforceable by its terms, or as applied to any person or circumstances, it shall be severable from that section and not affect the remainder thereof. In the event of such holding of invalidity or unenforceability of a provision, the regulations provide that the meal pattern requirement covered by that provision would revert to the version that immediately preceded the invalidated provision. This final rule adds similar paragraphs to 7 CFR 220.8 (SBP meal pattern requirements), and 7 CFR 226.20 (CACFP meal pattern requirements).

Section 21: Summary of Changes

This section provides a high-level overview of the provisions finalized in this rulemaking. It includes:

- A descriptive summary of changes; and
- A table detailing the changes, including the child nutrition program or programs that the changes apply to, and their implementation dates.

21A: Descriptive Summary of Changes

This section provides a narrative summary of the changes finalized in this rulemaking, including the implementation dates.

Section 2: Added Sugars

This rulemaking finalizes the following added sugars limits in the school lunch and breakfast programs:

- *Product-based limits:* this rulemaking implements the following product-based limits for school meals; these limits must be implemented by SY 2025–2026:
- *Breakfast cereals:* limited to no more than 6 grams of added sugars per dry ounce.
- *Yogurt:* limited to no more than 12 grams of added sugars per 6 ounces.
- Flavored milk: limited to no more than 10 grams of added sugars per 8 fluid ounces or, for flavored milk sold as a competitive food for middle and high schools, 15 grams of added sugars per 12 fluid ounces.
- *Weekly dietary limit:* this rulemaking implements a dietary specification limiting added sugars to less than 10 percent of calories per week in the school lunch and breakfast programs; this weekly limit, which must be implemented by SY 2027–2028, is in addition to the product-based limits described above.

This rulemaking also extends the product-based added sugars limits for breakfast cereals and yogurt to CACFP; this change must be implemented by October 1, 2025. These added sugars limits replace the existing total sugars limits for breakfast cereals and yogurt in CACFP.

[167] Office of the Federal Register. *Amendatory instruction: Revise and Republish.* Available at: *https://www.archives.gov/federal-register/write/ddh/revise-republish.*

Section 3: Milk

Section 3A: Flavored Milk

This final rule maintains the current regulation allowing all schools to offer fat-free and low-fat milk, flavored and unflavored, to K–12 students, with the new proposed added sugars limit for flavored milk. This final rule also continues to allow SMP and CACFP operators to offer fat-free and low-fat milk, flavored and unflavored, to participants ages 6 and older. Because this rule finalizes the current flavored milk requirements, child nutrition program operators will not need to make changes to their menus to comply with this provision, beyond complying with the product-based added sugars limit for flavored milk in *Section 2: Added Sugars* upon implementation.

Section 3B: Fluid Milk Substitutes: Responses to Request for Input

This final rule reorganizes the NSLP regulatory text related to fluid milk substitutes for non-disability reasons. This rule moves the regulatory text explaining the non-disability fluid milk substitute requirements from paragraph (m) of 7 CFR 210.10—which discusses exceptions and variations allowed in reimbursable meals—to paragraph (d) of 7 CFR 210.10—which discusses the fluid milk requirements. Schools are not required to change menus or operations as a result of this technical change.

This final rule does not make any substantive changes to the non-disability fluid milk substitute request process outlined in regulation; USDA does not have the authority to change the statutory requirements for non-disability fluid milk substitutes.

Section 3C: Fluid Milk Substitutes: Nutrient Requirements

As a conforming amendment, this final rule changes the units for vitamin A and vitamin D requirements for fluid milk substitutes in all child nutrition programs. Instead of 500 IUs, the unit for the vitamin A requirement is now 150 mcg retinol activity equivalents (RAE) per 8 fluid ounces. Instead of 100 IUs, the unit for the vitamin D requirement is now 2.5 mcg per 8 fluid ounces. Child nutrition program operators are not required to change menus or operations as a result of this technical change.

Section 4: Whole Grains

This final rule maintains the current whole grains requirement that at least 80 percent of the weekly grains offered in the school lunch and breakfast programs are whole grain-rich, based on ounce equivalents of grains offered. It also codifies the definition of ''whole grain-rich'' in NSLP, SBP, and CACFP regulations, to mean that the grain content of a product is between 50 and 100 percent whole grain. Lastly, this final rule updates the definition of ''entrée item'' in the competitive food service regulations to clarify that both whole-grain rich and enriched grain entrées offered as part of a reimbursable school meal may qualify as an ''entrée item'' when sold à la carte as a ''Smart Snack.'' Because this rule finalizes the current whole grain-rich requirements and whole grain-rich definition, child nutrition program operators will not need to make changes to comply with the whole grain-rich provision of this rule.

Section 5: Sodium

This final rule maintains current sodium limits at school lunch and breakfast through June 30, 2027, and implements one reduction in school lunch and breakfast sodium limits that schools must implement by July 1, 2027. As suggested by numerous stakeholders, this final rule also commits to conducting a study on potential associations between sodium reduction and student participation in school meals.

Section 6: Meats/Meat Alternates at Breakfast

This final rule codifies the combined grains and meats/meat alternates meal component at K–12 breakfast and removes the requirement for schools to offer 1.0 ounce equivalent of grains each day at breakfast. Schools may offer grains, meats/meat alternates, or a combination of both to meet the minimum ounce equivalents in this combined component requirement. This change provides schools with more menu planning flexibility at breakfast. Schools are not required to change menus or operations as a result of this provision.

Section 7: Substituting Vegetables for Grains in Tribal Communities

The final rule codifies the proposal to add school food authorities and schools that are tribally operated, operated by the Bureau of Indian Education, and that serve primarily American Indian or Alaska Native children to the list of schools at 7 CFR 210.10(c)(3) and 220.8(c)(3) that may serve vegetables to meet the grains requirement in NSLP and SBP. For SFSP and CACFP, USDA finalizes the proposal to revise 7 CFR 225.16(f)(3) and 226.20(f) to allow sponsors, institutions, and facilities, as applicable, that serve primarily American Indian or Alaska Native participants to substitute vegetables for grains or breads. Additionally, this final rule allows all schools, sponsors, institutions, and facilities in Guam and Hawaii to serve vegetables to meet the grains or breads requirement. These changes provide child nutrition program operators an optional menu planning flexibility. Program operators are not required to change menus or operations as a result of this provision.

Section 8: Traditional Indigenous Foods

This final rule codifies the proposal to explicitly state in regulation that traditional Indigenous foods may be served in reimbursable school meals. Regulations at 7 CFR 210.10(c)(7) and 220.8(c)(4) will include the definition of traditional foods from the Agriculture Improvement Act of 2014, as amended (25 U.S.C. 1685(b)(5)), which defines traditional food as ''food that has traditionally been prepared and consumed by an [American] Indian tribe,'' including wild game meat, fish, seafood, marine mammals, plants, and berries. Schools are not required to change menus or operations as a result of this technical change.

Section 9: Afterschool Snacks

This final rule aligns NSLP snack meal pattern requirements for K–12 children with the CACFP snack meal pattern requirements, as required by the National School Lunch Act (NSLA, 42 U.S.C. 1766a(d)). Additionally, this rule finalizes the provision from the 2020 proposed rule to revise the definition of *Child.* This change clarifies that children who are age 18 and under at the start of the school year may receive reimbursable NSLP snacks, consistent with statute (NSLA, 42 U.S.C. 1766a(b)). As with the proposed rule, this final rule changes all regulatory references in 7 CFR part 210 from ''meal supplements'' to ''afterschool snacks.'' The change to NSLP snack meal pattern requirements must be implemented by July 1, 2025.

Section 10: Substituting Vegetables for Fruits at Breakfast

This final rule continues to allow schools to substitute vegetables for fruits in the SBP and simplifies the vegetable variety requirement. Under this final rule, schools choosing to offer vegetables at breakfast one day per school week have the option to offer any vegetable, including a starchy vegetable. Schools that choose to substitute vegetables for fruits at breakfast on two or more days per school week are required to offer vegetables from at least two different subgroups. The vegetable subgroups that schools may choose from

include dark green, red/orange, beans, peas, and lentils, starchy, and ''other'' vegetables.

Section 11: Nuts and Seeds

This final rule codifies the proposal to allow nuts and seeds to credit for the full meats/meat alternates component in all child nutrition programs and meals, removing the 50 percent crediting limit for nuts and seeds at breakfast, lunch, and supper. This change provides child nutrition program operators more menu planning flexibility. Program operators are not required to change menus or operations as a result of this provision.

Section 12: Beans, Peas, and Lentils at Lunch

This final rule codifies the option for schools to count beans, peas, and lentils offered as a meat alternate at lunch toward the weekly beans, peas, and lentils vegetable subgroup requirement. Under this option, as with the current requirement, menu planners would determine which overall meal component beans, peas, and lentils would count toward: the vegetable meal component, or the meats/meat alternates meal component. Beans, peas, and lentils offered to students as either vegetables or meat alternates can count toward the weekly requirement to offer ½ cup of beans, peas, and lentils. This change provides schools with more menu planning flexibility at lunch. Schools are not required to change menus or operations as a result of this provision.

Section 13: Competitive Foods: Bean Dip Exemption

This final rule adds *bean dip* to the list of foods exempt from the total fat standard in the Smart Snacks regulations. This exemption applies to products marketed as hummus, as well as bean dips made from any variety of beans, peas, or lentils. Bean dip will continue to be subject to the saturated fat standard for Smart Snacks, as well as all other Smart Snacks requirements. This change provides schools the option to sell bean dip as a Smart Snack. Schools are not required to change operations as result of this provision.

Section 14: Meal Modifications

This final rule codifies in regulation that State licensed healthcare professionals and registered dietitians may write medical statements to request meal modifications on behalf of child or adult participants with disabilities in the school meal programs and CACFP. It also defines a State licensed healthcare professional as an individual authorized to write medical prescriptions under State law. The change requiring schools, institutions, and facilities to accept medical statements from registered dietitians must be implemented by July 1, 2025, for the school meal programs, and by October 1, 2025, for CACFP. This final rule also updates and reorganizes the regulatory text to distinguish between disability and non-disability requests more clearly. Regarding non-disability requests, this final rule also encourages schools, institutions, and facilities to meet participants' non-disability dietary preferences when planning and preparing school and CACFP meals.

Section 15: Clarification on Potable Water Requirements

This final rule maintains the requirement that schools make plain potable water available and accessible without restriction to children at no charge during the meal service. To clarify this requirement, this final rule adds the word ''plain'' to the potable water regulations. Schools are not required to change menus or operations as a result of this technical change.

Section 16: Synthetic Trans Fats

This final rule removes the dietary specification prohibiting synthetic *trans* fat in the school lunch and breakfast programs, and in foods sold to children on campus during the school day. Under this change, schools will no longer need to include the synthetic *trans* fat prohibition in their procurement documentation, and State agencies will no longer need to review product labels or manufacturer specifications during Administrative Reviews for compliance with the synthetic *trans* fat dietary specification.

Section 17: Professional Standards: Hiring Exception for Medium and Large Local Educational Agencies

This final rule codifies the proposal to allow State agency discretion to approve the hiring of an individual to serve as a school nutrition program director in a medium or large local educational agency, for individuals who have 10 years or more of school nutrition program experience but who do not hold a bachelor's or an associate's degree. Directors hired under this exception must have a high school diploma or GED. At the discretion of the State agency, this change provides local educational agencies an optional hiring flexibility. Schools are not required to change menus or operations as a result of this provision.

Section 18: Buy American

18A: Limited Exceptions to the Buy American Requirement

This final rule maintains the following limited exceptions for the Buy American provision and codifies them in regulation. The two limited circumstances when school food authorities may purchase non-domestic foods are when:

- The product is listed on the FAR 25.104 Nonavailable articles list and/or is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

This final rule will also gradually phase in a cap on non-domestic food costs. This cap applies to total commercial food costs. The non-domestic food costs cap will be phased in as follows:

- Beginning in SY 2025–2026, the non-domestic food cost cap will be 10 percent.
- Beginning in SY 2028–2029, the non-domestic food cost cap will be 8 percent.
- Beginning in SY 2031–2032, the non-domestic food cost cap will be 5 percent.

18B: Exception Documentation and Reporting Requirements

This final rule requires school food authorities to maintain documentation to demonstrate use of one of the two limited exceptions for non-domestic food purchases, as detailed in Section 18A. In response to public comments, this final rule exempts products on the FAR 25.104 Nonavailable articles lists from the documentation requirement.

18C: Procurement Procedures

This final rule requires school food authorities to include the Buy American requirements in documented procurement procedures, solicitations, and contracts for foods and food products procured for the school lunch and breakfast programs.

18D: Definition of ''Substantially''

This final rule codifies the following definition of ''substantially'' in the Buy American regulations: ''Substantially using agriculture commodities that are produced in the United States means over 51 percent of a food product must consist of agricultural commodities that were grown domestically.'' This change is consistent with existing USDA policy guidance. Therefore, schools are not expected to need to change menus or

operations as a result of this technical change.

18E: Clarification of Requirements for Harvested Farmed and Wild Caught Fish

This final rule codifies language in regulations regarding how the Buy American requirements apply to fish and fish products offered in the school lunch and breakfast programs. In order to be compliant with Buy American requirements, under this final rule:

- Farmed fish must be harvested within the United States or any territory or possession of the United States.
- Wild caught fish must be harvested within the Exclusive Economic Zone of the United States or by a United States flagged vessel.

This change is consistent with statutory requirements and existing USDA policy guidance. Therefore, schools are not required to change menus or operations as a result of this technical change.

Section 19: Geographic Preference

This final rule expands the geographic preference option by allowing ''locally grown'', ''locally raised'', or ''locally caught'' as procurement specifications (a written description of the product or service that the vendor must meet to be considered responsive and responsible) for unprocessed or minimally processed food items in the child nutrition programs. The definition of unprocessed, and the minimal food handling and processing techniques allowed within that definition, remains unchanged in this final rule. This final rule continues to allow State agencies and program operators to adopt their own definition of ''local'' and does not prescribe a Federal definition of ''local'' for the purpose of procuring local foods for child nutrition programs.

Section 20: Miscellaneous Changes

This final rule makes a variety of miscellaneous changes to the child nutrition program regulations. This rule:

- Removes outdated terminology and updates terminology and definitions for consistency across regulations.
- Removes outdated implementation dates and requirements that are no longer in effect.
- Makes a variety of other technical corrections and changes to the regulations, as detailed in *Section 20: Miscellaneous Changes*.

Child nutrition program operators are not required to change menus or operations as a result of the miscellaneous changes in this rulemaking.

21B: Table of Changes by Program

The chart below details each provision of the rule, the section of the rule that covers the provision, the programs impacted, and the implementation date. For ease of reference, the acronyms used in the chart below are:

- NSLP—National School Lunch Program (7 CFR part 210)
- SMP—Special Milk Program (7 CFR part 215)
- SBP—School Breakfast Program (7 CFR part 220)
- SFSP—Summer Food Service Program (7 CFR part 225)
- CACFP—Child and Adult Care Food Program (7 CFR part 226)

As noted in the *Implementation Dates* column, certain provisions of this rule address requirements that are already in effect. This rulemaking provides an implementation date for these provisions to account for minor corrections and reorganization of the regulatory text. Child nutrition program operators will not need to make any changes to comply with requirements that are already in effect. Additionally, many provisions of this rule provide optional administrative or operational flexibilities. Child nutrition program operators are not required to change menus or operations to comply with provisions that provide optional administrative or operational flexibilities. These provisions are noted in the *Implementation Dates* column.

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Provision	Rule Section	Programs Impacted	Implementation Date
Added Sugars: Product-based Limits for Breakfast Cereals	Section 2	NSLP, SBP, CACFP	NSLP/SBP: July 1, 2025 CACFP: October 1, 2025 *Note: CACFP total sugars limits remain in place through September 30, 2025*
Added Sugars: Product-based Limits for Yogurt	Section 2	NSLP, SBP, CACFP	NSLP/SBP: July 1, 2025 CACFP: October 1, 2025 *Note: CACFP total sugars limits remain in place through September 30, 2025*
Added Sugars: Product-based Limits for Flavored Milks	Section 2	NSLP, NSLP Smart Snacks in School, SBP	July 1, 2025
Added Sugars: Weekly Limit	Section 2	NSLP, SBP	July 1, 2027
Milk: Flavored Milk	Section 3A	NSLP, NSLP Smart Snacks in School, SMP, SBP, CACFP	July 1, 2024 *Note: this rule finalizes the current flavored milk requirements; child nutrition operators will not need to make changes to comply with this requirement, beyond those changes described in Section 2: Added Sugars*
Milk: Fluid Milk Substitutes: Responses to Request for Input	Section 3B	NSLP, SBP	July 1, 2024 *Note: schools are not required to change menus or operations as a result of this provision*
Milk: Fluid Milk Substitutes: Nutrient Requirements	Section 3C	NSLP, SMP, SBP, CACFP	July 1, 2024 *Note: child nutrition program operators are not required to change menus or operations as a result of this provision*
Whole Grains: Whole Grain-rich Requirement	Section 4	NSLP, SBP	July 1, 2024 *Note: this rule finalizes the current whole grain-rich requirements; child nutrition operators will not need to make changes to comply with this requirement*
Whole Grains: Whole Grain-rich Definition	Section 4	NSLP, SBP, CACFP	July 1, 2024 *Note: this rule codifies existing whole grain-rich*

			definition; child nutrition operators will not need to make changes to comply with this requirement
Sodium	Section 5	NSLP, SBP	July 1, 2024 *Note: this rule maintains the current sodium limits for the first three years of implementation; schools will not be required to implement further sodium reductions until July 1, 2027*
Meats/Meat Alternates at Breakfast	Section 6	SBP	July 1, 2024 *Note: schools are not required to change menus or operations as a result of this provision*
Substituting Vegetables for Grains in Tribal Communities	Section 7	NSLP, SBP, SFSP, CACFP	July 1, 2024 *Note: child nutrition program operators are not required to change menus or operations as a result of this provision*
Traditional Indigenous Foods	Section 8	NSLP, SBP	July 1, 2024 *Note: schools are not required to change menus or operations as a result of this provision*
Afterschool Snacks: NSLP Snacks Meal Pattern Requirements	Section 9	NSLP Snacks	July 1, 2025
Afterschool Snacks: All Other Changes	Section 9	NSLP Snacks	July 1, 2024 *Note: schools following the current regulatory requirement are not required to change menus or operations as a result of this provision*
Substituting Vegetables for Fruits at Breakfast	Section 10	SBP	July 1, 2024 *Note: schools following the current regulatory requirement are not required to change menus or operations as a result of this provision*
Nuts and Seeds	Section 11	NSLP, SBP, SFSP, CACFP	July 1, 2024 *Note: child nutrition program operators are not required to change menus or operations as a result of this provision*
Beans, Peas, and Lentils at Lunch	Section 12	NSLP	July 1, 2024 *Note: schools are not required to change menus or operations as a result of this provision*
Competitive Foods: Bean Dip Exemption	Section 13	NSLP Smart Snacks in Schools	July 1, 2024

			Note: schools are not required to change menus or operations as a result of this provision
Meal Modifications: Requirement to Accept Medical Statements from Registered Dietitians	Section 14	NSLP, SBP, CACFP	NSLP/SBP: July 1, 2025 CACFP: October 1, 2025
Meal Modifications: All Other Changes	Section 14	NSLP, SBP, CACFP	July 1, 2024 *Note: child nutrition program operators are not required to change menus or operations as a result of this provision*
Clarification on Potable Water Requirements	Section 15	NSLP, SBP	July 1, 2024 *Note: schools are not required to change menus or operations as a result of this provision*
Synthetic Trans Fat	Section 16	NSLP, NSLP Smart Snacks in School, SBP	July 1, 2024 *Note: schools are not required to change menus or operations as a result of this provision*
Professional Standards: Hiring Exception for Medium and Large Local Educational Agencies	Section 17	NSLP, SBP	July 1, 2024 *Note: schools are not required to change menus or operations as a result of this provision*
Buy American	Section 18A-18E	NSLP, SBP	July 1, 2024 *Note: the cap for non-domestic food purchases will be gradually phased in over time*
Geographic Preference	Section 19	NSLP, SMP, SBP, SFSP, CACFP	July 1, 2024 *Note: child nutrition program operators are not required to change menus or operations as a result of this provision*
Terminology Change: Beans, Peas, and Lentils	Section 20	NSLP, SBP, SFSP, CACFP	July 1, 2024 *Note: child nutrition program operators are not required to change menus or operations as a result of this provision*

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Section 22: Procedural Matters

Executive Orders 12866, 13563, and 14094

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and

equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking has been determined to be significant under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094, and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Regulatory Impact Analysis

As required for all rules that have been designated as significant under section 3(f)(1) Executive Order 12866 by the Office of Management and Budget, a Regulatory Impact Analysis was developed for this rule. It follows this rule as an Appendix. The following summarizes the conclusions of the regulatory impact analysis:

Need for Action: This rule establishes requirements that align school meals with the goals of the *Dietary Guidelines for Americans, 2020–2025,* and that support the continued provision of nutritious school meals. To develop this rule, USDA considered broad stakeholder input, including written comments received in response to the 2023 proposed rule, oral comments submitted during listening sessions, and a comprehensive review of the *Dietary Guidelines for Americans, 2020–2025.* The proposed rule included a focus on sodium, whole grains, milk, and added sugars. This rule represents the next stage of the rulemaking process to permanently update and improve school meal pattern requirements. In response to public comments, this rule revises the proposed implementation of sodium reductions and maintains current milk requirements allowing schools to offer flavored milk to all K–12 children. Further, this rule finalizes a variety of changes to school meal requirements from the 2020 proposed rule, *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs.* Updates for the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP) are also included in certain provisions of this rule. Finally, this rulemaking will strengthen Buy American requirements.

Benefits: Making the changes outlined in this rule can lead to improved health outcomes in the long-term. The Regulatory Impact Analysis details potential health benefits because of sodium reductions and added sugars limits over time, as well as information regarding the methodology for selecting specific limits. Sections of this rule on traditional Indigenous foods may have some potential health benefits for American Indian and Alaska Native children and allow for schools to serve more culturally relevant ingredients. This rule maintains the current milk requirements from the transitional standards rule, allowing all schools to offer flavored or unflavored milks to K–12 children. USDA also maintains the requirements that at least 80 percent of the weekly grain offerings in school meals each week are whole grain-rich. This rule builds on the progress schools have already made in improving school meals to support healthy diets for school children while also allowing for operational or administrative flexibilities for geographic preference, meats/meat alternates at breakfast, nuts and seeds, and beans, peas and lentils at lunch. Minor shifts and technical corrections are included in other provisions, such as updating definitions and terminology in the regulations.

Costs: USDA estimates this rule would cost schools between $0.02 and $0.04 per meal or an average of $206 million annually including both the SBP and NSLP starting in SY 2024–2025, accounting for the fact that the requirements will be implemented gradually and adjusting for annual inflation.[168] While some changes—such as aligning the NSLP snack meal pattern with that of CACFP or simplifying requirements for schools that choose to substitute vegetables for fruits at breakfast—are estimated to reduce school food costs or have no cost impact, others are estimated to increase food costs. The costs to schools are mainly due to a shift in purchasing patterns and increased labor costs. An increase in cost due to the Buy American final rule is a result of additional labor and food costs. The changes in this rulemaking are gradual, achievable, and realistic for schools and recognize the need for strong nutrition requirements in school meals. There are no estimated changes in Federal costs due to the changes in this final rule, as the rule does not impact the Federal reimbursement rate for school meals and is not expected to significantly impact baseline participation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. This rule would have a significant impact on a substantial number of small entities.

The requirements established by this rule apply to school districts, which meet the definitions of ''small governmental jurisdiction'' and ''small entity'' in the Regulatory Flexibility Act. Overall, about 60 percent of school food authorities operating child nutrition programs are considered ''small,'' or having less than 999 students.[169] Under the National School Lunch Act (NSLA, 42 U.S.C. 1758(f)), schools participating in the school lunch or breakfast program are required to serve meals that are consistent with the goals of the most recent *Dietary Guidelines* and that consider the nutrient needs of children who may be at risk for inadequate food intake and food insecurity. This final rule amends 7 CFR parts 210 and 220 that govern school lunch and breakfast program requirements, including the nutrition requirements that schools are required to meet to receive Federal reimbursement for program meals. The changes in this final rule further align school nutrition requirements with the goals of the *Dietary Guidelines for Americans, 2020–2025,* consistent with statute.

Significant Alternatives

As discussed in *Section 3A: Flavored Milk* and *Section 4: Whole Grains,* USDA considered two proposals for the milk provision and a proposal and alternative for the whole grains provision.

For milk, the proposed rule included two alternatives:

- Alternative A: Proposed to allow flavored milk (fat-free and low-fat) at school lunch and breakfast for high school children only, effective SY 2025–2026. Under this alternative, USDA proposed that children in grades K–8 would be limited to a variety of unflavored milk. The proposed regulatory text for Alternative A would allow flavored milk for high school children only (grades 9–12). Flavored milk would be subject to the new proposed added sugars limit.
- Alternative B: Proposed to continue to allow all schools to offer fat-free and low-fat milk, flavored and unflavored, to K–12 children, with the new proposed added sugars limit for flavored milk.

[168] Using 2023 dollars and not adjusting for annual inflation results in $1.256 billion dollars over eight school years (over nine fiscal years) or $52 to $227 million annually ($0.03 per meal), see appendix.

[169] See Appendix A. U.S. Department of Agriculture. *Results of USDA's Food and Nutrition Service-Administered School Food Authority Survey II on Supply Chain Disruption and Student Participation.* July 2023. Available at: *https://fns-prod.azureedge.us/sites/default/files/resource-files/SFASurvey-II-Supply-Chain-072523.pdf.*

For whole grains, the proposed rule included a proposal and an alternative:

- The rule proposed to maintain the current requirement that at least 80 percent of the weekly grains offered in the school lunch and breakfast programs are whole grain-rich, based on ounce equivalents.
- The rule requested public input on an alternative that would require that all grains offered in the school lunch and breakfast programs be whole grain-rich, except that one day each school week, schools may offer enriched grains.

USDA encouraged public input on the options provided for the milk and whole grains provisions, as well as all other aspects of the proposed rule. In some cases, USDA posed specific questions for public input to help inform the final rule. For example, as noted in *Section 2: Added Sugars,* USDA requested public input on whether the proposed implementation dates would provide appropriate lead time to successfully implement the proposed added sugars limits. As noted in *Section 4: Sodium,* USDA requested input on what sodium limits would be achievable for schools and industry, while supporting lower-sodium meals for children. USDA also requested public input on the proposed implementation schedule, as well as the number and level of sodium reductions proposed in the rule. USDA indicated that the Department would use public input received in response to the proposed rule to help inform the final rule.

USDA received 130 public comments from school districts or schools, as well as about 340 comments from school nutrition professionals. Some of these respondents provided details about their school type, and several addressed specific concerns of small or rural schools. For example, one respondent indicated that they work in a ''small school district'' with no central kitchen ''and not enough staff,'' and suggested that these factors make it very hard to do scratch cooking. Another respondent who noted they work at a small charter school also raised concerns about meal preparation, noting that they ''do not have the space, equipment and staff to cook meals from scratch.'' An advocacy group representing small and rural schools added that schools would need to prepare more meals from scratch to further limit sodium. The same respondent noted that smaller schools may not have the funds to hire registered dietitians to assist with menu planning. A school food service professional noted that ''small school systems will struggle to make menu adjustments'' to meet the proposed sodium reductions. Another school food service professional noted that in small schools, staff ''wear many hats'' and have limited time and resources. This respondent was especially concerned about further sodium reductions. While they expressed support for reducing sodium, they suggested USDA consider the impact to student participation and consumption of meals when determining further reductions. An advocacy group representing State rural education associations asserted that the proposed sodium limits would reduce compliant products available to rural schools, which would make it difficult to meet the updated sodium limits.

Regarding the proposed added sugars limits, a State agency suggested that requiring product-based limits and a weekly limit would make it more difficult to successfully administer the programs, especially for smaller schools. An advocacy group representing rural schools asserted that the proposed added sugars limits and sodium reductions would reduce student participation, increase costs, and make it harder for rural schools to procure compliant products. An industry respondent maintained that rural schools may have an easier time implementing the proposed product-based added sugars limits, compared to the proposed weekly added sugars limit. However, a State agency argued that small and rural schools often face limited product options and may not have access to products that meet the proposed product-based added sugars limits. Regarding the proposed limit on grain-based desserts at breakfast, a respondent who works at a small charter school asserted that USDA would need to ''come up with some solutions for what to serve for breakfast grains'' if grain-based desserts, such as toaster pastries and fruit turnovers, are limited at breakfast under the final rule.

A few respondents provided input on the milk and whole grain proposals from the small or rural school perspective. A State agency noted that they have several schools where students from grades 6–12 attend school in the same building. This State agency noted that these smaller schools would face challenges implementing milk Alternative A. For example, smaller schools may not have extra refrigeration space to store flavored milk during the K–5 meal service. Other State agencies raised similar concerns, noting that in some smaller schools, elementary and middle school students may share one breakfast or lunch period, and it would be difficult to restrict flavored milk for some students but not others. An advocacy group representing small and rural schools raised concerns about the potential decrease in student consumption of milk, if flavored milk is restricted.

Regarding whole grains, one school food service professional who stated that they work at a ''small school with limited access to distributors'' supported the proposal to maintain the 80 percent whole grain-rich requirement. This respondent suggested the 80 percent whole grain-rich requirement allows them to occasionally offer enriched tortillas and egg noodles. A respondent that identified as a small and rural school agreed, stating support for the 80 percent whole-grain rich requirement. Another respondent representing small and rural schools suggested that USDA not ''confuse menu planners by changing the whole grain-rich requirements'' and supported maintaining the current 80 percent whole grain-rich requirement.

As discussed throughout the preamble, this rulemaking is based on a comprehensive review of the *Dietary Guidelines,* robust stakeholder input on school nutrition requirements, and lessons learned from prior rulemakings. With this rule, USDA aims to integrate each of these factors in a way that prioritizes children's health while ensuring that the nutrition requirements are achievable for all schools. USDA recognizes that small school districts, like all school districts, will face increased costs and potential challenges in implementing this rule. These costs are not significantly greater for small school districts than for larger ones, as implementation costs are driven primarily by factors other than school district size. Additionally, as noted, about 60 percent of school food authorities operating child nutrition programs are considered ''small,'' or having less than 999 students.[170] Considering that the majority of school food authorities are small, USDA expects the cost impact data presented in the Regulatory Impact Analysis reflects small school food authorities and that there would not be significant differential impacts on them as a result of this rule. Nevertheless, USDA does not discount the special challenges that some smaller school districts may face. As a group, small school districts may have less flexibility to adjust resources in response to immediate budgetary needs. As noted in public comments, some respondents cited challenges that

[170] See appendix A. U.S. Department of Agriculture. *Results of USDA's Food and Nutrition Service-Administered School Food Authority Survey II on Supply Chain Disruption and Student Participation.* July 2023. Available at: *https://fns-prod.azureedge.us/sites/default/files/resource-files/SFASurvey-II-Supply-Chain-072523.pdf.*

small school districts face with limited time and resources, which could make making menu changes at a rapid pace challenging. Therefore, USDA expects that the phased-in implementation period for meal pattern changes finalized in this rule will provide these school districts opportunity for advance planning.

In addition, USDA considered public comments from small and rural school districts, and organizations representing them when determining the final requirements. For example, as discussed in *Section 3A: Flavored Milk,* USDA recognized that implementing Alternative A would be operationally challenging for small schools, where children from many grade levels may share cafeteria space. USDA also appreciates concerns that respondents raised regarding a lack of refrigerated storage space for flavored milk in small schools. This rule finalizes milk Alternative B, which maintains the current requirement allowing all schools to offer fat-free and low-fat milk, flavored and unflavored, to K–12 children. As discussed in *Section 4: Whole Grains,* this final rule maintains the current requirement that at least 80 percent of the weekly grains offered by ounce equivalent are whole grain-rich, which respondents noted has been successfully implemented by many schools. USDA also considered respondent input on other provisions in this rulemaking. For example, based on stakeholder feedback, this rule does not finalize the proposed limit on grain-based desserts offered at breakfast. Additionally, based on public input, this final rule allows schools more time to gradually reduce sodium and includes a commitment from USDA to conduct a study on the potential associations between sodium reduction and student participation. USDA expects that this change from the proposed rule will make the sodium limits more achievable for schools, including small schools, as it will allow more time for menu adjustments and product reformulation. With this rule, USDA intends to improve the school meal nutrition requirements in a way that is practical and attainable for all schools.

More detailed information about the costs associated with provisions of this rulemaking may be found in the Regulatory Impact Analysis.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of $146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at *http://www.bea.gov/iTable*) in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule. This rule has UMRA impacts, discussed in the Regulatory Impact Analysis conducted by USDA in connection with this rule which includes a cost/benefit analysis and explains the options considered to update the school meal patterns based on the *Dietary Guidelines for Americans, 2020–2025.*

Executive Order 12372

The NSLP, SMP, SBP, SFSP, and CACFP are listed in the Catalog of Federal Domestic Assistance under NSLP No. 10.555, SMP No. 10.556, SBP No. 10.553, SFSP No. 10.559, and CACFP No. 10.558, respectively, and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (see 2 CFR chapter IV). Since the child nutrition programs are State-administered, USDA's FNS Regional Offices have formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operations. This provides USDA with the opportunity to receive regular input from program administrators and contributes to the development of feasible program requirements.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. This rule has federalism impacts which are discussed below.

Prior Consultation With State Officials

As detailed in the proposed rule, USDA received input from various stakeholders through listening sessions and public comments prior to drafting the proposed rule. USDA held over 50 listening sessions with stakeholder groups that represent national, State, and local interests.[171] USDA also received over 8,000 public comments on the transitional standards final rule prior to drafting the proposed rule. These comments, from State agencies, advocacy groups, school districts, and other stakeholders, helped to inform the proposed rule. To develop this rule, USDA considered over 136,000 public comments received on the proposed rule. State agencies, school nutrition professionals, advocacy groups, industry respondents, professional associations, school districts, CACFP sponsoring organizations, dietitians, and individuals submitted public comments on the proposed rule.

Nature of Concerns and the Need To Issue This Rule

As noted in *Section 1: Background,* child nutrition program stakeholders that commented on the proposed rule raised concerns that changes to the school meal patterns could negatively impact student participation and consumption of meals. Stakeholders also cited issues with product availability, suggesting that the proposed added sugars limits and sodium reductions would cause vendors to leave the school nutrition market and make it more difficult for schools to procure products for meals. The proposed implementation timeframes were also a concern for some stakeholders, who argued that schools would need more time to successfully implement the changes. Stakeholders also raised concerns about school food finances. For example, a school district respondent suggested that transitioning to new or updated requirements would involve purchasing new products, which they asserted would be more expensive. This respondent also raised concerns about the potential for reduced student participation under the updated requirements, which they noted could

[171] As detailed in the proposed rule, USDA held listening sessions with Academy of Nutrition and Dietetics, American Beverage Association, American Commodity Distribution Association, American Heart Association, Center for Science in the Public Interest, Education Trust, FoodCorps, Friends of the Earth, International Dairy Foods Association, National Congress of American Indians, National Indian Education Association, School Nutrition Association, State agencies, Urban School Food Alliance, Whole Grains Council members, and local school districts, including tribally-run schools, and others.

negatively impact school food finances. Another respondent raised similar concerns in connection to the sodium proposal, suggesting that reduced sodium could result in less palatable meals. This respondent suggested that less palatable meals could lead to reduced student participation in school meals, which could negatively impact school food finances. Other respondents suggested that schools are still dealing with high food costs and supply chain issues or provided general comments asserting that more nutritious foods (such as foods with less added sugars) could be more expensive compared to foods that schools currently offer. Stakeholders from the CACFP community expressed concern that USDA did not adequately engage the CACFP community prior to publishing the proposed rule.

USDA greatly appreciates input that child nutrition program stakeholders provided in advance of the proposed rule and through the public comment process. In developing this rule, USDA considered the *Dietary Guidelines,* robust stakeholder input, and lessons learned from prior rulemakings. Further, according to the National School Lunch Act (NSLA, 42 U.S.C. 1758(f)), schools participating in the school lunch or breakfast program are required to serve lunches and breakfasts that are consistent with the goals of the most recent *Dietary Guidelines* and that consider the nutrient needs of children who may be at risk for inadequate food intake and food insecurity. This rulemaking also advances the mission of USDA, which includes a focus on providing effective, science-based public policy leadership in food and nutrition.[172]

Extent To Which We Meet Those Concerns

Through this rulemaking, USDA is updating the school meal patterns in a practical and durable manner for the long-term. USDA has considered the impact of this rulemaking on State agencies, schools, and other child nutrition program operators. This rule aims to update the meal patterns to align with the goals of the *Dietary Guidelines for Americans, 2020–2025* in the most effective and least burdensome manner. For example, while USDA considered a more restrictive milk alternative in the proposed rule, this rule will continue to allow schools to offer all K–12 students flavored milk. Similarly, while USDA considered an alternative approach in the proposed rule, this rule will maintain the current whole grains requirement for school meals, preventing State agencies and schools from needing to implement a new whole grains requirement. When compared to the proposed rule, this rule also allows schools even more time to gradually reduce sodium in school meals and does not go as far as the proposed rule. USDA has also committed to conducting a study on potential associations between sodium reduction and student participation in the school meal programs. Further, this rulemaking includes changes that simplify program operations, for example, by easing restrictions around substituting vegetables for fruits at breakfast; aligning crediting for nuts and seeds, and nut and seed butters, across child nutrition programs; allowing schools to more easily offer meats/meat alternates at breakfast; and providing an additional exception to the professional standards hiring requirements for medium and large local educational agencies. This rulemaking retains other existing regulatory provisions to the extent possible.

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule permits State or local agencies operating the school lunch or breakfast programs to establish more rigorous nutrition requirements or additional requirements for school meals that are not inconsistent with the nutritional provisions of the rulemaking. Such additional requirements are permissible as part of an effort by a State or local agency to enhance school meals or the school nutrition environment. To illustrate, State or local agencies are permitted to establish more restrictive sodium limits. The sodium limits are stated as maximums (*e.g.,* ≤) and could not be exceeded; however, lesser amounts than the maximum could be served. Likewise, State or local agencies are permitted to accelerate implementation of the dietary specification for added sugars in an effort to reduce added sugars in school meals at an earlier date. However, State or local agencies cannot, for example, allow schools to exceed the added sugars limits in this rulemaking as that would be inconsistent with the rulemaking's provisions. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed the rule, in accordance with Departmental Regulation 4300–004, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on participants on the basis of age, race, color, national origin, sex (including gender identity and sexual orientation), or disability. Due to the unavailability of data, FNS is unable to determine whether this rule will have an adverse or disproportionate impact on protected classes among entities that administer and participate in Child Nutrition Programs. However, the FNS Civil Rights Division finds that the current mitigation and outreach strategies outlined in the regulations and this Civil Rights Impact Analysis (CRIA) provide ample consideration to applicants' and participants' ability to participate in the NSLP, SBP, SMP, and CACFP. The promulgation of this rule will impact school food authorities and CACFP institutions and facilities by updating certain program requirements, including nutrition requirements.

Participants in the NSLP, SMP, SBP, and CACFP may be impacted when the requirements under the rule are implemented by school food authorities and CACFP institutions and facilities. The changes are expected to provide participants in NSLP, SBP, SMP, and CACFP wholesome and appealing meals that reflect the goals of the *Dietary Guidelines* and meet their needs and preferences.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. What follows is a summary of Tribal

[172] USDA's mission is: ''To serve all Americans by providing effective, innovative, science-based public policy leadership in agriculture, food and nutrition, natural resource protection and management, rural development, and related issues with a commitment to deliverable equitable and climate-smart opportunities that inspire and help America thrive.'' See: U.S. Department of Agriculture. *Strategic Plan Fiscal Years 2022–2026.* Available at: *https://www.usda.gov/sites/default/files/documents/usda-fy-2022-2026-strategic-plan.pdf.*

implications are present and consultation/coordination taken to date.

This regulation has Tribal implications. As noted in the proposed rule, USDA held listening sessions with Tribal stakeholders in summer 2022, and took feedback received during those listening session into account when developing the proposed rule. USDA held a Tribal consultation on May 23, 2023, during which Tribal leaders provided feedback and input on the proposed rule. Tribal leaders supported improving children's health and nutrition, for example, by reducing sugars in children's diets. Regarding the term ''traditional foods,'' Tribal leaders supported use of the term as detailed in Section 8: Traditional Indigenous Foods and confirmed that it is a recognizable term. Tribal leaders maintained that traditional Indigenous foods can be more expensive to procure compared to other foods and requested additional reimbursement to provide traditional Indigenous foods in school meals. Although USDA does not have the authority to provide additional reimbursement, USDA appreciates Tribal leaders sharing this concern. If a Tribe requests additional consultation in the future, USDA's Office of Tribal Relations will ensure meaningful consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chap. 35; 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collection of information requirements by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB Control Number. This rulemaking finalizes long-term school nutrition requirements based on the goals of the *Dietary Guidelines for Americans, 2020–2025,* robust stakeholder input, and lessons learned from prior rulemakings. Notably, this rulemaking gradually phases in added sugars limits for the school lunch and breakfast programs and in the Child and Adult Care Food Program (CACFP), updates total sugars limits for breakfast cereals and yogurt to added sugars limits. As a reflection of feedback from stakeholders, this rule implements a single sodium reduction in the school lunch and breakfast programs and commits to studying the potential associations between sodium reduction and student participation. This rulemaking addresses a variety of other school meal requirements, including establishing long-term milk and whole grain requirements. Finally, this rulemaking strengthens Buy American requirements. While this rulemaking takes effect school year (SY) 2024–2025, the Department is gradually phasing in required changes over time.

In accordance with the PRA, this rule contains new information collection requirements, which are subject to review and approval by OMB. These new requirements will be added into the following information collections: OMB Control Number 0584–0006 7 CFR part 210 National School Lunch Program (expiration date September 30, 2026), OMB Control Number 0584–0012 7 CFR part 220 (expiration date August 31, 2025), OMB Control Number 0584–0055 Child and Adult Care Food Program (expiration date August 31, 2025), and OMB Control Number 0584–0280 7 CFR part 225, Summer Food Service Program (expiration date September 30, 2025). This rulemaking finalizes new reporting and recordkeeping requirements for State agencies and school food authorities administering the National School Lunch Program (NSLP) and School Breakfast Program (SBP). This rulemaking also finalizes one recordkeeping requirement on Summer Food Service Program (SFSP) and CACFP operators. The final rule contains existing information collections in the form of recordkeeping requirements that have been approved by OMB under OMB Control Number 0584–0006 7 CFR part 210 National School Lunch Program (expiration date September 30, 2026) and OMB Control Number 0584–0012 7 CFR part 220 School Breakfast Program (expiration date August 31, 2025); however, the provisions in this rule do not impact these requirements or their associated burden. Therefore, they are not included in the discussion concerning the burden impact resulting from the provisions in this rulemaking. This rulemaking does not impact existing and approved information collection requirements.

USDA is submitting for public comment the information collection burden that will result from adoption of the new recordkeeping and reporting requirements finalized in the rulemaking. The establishment of the information requirements in the rule is contingent upon OMB approval. When the rulemaking information collection request is approved, the Department will publish a separate notice in the **Federal Register** announcing OMB's approval.

Comments on the information collection requirements addressed in the rule may be submitted. Comments must be received by June 24, 2024. Send comments to Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20403, Fax: 202–395–7285, or email to *oira_submission@omb.eop.gov.* Please also send a copy of your comments to School Meals Policy Division, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314. For further information, please contact Marlana Bates at *marlana.bates@usda.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

USDA published a proposed rule on February 7, 2023 (88 FR 8050), and received comments from the public concerning the reporting and recordkeeping requirements and their associated burden. Consequently, USDA has revised certain provisions in the rule, and therefore has updated the reporting and recordkeeping information requirement burden estimates from the estimates reported in the proposed rule. In response to public input, USDA made changes to the Buy American provision which impacts the information collection. The rule will now gradually phase in the proposed non-domestic food cap of 5 percent. USDA will introduce a 10 percent cap in SY 2025–2026, an 8 percent cap in SY 2028–2029, and a 5 percent cap in SY 2031–2032. Additionally, USDA is including in this rule that when a school food authority purchases a food item found on the Federal Acquisition Regulations (FAR) 25.104 Nonavailable articles list, no further documentation is required. Food products from the FAR Nonavailable articles list must be included in the non-domestic food cap calculation. Despite the changes to the Buy American provision, the hourly burden calculations are unlikely to decrease substantially from a quarter of an hour per record. For the menu planning options for substituting vegetables for grains in Tribal communities, the estimated burden has

been extended by a quarter of an hour per record for SFSP and CACFP operators in response to public comment that the estimate in the proposed rule was too low. USDA originally estimated that it would take an hour to complete this requirement. Based on the public comment and further evaluation of the requirement and comparison to other similar menu planning requirements, USDA now estimates it will take an additional 15 minutes to complete this requirement. The revised time estimate for this requirement is now one hour and 15 minutes.

The estimated numbers of responses, and burden hours for the information collection requirements that were included in the February 7, 2023, proposed rule are being revised in the final rule. In addition, the baseline for one of the affected collections (OMB Control Number 0584–0006) has been revised since the issuance of the proposed rule. These revisions are based on updating previous information collections rather than creating a new collection as was in the proposed rule. Between the publication of the proposed rule and the final rule, the following ICR expired: OMB Control Number 0584–0006. Because this collection has since been renewed and updated with an expiration date of September 30, 2026, the decision was made to switch to revisions of previous collections rather than a new information collection. The number of respondents now align with those in the four previous information collections. Burden was also added to account for the changes in the NSLP and SBP, instead of a combined estimate for both programs for the three applicable provisions. Additionally, burden was added to account for menu development, which had not been considered in previous information collections. As a result, the number of responses and burden hours for this rule have increased over those estimated for the proposed rule.

USDA now estimates that this rule will have an estimated 19,705 respondents, 763,892 responses, and 635,196 burden hours. This is the same number of respondents, an increase of 549,934 responses, and an increase of 204,897 burden hours in comparison to the estimations included in the proposed rule. These estimates are totaled from four information collections, each of which is detailed in sections below. First, an overview of each part of the rule that adds burden is below, including professional standards exception, Buy American, substituting vegetables for grains in Tribal communities, menu planning options, and annualized costs.

Professional Standards Exception

This rulemaking codifies the proposed hiring exception to allow State agencies to approve the hiring of an individual to serve as a school nutrition program director in medium (2,500 to 9,999 students) or large (10,000 or more students) local educational agencies, for individuals who have 10 years or more of school nutrition program experience but who do not hold a bachelor's or associate's degree.

Buy American

The National School Lunch Act (NSLA, 42 U.S.C. 1760(n)) and program regulations at 7 CFR 210.21(d)(2)(i) and 220.16(d)(2)(i), require school food authorities to purchase domestic commodities or products ''to the maximum extent practicable.'' This provision, known as the Buy American provision, was initially implemented in 1998 and supports the mission of the child nutrition programs, which is to serve children nutritious meals and support American agriculture. There are two limited exceptions to the Buy American provision that school food authorities may implement when purchasing domestic foods is not feasible. The exceptions apply when a product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality, or when competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

The final rule maintains the current two limited exceptions to the Buy American provision and clarifies in regulation that it is the responsibility of the school food authority to determine whether an exception applies. In addition, in response to public comment, USDA is including in this rule that when a school food authority purchases a food item found on the Federal Acquisition Regulations (FAR) 25.104 Nonavailable articles list, no further documentation is required. The Nonavailable articles list is a list of items that have been deemed not available in the U.S. and excepted from the Buy American statute.[173] Food products from the FAR Nonavailable articles list must be included in the non-domestic food cap calculation. Also, in response to public comments that suggested a 5 percent cap is too restrictive under current procurement conditions, USDA will use a phased approach to gradually reach the proposed 5 percent of total costs per school year cap on non-domestic food purchases.

The phased approach will be as follows:

- Beginning in SY 2025–2026, the non-domestic food cost cap will be 10 percent.
- Beginning in SY 2028–2029, the non-domestic food cost cap will be 8 percent.
- Beginning in SY 2031–2032, the non-domestic food cost cap will be 5 percent.

For oversight purposes, the final rule codifies a recordkeeping requirement for school food authorities to maintain documentation to demonstrate that their non-domestic food purchases do not exceed the above specified annual threshold by year. This recordkeeping requirement would codify a requirement to maintain documentation for use of exceptions to the Buy American provision. While school food authorities may already maintain documentation to demonstrate compliance with the Buy American provision in accordance with guidance made available by USDA, the need to maintain this documentation is currently not discussed in the regulations governing the Buy American provisions. Therefore, the rule element to codify recordkeeping requirements to document compliance with the Buy American provision, including the use of exceptions to the provision, and their associated burden are addressed as a revision in the information collection request for the rule.

Lastly, the rule requires school food authorities to include the Buy American provision in procurement procedures, solicitations, and contracts for foods and food products procured using informal and formal procurement methods, and in awarded contracts. These recordkeeping requirements are being added to the information collection associated with the rule.

Substituting Vegetables for Grains in Tribal Communities

The rulemaking codifies the proposal to allow school food authorities that are tribally operated, operated by the Bureau of Indian Education, and that serve primarily American Indian or Alaska Native children to serve vegetables to meet the grains requirement in NSLP and SBP. In addition, the rulemaking codifies the proposal to extend this menu planning option to SFSP and CACFP sponsors,

[173] 41 U.S.C chapter 83 is the Buy American statute that requires public agencies to procure articles, materials, and supplies that were mined, produced, or manufactured in the United States, substantially all from domestic components. Available at: *https://www.acquisition.gov/far/part-25.*

institutions, and facilities that serve primarily American Indian or Alaska Native participants. Additionally, this rule allows all schools, sponsors, institutions, and facilities in Guam and Hawaii to serve vegetables to meet the grains or breads requirement. The menu planning option aims to improve the child nutrition programs for American Indian and Alaska Native children and build on USDA's commitment to support traditional foodways.

Menu Planning Options

This rulemaking makes a variety of changes to school meal nutrition requirements, including to implement quantitative limits for the following leading sources of added sugars in school meals: breakfast cereals, yogurt, and flavored milk. The rulemaking will also implement a dietary specification limiting added sugars to less than 10 percent of calories per week in the school lunch and breakfast programs. USDA acknowledges these changes will be reflected in schools' production and menu records that show how meals offered at school contribute to the required food components and food quantities for each age/grade group every day.

Longstanding recordkeeping requirements established at 7 CFR 210.10(a)(3) and 7 CFR 220.8(a)(3) require schools to maintain menu records for the meals produced and served in schools participating in the NSLP and SBP, but additional burden must be addressed for developing menus. This includes developing menus that meet existing and updated USDA menu specifications, including but not limited to, whole grains, milk, sodium, and added sugars. USDA expects there to be additional burden in this information collection from the requirements to limit added sugars in the NSLP and SBP or any other changes to school meal nutrition requirements included in this rulemaking, affecting OMB Control Number 0584–0006 7 CFR part 210 National School Lunch Program and OMB Control Number 0584–0012 7 CFR part 220 School Breakfast Program.

Annualized Costs

As a result of the implementation of the provisions in this rule, there will be some start-up and maintenance costs. In public comments, these included costs such as extra supplies or funding to implement the updated meal patterns, as well as updating costs to update websites, materials, menus, and recipes. Another potential cost for school food authorities detailed in public comments includes updating meal planning databases. Public comments also pointed to start-up costs for implementing the Buy American provision over time, mainly due to updated forms and labor associated with updating ordering procedures/documentation.

USDA estimates a cost of $50,000 per State agency to account for maintenance and start-up costs associated with the rule, and an additional $1000 per school food authority to account for maintenance of databases, menu planning, materials, and other rule related costs for the NSLP, under OMB Control Number 0584–0006. This would result in a total of $2,800,000 in costs for State agencies and $19,019,000 in costs for school food authorities, or $21,819,000 in total costs as a result of this final rule. This $21,819,000 would only be added to OMB Control Number 0584–0006 since these State agencies and school food authorities operate both the NSLP and SBP.

For CACFP OMB Control Number 0584–0055, an additional $305,000 should be added to account for the start-up costs associated with menu changes for CACFP operators. For SFSP OMB Control Number 0584–0280, an additional $10,000 should be added to account for the start-up costs associated with menu changes for SFSP operators. These totals result from an additional $500 per operator affected by the menu changes.

Information Collections

Title: 7 CFR part 210 National School Lunch Program

Form Number: None

OMB Control Number: 0584–0006

Expiration Date: September 30, 2026

Type of Request: Revision of a currently approved collection

Abstract: This is a revision of a currently approved information collection to add new reporting and recordkeeping information requirements that are discussed in the rule, into the collection. Below is a summary of the changes in the final rule and the accompanying reporting and recordkeeping requirements that will impact the burden that program requirements have on State governments and school food authorities. USDA has updated the number of responses and burden hours associated with the collection of information requirements included in the rule since publication of the proposed rule, *Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Dietary Guidelines for Americans,* published on February 7, 2023. Revisions are based on adding in burden for menu development including the development resulting from the provisions in the new rule.

Reporting

The changes in this rule will add new reporting requirements related to professional standards to the existing requirements that are currently approved under OMB Control Number 0584–0006.

State Agencies

The hiring exception for professional standards introduces a reporting requirement at 7 CFR 210.30(b)(1)(iv) for State agencies, who would be required to review and respond to each request submitted on behalf of school food authorities. USDA estimates 56 State agencies would review and either approve or deny each approximately 17 requests received per each State agency, for a total of 951 responses, and that it takes approximately 30 minutes (.5 hours) to review and respond to each request, for a total of 476 hours. USDA estimates that this new requirement will add 476 burden hours and 951 responses to the currently approved burden for OMB Control Number 0584–0006.

School Food Authorities

The hiring exception for professional standards adds a new requirement for the school food authorities at 7 CFR 210.30(b)(1)(iv). USDA estimates 951 school food authorities would submit 1 request to their respective State agencies to hire an individual to serve as the school nutrition program director in medium or large local educational agencies each year, and that each respondent will take approximately 30 minutes (.5 hours) to develop and submit this request for a total of 476 hours. USDA estimates that this new requirement will add an estimated 476 burden hours and 951 responses into the currently approved burden for OMB Control Number 0584–0006.

Recordkeeping

The changes in this rule will add new recordkeeping requirements related to professional standards, Buy American, substituting vegetables for grains in Tribal communities, and menu planning options to the existing requirements that are currently approved under OMB Control Number 0584–0006.

State Agencies

In addition to the reporting requirements associated with the hiring exception to allow State agencies to approve the hiring of individuals who do not meet the educational criteria but have 10 years or more of school

nutrition program experience to serve as the school nutrition program director, State agencies would be required to maintain the requests that the school food authorities developed and submitted to them for review and approval, as stated in 7 CFR 210.30(b)(1)(iv). The new requirement would impact an estimated 56 State agencies, who will be reviewing an estimated 17 requests, for 951 responses. USDA estimates it takes the State agencies approximately 15 minutes (.25 hours) to maintain each record annually, for a total of 238 hours. USDA estimates that this new requirement will add 238 hours and 951 responses to the currently approved burden for OMB Control Number 0584–0006.

School Food Authorities

The new requirement at 7 CFR 210.30(b)(1)(iv) also requires school food authorities to maintain documentation of requests to hire individuals under the Professional Standards Exception provision. This requirement adds an estimated 238 burden hours and 951 responses into the collection. USDA estimates that the same burden estimates will be added to the existing burden approved for OMB Control Number 0584–0006 once these requirements are merged into that collection.

USDA estimates the recordkeeping requirement at 7 CFR 210.21(d)(5) for school food authorities to maintain documentation to demonstrate that their non-domestic food purchases do not exceed the proposed specified annual threshold will impact approximately 19,019 school food authorities. USDA estimates these 19,019 respondents will develop and maintain 10 records each year, for a total of 190,190 responses, and that it takes approximately 15 minutes (.25 hours) each month to complete the requirement for each record. This requirement adds a total of 47,548 annual burden hours and 190,190 responses into the information collection request for OMB Control Number 0584–0006. In addition, USDA estimates the final recordkeeping requirement at 7 CFR 210.21(d)(3) to include the Buy American provision in procurement procedures, solicitations, and contracts would impact approximately 19,019 school food authorities. USDA estimates these 19,019 respondents will revise their procurement procedures, solicitations, and contracts and maintain these records, and estimates they would spend approximately 10 hours each year meeting this requirement. This requirement would add a total of 190,190 annual burden hours and 19,019 responses into the information collection request for OMB Control Number 0584–0006.

Alongside the final provision is a requirement that the school food authorities using this option maintain documentation that they are tribally operated, are operated by the Bureau of Indian Education, or serve primarily American Indian or Alaska Native students. As described in the proposed rule, school food authorities and schools ''serving primarily American Indian or Alaska Native children'' include school food authorities and schools where American Indian or Alaska Native children represent the largest demographic group of enrolled children. This documentation would be maintained for program reviews. This recordkeeping requirement at 7 CFR 210.10(c)(3) establishes a collection of information for school food authorities that participate in the school meals programs and elect to implement the operational flexibility to serve vegetables in place of grains in school meals. USDA estimates 317 school food authorities operating the NSLP would maintain documentation each year to demonstrate schools using the menu planning option meet the criteria, and that it would take approximately 1 hour to collect and maintain such documentation annually. This requirement for school food authorities would add an estimated 317 annual burden hours and 317 responses into the currently approved burden for OMB Control Number 0584–0006.

Another requirement in the rule includes menu planning options, in which school food authorities develop menu records (beyond regular menu maintenance) that meet updated and new USDA specifications from the rule, under 7 CFR 210.10(a)(3). This also includes following all previous rule menu specifications. USDA estimates 19,019 school food authorities would develop menu records in 30 minutes (0.5 hours), 10 times per year. This requirement would add an estimated 95,095 annual burden hours and 190,190 responses into the currently approved burden for OMB Control Number 0584–0006.

Summary

USDA estimates that the burden for the new reporting and recordkeeping information requirements that are impacted by this final rule will have 19,075 respondents, 403,520 responses, and 334,576 burden hours. Once the information collection requests related to this rule is approved by OMB, USDA expects that the total information collection burden for OMB Control Number 0584–0006 7 CFR part 210 National School Lunch Program will be 115,935 respondents, 48,035,516 responses, and 10,143,277 burden hours. This is an estimated increase of 403,520 responses and 334,576 hours, with no increase in respondents, from the currently approved burden for this collection.

Respondents (Affected Public): State Agencies (State governments), and School Food Authorities (local governments).

Reporting

Estimated Number of Respondents: 1,007.

Estimated Number of Responses per Respondent: 1.89.

Estimated Total Annual Responses: 1,902.

Estimated Time per Response: 30 minutes (.50 hours).

Estimate Total Annual Burden on Respondents: 951 hours.

Recordkeeping

Estimated Number of Respondents: 19,075.

Estimated Number of Responses per Respondent: 21.05.

Estimated Total Annual Responses: 401,618.

Estimated Time per Response: Approximately 50 minutes (0.83 hours).

Estimate Total Annual Burden on Respondents: 333,625.

BILLING CODE 3410–30–P

Reporting for OMB Control Number 0584-0006								
Description of Activities	**Regulation Citation**	**Estimated # of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Average Burden Hours per Response**	**Estimated Total Annual Burden Hours Due to Final Rulemaking**	**Hours Currently Approved**	**Estimated Total Difference**
State agencies review and approve/deny each request to hire a school nutrition program director in a medium or large local educational agency who does not meet professional standards educational criteria	210.30(b)(1)(iv)	56	17	951	.5	476	0	476
Total State Agency Reporting		**56**		**951**		**476**	**0**	**476**
School food authorities develop and submit requests to hire a school nutrition program director in a medium or large local educational agency who does not meet professional standards educational criteria	210.30(b)(1)(iv)	951	1	951	.5	476	0	476
Total School Food Authority Reporting		**951**		**951**		**476**	**0**	**476**
Total Reporting		**1,007**	**1.89**	**1,902**	**.50**	**951**	**0**	**951**

Recordkeeping for OMB Control Number 0584-0006								
Description of Activities	**Regulation Citation**	**Estimated # of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Average Burden Hours per Response**	**Estimated Total Annual Burden Hours Due to Final Rulemaking**	**Hours Currently Approved**	**Estimated Total Difference**
State agencies maintain school food authorities requests to hire individuals in medium or large local educational agencies who do not meet professional standards educational criteria	210.30(b)(1)(iv)	56	17	951	0	238	0	238
Total State Agency Recordkeeping		**56**		**951**		**238**	**0**	**238**
School food authorities maintain documentation of requests to hire individuals in medium or large local educational agencies who do not meet professional standards educational criteria	210.30(b)(1)(iv)	951	1	951	0	238	0	238
School food authorities maintain documentation demonstrating compliance with the Buy American provision	210.21(d)(5)	19,019	10	190,190	0	47,548	0	47,548
School food authorities include language requiring Buy American in all procurement procedures, solicitations, and contracts and maintain such documentation	210.21(d)(3)	19,019	1	19,019	10	190,190	0	190,190
School food authorities maintain records to demonstrate that schools are tribally operated, are	210.10(c)(3)	317	1	317	1	317	0	317

operated by the Bureau of Indian Education, or serve primarily American Indian or Alaska Native students								
School food authorities develop menu records (beyond regular menu maintenance) that meet updated and new USDA specifications from the rule	210.10(a)(3)	19,019	10	190,190	1	95,095	0	95,095
Total School Food Authority Recordkeeping		**19,019**		**400,667**		**333,387**	**0**	**333,387**
Total Recordkeeping Burden		**19,075**		**401,618**		**333,625**	**0**	**333,625**

SUMMARY OF BURDEN: RECORDKEEPING AND REPORTING	
TOTAL NO. RESPONDENTS	115,935
AVERAGE NO. RESPONSES PER RESPONDENT	414.33
TOTAL ANNUAL RESPONSES	48,035,516
AVERAGE HOURS PER RESPONSE	0.21
TOTAL BURDEN HOURS	10,143,277

BILLING CODE 3410–30–C

Title: 7 CFR part 220, School Breakfast Program.

Form Number: None.

OMB Control Number: 0584–0012.

Expiration Date: August 31, 2025.

Type of Request: Revision of a currently approved collection.

Abstract: This is a revision of a currently approved information collection, that adds new recordkeeping information requirements that are discussed in the final rule into the collection. Below is a summary of the changes in the final rule and the accompanying recordkeeping requirements that will impact the burden that program requirements have on school food authorities. The burden was separated out for the SBP from the NSLP, and burden hours were added to account for menu development, both of which added additional recordkeeping burden hours.

Recordkeeping

The changes in this rule will add new recordkeeping requirements related to Buy American, substituting vegetables for grains in Tribal communities, and menu planning options to the existing requirements that are currently approved under OMB Control Number 0584–0012.

School Food Authorities

USDA estimates the requirement at 7 CFR 220.16(d)(5) for school food authorities to maintain documentation to demonstrate that their non-domestic food purchases do not exceed the proposed specified annual threshold will impact approximately 17,117 school food authorities. USDA estimates these 17,117 respondents will develop and maintain 10 records each year, for a total of 171,170 responses, and that it takes approximately 15 minutes (.25 hours) each month to complete the requirement for each record. This requirement adds a total of 42,793 annual burden hours and 171,170 responses into the currently approved burden for OMB Control Number 0584–0012.

USDA estimates the requirement at 7 CFR 220.16(d)(3) to include the Buy American provision in procurement procedures, solicitations, and contracts would impact approximately 17,117 school food authorities. USDA estimates these 17,117 respondents will revise their procurement procedures, solicitations, and contracts and maintain these records, and estimates they would spend approximately 10 hours each year meeting this requirement. This requirement would add a total of 171,170 annual burden hours and 17,117 responses into the currently approved burden for OMB Control Number 0584–0012.

This requirement at 7 CFR 220.8(c)(3) establishes a collection of information for school food authorities that participate in the school meals programs and elect to implement the operational flexibility to serve vegetables in place of grains in school meals. USDA estimates 285 school food authorities operating the SBP would maintain documentation each year to demonstrate schools using the menu planning option meet the criteria, and that it would take approximately 1 hour to collect and maintain such documentation annually. USDA estimates that this new requirement for school food authorities

would add an estimated 285 annual burden hours and 285 responses into the currently approved burden for OMB Control Number 0584–0012.

Another requirement in the rule, includes menu planning options, in which school food authorities develop menu records (beyond regular menu maintenance) that meet updated and new USDA specifications from the rule, under 7 CFR 220.8(a)(3). This also includes following all previous rule menu specifications. USDA estimates 17,117 school food authorities would develop breakfast menu records in 30 minutes (0.5 hours), 10 times per year. This requirement would add an estimated 85,585 annual burden hours and 171,170 responses into the currently approved burden for OMB Control Number 0584–0012.

Summary

USDA estimates that the burden for the new recordkeeping information requirements that are impacted by this final rule will have 17,117 respondents, 359,742 responses, and 299,833 burden hours. Once the information collection requests related to this rule is approved by OMB, USDA expects that the total information collection burden for OMB Control Number 0584–0012 7 CFR part 220 School Breakfast Program will be 105,700 respondents, 33,462,278 responses, and 4,036,508 burden hours. This is an estimated increase of 359,742 responses and 299,833 hours, with no increase in respondents, from the currently approved burden for this collection.

Respondents (Affected Public): School Food Authorities (local governments).

Recordkeeping

Estimated Number of Respondents: 17,117.

Estimated Number of Responses per Respondent: 21.02.

Estimated Total Annual Responses: 359,742.

Estimated Time per Response: Approximately 50 minutes (0.83 hours).

Estimate Total Annual Burden on Respondents: 299,833.

BILLING CODE 3410–30–P

Recordkeeping for OMB Control Number 0584-0012								
Description of Activities	**Regulation Citation**	**Estimated # of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Average Burden Hours per Response**	**Estimated Total Annual Burden Hours Due to Final Rulemaking**	**Hours Currently Approved**	**Estimated Total Difference**
School food authorities maintain documentation demonstrating compliance with the Buy American provision	220.16(d)(5)	17,117	10	171,170	0	42,793	0	42,793
School food authorities include language requiring Buy American in all procurement procedures, solicitations, and contracts and maintain such documentation	220.16(d)(3)	17,117	1	17,117	10	171,170	0	171,170
School food authorities maintain records to demonstrate that schools are tribally operated, are operated by the Bureau of Indian Education, or serve primarily American Indian or Alaska Native students	220.8(c)(3)	285	1	285	1	285	0	285
School food authorities develop menu records (beyond regular menu maintenance) that meet updated and new USDA specifications from the rule	220.8(a)(3)	17,117	10	171,170	1	85,585	0	85,585
Total School Food Authority Recordkeeping		17,117		359,742		299,833	0	299,833
Total Recordkeeping		17,117		359,742		299,833	0	299,833

SUMMARY OF BURDEN: RECORDKEEPING AND REPORTING	
TOTAL NO. RESPONDENTS	105,700
AVERAGE NO. RESPONSES PER RESPONDENT	316.5778
TOTAL ANNUAL RESPONSES	33,462,278
AVERAGE HOURS PER RESPONSE	0.1206
TOTAL BURDEN HOURS	4,036,508

BILLING CODE 3410–30–C

Title: Child and Adult Care Food Program.

Form Number: None.

OMB Control Number: 0584–0055.

Expiration Date: August 31, 2025.

Type of Request: Revision of a currently approved collection.

Abstract: This is a revision of a currently approved information collection, that adds new recordkeeping information requirements that are discussed in the final rule into the collection. Below is a summary of the changes in the final rule and the accompanying recordkeeping requirements that will impact the burden that program requirements have on program operators in the CACFP. Burden was split up by institutions and facilities for the menu planning options, which is an update from the proposed rule, in which estimates were combined. In response to public comment, time to maintain documentation was added to estimates from the proposed rule.

Recordkeeping

The changes in this rule will add new recordkeeping requirements related to substituting vegetables for grains in Tribal communities to the existing requirements that are currently approved under OMB Control Number 0584–0055.

CACFP—Businesses

The provision for substituting grains for vegetables in Tribal communities adds a new requirement for CACFP businesses (facilities and institutions) serving primarily American Indian or Alaska Native participants and electing to implement this menu planning option. CACFP operators electing to serve vegetables to meet the grains requirement under this provision are also required to maintain documentation demonstrating that the site qualifies for the menu planning option.

Institutions

USDA estimates the recordkeeping requirement at 7 CFR 226.20(f) would require approximately 70 institutions to collect and maintain documentation each year to demonstrate that the site serves primarily American Indian or Alaska Native participants, and that it takes approximately 1.25 hours to collect and maintain such documentation. USDA estimates this collection of information would add an estimated 88 annual burden hours and 70 responses for CACFP operators and the information collection request associated with this provision under OMB Control Number 0584–0055.

Facilities

USDA estimates the recordkeeping requirement at 7 CFR 226.20(f) would require approximately 540 facilities to collect and maintain documentation each year to demonstrate that the site serves primarily American Indian or Alaska Native participants, and that it takes approximately 1.25 hours to collect and maintain such documentation. USDA estimates this collection of information would add an estimated 675 annual burden hours and 540 responses for CACFP operators and the information collection request associated with this provision under OMB Control Number 0584–0055.

Summary

USDA estimates that the burden related to the new recordkeeping information requirements that are discussed in this final rule will have 610 respondents, 610 responses, and 763 burden hours. Once the information collection requests related to this rule is approved by OMB, USDA expects that the total information collection burden for OMB Control Number 0584–0055 Child and Adult Care Food Program will be 3,794,949 respondents, 16,213,703 responses, and 4,213,973 burden hours. This is an estimated increase of 610 responses and 763 burden hours from the currently approved burden for this collection, with no change in the number of respondents.

Respondents (Affected Public): Child and Adult Care Food Program (businesses, which include institutions and facilities).

Recordkeeping

Estimated Number of Respondents: 610.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 610.

Estimated Time per Response: Approximately 75 minutes (1.25 hours).

Estimate Total Annual Burden on Respondents: 763.

BILLING CODE 3410–30–P

Recordkeeping for OMB Control Number 0584-0055								
Description of Activities	**Regulation Citation**	**Estimated # of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Average Burden Hours per Response**	**Estimated Total Annual Burden Hours Due to Final Rulemaking**	**Hours Currently Approved**	**Estimated Total Difference**
Child and Adult Care Food Program Operators (**institutions**) maintain documentation demonstrating that service sites qualify for the menu planning option to serve vegetables to meet the grains requirement by serving primarily American Indian and Alaska Native children	226.20(f)	70	1	70	1	88	0	88
Child and Adult Care Food Program Operators (**facilities**) maintain documentation demonstrating that service sites qualify for the menu planning option to serve vegetables to meet the grains requirement by serving primarily American Indian and Alaska Native children	226.20(f)	540	1	540	1	675	0	675
Total Child and Adult Care Food Program Operators (facility and institution level) Recordkeeping		610		610		763	0	763
Total Recordkeeping OMB Control Number 0584-0055		610		610		763	0	763

SUMMARY OF BURDEN: RECORDKEEPING AND REPORTING	
TOTAL NO. RESPONDENTS	3,794,949
AVERAGE NO. RESPONSES PER RESPONDENT	4.272
TOTAL ANNUAL RESPONSES	16,213,703
AVERAGE HOURS PER RESPONSE	0.260
TOTAL BURDEN HOURS	4,213,973

BILLING CODE 3410–30–C

Title: 7 CFR part 225, Summer Food Service Program.

Form Number: None.

OMB Control Number: 0584–0280.

Expiration Date: September 30, 2025.

Type of Request: Revision of a currently approved collection.

Abstract: This is a revision of a currently approved information collection that adds a recordkeeping information requirement that is discussed in the final rule into the collection. Below is a summary of the changes in the final rule and the accompanying recordkeeping requirement that will impact the burden that program requirements have on the program operators in the SFSP. Substituting vegetables for grains in Tribal communities is the only provision in the final rule adding burden to this collection.

Recordkeeping

The changes in this rule will add a new recordkeeping requirement related to substituting vegetables for grains in Tribal communities to the existing requirements that are currently approved under OMB Control Number 0584–0280.

Businesses (Operators)

The provision to substitute grains for vegetable establishes a recordkeeping requirement for SFSP operators serving primarily American Indian or Alaska Native participants and electing to implement this menu planning option. SFSP operators electing to serve vegetables to meet the grains requirement under this provision are also required to maintain documentation demonstrating that the site qualifies for the menu planning option.

USDA estimates the recordkeeping requirement under 7 CFR 225.16(f)(3) would require approximately 20 SFSP operators to collect and maintain documentation each year to demonstrate that the site serves primarily American Indian or Alaska Native participants, and that it takes approximately 1.25 hours to collect and maintain such documentation, for 25 hours. USDA estimates that this new requirement would add 25 annual burden hours and 20 responses into the burden for OMB Control Number 0584–0280.

Summary

As a result of the changes outlined in this rulemaking, USDA estimates that the burden for rule-related requirements for OMB Control Number 0584–0280 will be 20 respondents, 20 responses, and 25 burden hours. Once the information collection requests related to this rule is approved by OMB, USDA expects that the total information collection burden for OMB Control Number 0584–0280 Summer Food Service Program will be 63,942 respondents, 391,815 responses, and 462,724 burden hours. This is an estimated increase of 20 responses and 25 burden hours from the currently approved burden for this collection, with no change in the number of respondents.

Respondents (Affected Public): Summer Food Service Program operators (non-profit institutions and camps).

Recordkeeping

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 20.

Estimated Time per Response: Approximately 75 minutes (1.25 hours).

Estimate Total Annual Burden on Respondents: 25.

BILLING CODE 3410–30–P

Recordkeeping for OMB Control Number 0584-0280								
Description of Activities	**Regulation Citation**	**Estimated # of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Average Burden Hours per Response**	**Estimated Total Annual Burden Hours Due to Final Rulemaking**	**Hours Currently Approved**	**Estimated Total Difference**
Summer Food Service Program sponsors maintain documentation demonstrating that service sites qualify for the menu planning option to serve vegetables to meet the grains requirement by serving primarily American Indian and Alaska Native children	225.16(f)(3)	20	1	20	1	25	0	25
Total Summer Food Service Program Operators (business level) Recordkeeping		20	1	20	1	25	0	25
Total Recordkeeping OMB Control Number 0584-0280		20	1	20	1	25	0	25

SUMMARY OF BURDEN: RECORDKEEPING AND REPORTING	
TOTAL NO. RESPONDENTS	63,942
AVERAGE NO. RESPONSES PER RESPONDENT	6.13
TOTAL ANNUAL RESPONSES	391,815
AVERAGE HOURS PER RESPONSE	1.181
TOTAL BURDEN HOURS	462,724

BILLING CODE 3410–30–C

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Grant programs—education, Grant program—health, Infants and children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping

requirements, School breakfast and lunch programs.

7 CFR Part 225

Food assistance programs, Grant programs—health, Infants and children, Labeling, Reporting and recordkeeping requirements.

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, FNS amends 7 CFR parts 210, 215, 220, 225, and 226 as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. Revise and republish § 210.2 to read as follows:

§ 210.2 Definitions.

For the purposes of this part:

2 CFR part 200, means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the National School Lunch Program).

Act means the National School Lunch Act, as amended.

Afterschool care program means a program providing organized child care services to enrolled school-age children afterschool hours for the purpose of care and supervision of children. Those programs must be distinct from any extracurricular programs organized primarily for scholastic, cultural or athletic purposes.

Applicable credits shall have the meaning established in 2 CFR part 200 and USDA implementing regulations 2 CFR parts 400 and 415.

Attendance factor means a percentage developed no less than once each school year which accounts for the difference between enrollment and attendance. The attendance factor may be developed by the school food authority, subject to State agency approval, or may be developed by the State agency. In the absence of a local or State attendance factor, the school food authority will use an attendance factor developed FNS. When taking the attendance factor into consideration, school food authorities will assume that all children eligible for free and reduced price lunches attend school at the same rate as the general school population.

Average Daily Participation means the average number of children, by eligibility category, participating in the Program each operating day. These numbers are obtained by dividing:

(1) The total number of free lunches claimed during a reporting period by the number of operating days in the same period;

(2) The total number of reduced price lunches claimed during a reporting period by the number of operating days in the same period; and

(3) The total number of paid lunches claimed during a reporting period by the number of operating days in the same period.

Child means:

(1) A student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under as described in paragraphs (1) and (2) of the definition of ''School'' in this section, including students with a disability who participate in a school program established for persons with disabilities;

(2) A person under 21 chronological years of age who is enrolled in an institution or center as described in paragraph (3) of the definition of ''School'' in this section; or

(3) For afterschool care programs, persons aged 18 and under at the start of the school year, and persons of any age with a disability who participate in a school program established for persons with disabilities.

Child with a disability means any child who has a physical or mental impairment that substantially limits one or more major life activities of such individual, has a record of such an impairment, or has been regarded as having such an impairment.

Commodity School Program means the Program under which participating schools operate a nonprofit lunch program in accordance with this part and receive donated food assistance in lieu of general cash assistance. Schools participating in the Commodity School Program will also receive special cash and donated food assistance in accordance with § 210.4(c).

Contractor means a commercial enterprise, public or nonprofit private organization or individual that enters into a contract with a school food authority.

Cost reimbursable contract means a contract that provides for payment of incurred costs to the extent prescribed in the contract, with or without a fixed fee.

Days means calendar days unless otherwise specified.

Department means the United States Department of Agriculture.

Distributing agency means a State agency which enters into an agreement with the Department for the distribution to schools of donated foods pursuant to part 250 of this chapter.

Donated foods means food commodities donated by the Department for use in nonprofit lunch programs.

Fiscal year means a period of 12 calendar months beginning October 1 of any year and ending with September 30 of the following year.

Fixed fee means an agreed upon amount that is fixed at the inception of the contract. In a cost reimbursable contract, the fixed fee includes the contractor's direct and indirect administrative costs and profit allocable to the contract.

Fixed-price contract means a contract that charges a fixed cost per meal, or a fixed cost for a certain time period. Fixed-price contracts may include an economic price adjustment tied to a standard index.

FNS means the Food and Nutrition Service, United States Department of Agriculture.

FNSRO means the appropriate Regional Office of the Food and Nutrition Service of the Department.

Food item means a specific food offered within a food component.

Food service management company means a commercial enterprise or a nonprofit organization which is or may be contracted with by the school food authority to manage any aspect of the school food service.

Free lunch means a lunch served under the Program to a child from a household eligible for such benefits under part 245 of this chapter and for which neither the child nor any member of the household pays or is required to work.

Local educational agency means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a

combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools. The term also includes any other public or private nonprofit institution or agency having administrative control and direction of a public or private nonprofit elementary school or secondary school, including residential child care institutions, Bureau of Indian Affairs schools, and educational service agencies and consortia of those agencies, as well as the State educational agency in a State or territory in which the State educational agency is the sole educational agency for all public or private nonprofit schools.

Lunch means a meal service that meets the meal requirements in § 210.10 for lunches.

Meal component means one of the food groups which comprise reimbursable meals. The meal components are: fruits, vegetables, grains, meats/meat alternates, and fluid milk.

National School Lunch Program means the Program under which participating schools operate a nonprofit lunch program in accordance with this part. General and special cash assistance and donated food assistance are made available to schools in accordance with this part.

Net cash resources means all monies, as determined in accordance with the State agency's established accounting system, that are available to or have accrued to a school food authority's nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

Nonprofit means, when applied to schools or institutions eligible for the Program, exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986.

Nonprofit school food service means all food service operations conducted by the school food authority principally for the benefit of schoolchildren, all of the revenue from which is used solely for the operation or improvement of such food services.

Nonprofit school food service account means the restricted account in which all of the revenue from all food service operations conducted by the school food authority principally for the benefit of school children is retained and used only for the operation or improvement of the nonprofit school food service. This account will include, as appropriate, non-Federal funds used to support paid lunches as provided in § 210.14(e), and proceeds from nonprogram foods as provided in § 210.14(f).

OIG means the Office of the Inspector General of the Department.

Paid lunch means a lunch served to children who are either not certified for or elect not to receive the free or reduced price benefits offered under part 245 of this chapter. The Department subsidizes each paid lunch with both general cash assistance and donated foods. The prices for paid lunches in a school food authority must be determined in accordance with § 210.14(e).

Point of Service means that point in the food service operation where a determination can accurately be made that a reimbursable free, reduced price, or paid lunch has been served to an eligible child.

Program means the National School Lunch Program and the Commodity School Program.

Reduced price lunch means a lunch served under the Program:

(1) To a child from a household eligible for such benefits under part 245 of this chapter;

(2) For which the price is less than the school food authority designated full price of the lunch and which does not exceed the maximum allowable reduced price specified under part 245 of this chapter; and

(3) For which neither the child nor any member of the household is required to work.

Reimbursement means Federal cash assistance including advances paid or payable to participating schools for lunches meeting the requirements of § 210.10 and served to eligible children.

Revenue, when applied to nonprofit school food service, means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

School means:

(1) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings;

(2) Any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; or

(3) Any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, except for residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes.

School food authority means the governing body which is responsible for the administration of one or more schools; and has the legal authority to operate the Program therein or be otherwise approved by FNS to operate the Program.

School nutrition program directors are those individuals directly responsible for the management of the day-to-day operations of school food service for all participating schools under the jurisdiction of the school food authority.

School nutrition program managers are those individuals directly responsible for the management of the day-to-day operations of school food service for a participating school(s).

School nutrition program staff are those individuals, without managerial responsibilities, involved in day-to-day operations of school food service for a participating school(s).

School week means the period of time used to determine compliance with the meal requirements in § 210.10. The period will be a normal school week of five consecutive days; however, to accommodate shortened weeks resulting from holidays and other scheduling needs, the period must be a minimum of three consecutive days and a maximum of seven consecutive days. Weeks in which school lunches are offered less than three times must be combined with either the previous or the coming week.

School year means a period of 12 calendar months beginning July 1 of any year and ending June 30 of the following year.

Seamless Summer Option means the meal service alternative authorized by Section 13(a)(8) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1761(a)(8), under which public or nonprofit school food authorities participating in the National School Lunch Program or School Breakfast Program offer meals at no cost to children during the traditional summer vacation periods and, for year-round schools, vacation periods longer than 10 school days.

Secretary means the Secretary of Agriculture.

State means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and, as applicable, American Samoa and the Commonwealth of the Northern Marianas.

State agency means:

(1) The State educational agency;

(2) Any other agency of the State which has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in schools, as specified in § 210.3(b) of this chapter; or

(3) The FNSRO, where the FNSRO administers the Program as specified in § 210.3(c) of this chapter.

State educational agency means, as the State legislature may determine,

(1) The chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or

(2) A board of education controlling the State department of education.

State licensed healthcare professional means an individual who is authorized to write medical prescriptions under State law. This may include, but is not limited to, a licensed physician, nurse practitioner, or physician's assistant, depending on State law.

Tofu means a soybean-derived food, made by a process in which soybeans are soaked, ground, mixed with water, heated, filtered, coagulated, and formed into cakes. Basic ingredients are whole soybeans, one or more food-grade coagulants (typically a salt or an acid), and water. Tofu products must conform to FNS guidance to count toward the meats/meat alternates component.

USDA implementing regulations include the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

Whole grain-rich is the term designated by FNS to indicate that the grain content of a product is between 50 and 100 percent whole grain with any remaining grains being enriched.

Whole grains means grains that consist of the intact, ground, cracked, or flaked grain seed whose principal anatomical components—the starchy endosperm, germ and bran—are present in the same relative proportions as they exist in the intact grain seed.

Yogurt means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Definition and Standard of Identity for yogurt, 21 CFR 131.200, and low-fat yogurt and non-fat yogurt covered as a standardized food under 21 CFR 130.10.

■ 3. In § 210.3, revise and republish paragraph (a) to read as follows:

§ 210.3 Administration.

(a) *FNS.* FNS will act on behalf of the Department in the administration of the Program.

* * * * *

■ 4. In § 210.4, revise and republish paragraphs (a) and (b)(3) and (4) to read as follows:

§ 210.4 Cash and donated food assistance to States.

(a) *General.* To the extent funds are available, FNS will make cash assistance available in accordance with the provisions of this section to each State agency for lunches and afterschool snacks served to children under the National School Lunch and Commodity School Programs. To the extent donated foods are available, FNS will provide donated food assistance to distributing agencies for each lunch served in accordance with the provisions of this part and part 250 of this chapter.

(b) * * *

(3) *Cash assistance for afterschool snacks.* For those eligible schools (as defined in § 210.10(o)(1)) operating afterschool care programs and electing to serve afterschool snacks to enrolled children, funds will be made available to each State agency, each school year in an amount no less than the sum of the products obtained by multiplying:

(i) The number of afterschool snacks served in the afterschool care program within the State to children from families that do not satisfy the income standards for free and reduced price school meals by 2.75 cents;

(ii) The number of afterschool snacks served in the afterschool care program within the State to children from families that satisfy the income standard for free school meals by 30 cents; and

(iii) The number of afterschool snacks served in the afterschool care program within the State to children from families that satisfy the income standard for reduced price school meals by 15 cents.

(4) *Annual adjustments for cash assistance for afterschool snacks.* The rates in paragraph (b)(3) of this section are the base rates established in August 1981 for the Child and Adult Care Food Program (CACFP). FNS will prescribe annual adjustments to these rates in the same Notice as the National Average Payment Rates for lunches. These adjustments will ensure that the reimbursement rates for afterschool snacks served under this part are the same as those implemented for afterschool snacks in the CACFP.

* * * * *

■ 5. In § 210.7, revise and republish paragraphs (a), (c) introductory text, (c)(1), (d), and (e) to read as follows:

§ 210.7 Reimbursement for school food authorities.

(a) *General.* Reimbursement payments to finance nonprofit school food service operations will be made only to school food authorities operating under a written agreement with the State agency. Subject to the provisions of § 210.8(c), such payments may be made for lunches and afterschool snacks served in accordance with provisions of this part and part 245 of this chapter in the calendar month preceding the calendar month in which the agreement is executed. These reimbursement payments include general cash assistance for all lunches served to children under the National School Lunch Program and special cash assistance payments for free or reduced-price lunches served to children determined eligible for such benefits under the National School Lunch and Commodity School Programs. Reimbursement payments will also be made for afterschool snacks served to eligible children in afterschool care programs in accordance with the rates established in § 210.4(b)(3). Approval will be in accordance with part 245.

* * * * *

(c) *Reimbursement limitations.* To be entitled to reimbursement under this part, each school food authority must ensure that Claims for Reimbursement are limited to the number of free, reduced price, and paid lunches and afterschool snacks that are served to children eligible for free, reduced price, and paid lunches and afterschool snacks, respectively, for each day of operation.

(1) *Lunch count system.* To ensure that the Claim for Reimbursement accurately reflects the number of lunches and afterschool snacks served to eligible children, the school food authority must, at a minimum:

(i) Correctly approve each child's eligibility for free and reduced price lunches and afterschool snacks based on

the requirements prescribed under part 245 of this chapter;

(ii) Maintain a system to issue benefits and to update the eligibility of children approved for free or reduced price lunches and afterschool snacks. The system must:

(A) Accurately reflect eligibility status as well as changes in eligibility made after the initial approval process due to verification findings, transfers, reported changes in income or household size, etc.; and

(B) Make the appropriate changes in eligibility after the initial approval process on a timely basis so that the mechanism the school food authority uses to identify currently eligible children provides a current and accurate representation of eligible children. Changes in eligibility which result in increased benefit levels must be made as soon as possible but no later than 3 operating days of the date the school food authority makes the final decision on a child's eligibility status. Changes in eligibility which result in decreased benefit levels must be made as soon as possible but no later than 10 operating days of the date the school food authority makes the final decision on the child's eligibility status;

(iii) Base Claims for Reimbursement on lunch counts, taken daily at the point of service, which correctly identify the number of free, reduced price and paid lunches served to eligible children;

(iv) Correctly record, consolidate and report those lunch and afterschool snack counts on the Claim for Reimbursement; and

(v) Ensure that Claims for Reimbursement do not request payment for any excess lunches produced, as prohibited in § 210.10(a)(2), or non-Program lunches (*i.e.,* a la carte or adult lunches) or for more than one afterschool snack per child per day.

* * * * *

(d) *Performance-based cash assistance.* The State agency must provide performance-based cash assistance as authorized under § 210.4(b)(1) for lunches served in school food authorities certified by the State agency to be in compliance with meal pattern and nutrition requirements set forth in § 210.10 and, if the school food authority participates in the School Breakfast Program (part 220 of this chapter), § 220.8 of this chapter, as applicable. State agencies must establish procedures to certify school food authorities for performance-based cash assistance in accordance with guidance established by FNS. Such procedures must ensure State agencies:

(1) Make certification procedures readily available to school food authorities and provide guidance necessary to facilitate the certification process.

(2) Require school food authorities to submit documentation to demonstrate compliance with meal pattern requirements set forth in § 210.10 and § 220.8 of this chapter, as applicable. Such documentation must reflect meal service at or about the time of certification.

(3) State agencies must review certification documentation submitted by the school food authority to ensure compliance with meal pattern requirements set forth in § 210.10, or § 220.8 of this chapter, as applicable. For certification purposes, State agencies should consider any school food authority compliant:

(i) If when evaluating daily and weekly range requirements for grains and meat/meat alternates, the certification documentation shows compliance with the daily and weekly minimums for these two components, regardless of whether the school food authority has exceeded the maximums for the same components.

(ii) If when evaluating the service of frozen fruit, the school food authority serves products that contain added sugar.

(4) Certification procedures must ensure that no performance-based cash assistance is provided to school food authorities for meals served prior to October 1, 2012.

(5) Within 60 calendar days of a certification submission or as otherwise authorized by FNS, review submitted materials and notify school food authorities of the certification determination, the date that performance-based cash assistance is effective, and consequences for non-compliance,

(6) Disburse performance-based cash assistance for all lunches served beginning with the start of certification provided that documentation reflects meal service in the calendar month the certification materials are submitted or, in the month preceding the calendar month of submission.

(e) *Reimbursements for afterschool snacks.* The State agency will reimburse the school food authority for afterschool snacks served in eligible schools (as defined in § 210.10(o)(1)) operating afterschool care programs under the National School Lunch Program (NSLP) in accordance with the rates established in § 210.4(b).

■ 6. In § 210.8, revise and republish paragraphs (c) and (d) to read as follows:

§ 210.8 Claims for reimbursement.

* * * * *

(c) *Content of claim.* The Claim for Reimbursement must include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Report of School Program Operations required under § 210.5(d). Such data must include, at a minimum, the number of free, reduced price, and paid lunches and afterschool snacks served to eligible children. The claim must be signed by a school food authority official.

(1) *Consolidated claim.* The State agency may authorize a school food authority to submit a consolidated Claim for Reimbursement for all schools under its jurisdiction, provided that, the data on each school's operations required in this section are maintained on file at the local office of the school food authority and the claim separates consolidated data for commodity schools from data for other schools. Unless otherwise approved by FNS, the Claim for Reimbursement for any month must include only lunches and afterschool snacks served in that month except if the first or last month of Program operations for any school year contains 10 operating days or less, such month may be combined with the Claim for Reimbursement for the appropriate adjacent month. However, Claims for Reimbursement may not combine operations occurring in two fiscal years. If a single State agency administers any combination of the Child Nutrition Programs, a school food authority will be able to use a common claim form with respect to claims for reimbursement for meals served under those programs.

(2) *October data.* For the month of October, the State agency must also obtain, either through the Claim for Reimbursement or other means, the total number of children approved for free lunches and afterschool snacks, the total number of children approved for reduced price lunches and afterschool snacks, and the total number of children enrolled in the school food authority as of the last day of operation in October. The school food authority must submit this data to the State agency no later than December 31 of each year. State agencies may establish shorter deadlines at their discretion. In addition, the State agency may require school food authorities to provide this data for a more current month if for use in the State agency claims review process.

(d) *Advance funds.* The State agency may advance funds available for the Program to a school food authority in an amount equal to the amount of reimbursement estimated to be needed for one month's operation. Following the receipt of claims, the State agency

will make adjustments, as necessary, to ensure that the total amount of payments received by the school food authority for the fiscal year does not exceed an amount equal to the number of lunches and afterschool snacks by reimbursement type served to children times the respective payment rates assigned by the State in accordance with § 210.7(b). The State agency must recover advances of funds to any school food authority failing to comply with the 60-day claim submission requirements in paragraph (b) of this section.

■ 7. In § 210.9, revise and republish paragraphs (b)(21) and (c) to read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) * * *

(21) No later than December 31 of each year, provide the State agency with a list of all schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day the preceding October. The State agency may designate a month other than October for the collection of this information, in which case the list must be provided to the State agency within 60 calendar days following the end of the month designated by the State agency. In addition, each school food authority must provide, when available for the schools under its jurisdiction, and upon the request of a sponsoring organization of day care homes of the Child and Adult Care Food Program, information on the boundaries of the attendance areas for the schools identified as having 50 percent or more of enrolled children certified eligible for free or reduced price meals.

(c) *Afterschool care requirements.* Those school food authorities with eligible schools (as defined in § 210.10(o)(1)) that elect to serve afterschool snacks during afterschool care programs, must agree to:

(1) Serve afterschool snacks which meet the minimum requirements prescribed in § 210.10;

(2) Price the afterschool snack as a unit;

(3) Serve afterschool snacks free or at a reduced price to all children who are determined by the school food authority to be eligible for free or reduced price school meals under part 245 of this chapter;

(4) If charging for meals, the charge for a reduced price afterschool snack must not exceed 15 cents;

(5) Claim reimbursement at the assigned rates only for afterschool snacks served in accordance with the agreement;

(6) Claim reimbursement for no more than one afterschool snack per child per day;

(7) Review each afterschool care program two times a year; the first review must be made during the first four weeks that the school is in operation each school year, except that an afterschool care program operating year round must be reviewed during the first four weeks of its initial year of operation, once more during its first year of operation, and twice each school year thereafter; and

(8) Comply with all requirements of this part, except that, claims for reimbursement need not be based on ''point of service'' afterschool snack counts (as required by § 210.9(b)(9)).

■ 8. In § 210.10:

■ a. Revise and republish paragraph (a)(1)(i);

■ b. Revise paragraphs (a)(3) and (b) through (f);

■ c. Revise and republish paragraph (g);

■ d. Revise paragraph (h);

■ e. Revise and republish paragraphs (i), (j), and (k)(2);

■ f. Revise paragraphs (m), (o), (p), and (q); and

■ g. Add paragraph (r).

The revisions and addition read as follows:

§ 210.10 Meal requirements for lunches and requirements for afterschool snacks.

(a) * * *

(1) * * *

(i) *Requirements for lunch.* School lunches offered to children age 5 or older must meet, at a minimum, the meal requirements in paragraph (b) of this section. Schools must follow a food-based menu planning approach and produce enough food to offer each child the quantities specified in the meal pattern established in paragraph (c) of this section for each age/grade group served in the school. In addition, school lunches must meet the dietary specifications in paragraph (f) of this section. Schools offering lunches to children ages 1 through 4 and infants must meet the meal pattern requirements in paragraphs (p) and (q) of this section, as applicable. Schools must make plain potable water available and accessible without restriction to children at no charge in the place(s) where lunches are served during the meal service.

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(3) *Production and menu records.* Schools or school food authorities, as applicable, must keep production and menu records for the meals they produce. These records must show how the meals offered contribute to the required meal components and food quantities for each age/grade group every day. Schools or school food authorities must maintain records of the latest nutritional analysis of the school menus conducted by the State agency. Information on maintaining production and menu records may be found in FNS guidance.

(b) *Meal requirements for school lunches.* School lunches for children ages 5 and older must reflect food and nutrition requirements specified by the Secretary. Compliance with these requirements is measured as follows:

(1) On a daily basis:

(i) Meals offered to each age/grade group must include the meal components and food quantities specified in the meal pattern in paragraph (c) of this section; and

(ii) The meal selected by each student must have the number of meal components required for a reimbursable meal and include at least one fruit or vegetable.

(2) Over a 5-day school week:

(i) Average calorie content of meals offered to each age/grade group must be within the minimum and maximum calorie levels specified in paragraph (f) of this section;

(ii) Average saturated fat content of the meals offered to each age/grade group must be less than 10 percent of total calories;

(iii) By July 1, 2027, average added sugars content of the meals offered to each age/grade group must be less than 10 percent of total calories; and

(iv) Average sodium content of the meals offered to each age/grade group must not exceed the maximum level specified in paragraph (f) of this section.

(c) *Meal pattern for school lunches.* Schools must offer the meal components and quantities required in the lunch meal pattern established in the following table:

TABLE 1 TO PARAGRAPH (c) INTRODUCTORY TEXT—NATIONAL SCHOOL LUNCH PROGRAM MEAL PATTERN

Meal components	Amount of food [1] per week (minimum per day)		
	Grades K–5	Grades 6–8	Grades 9–12
Fruits (cups) [2]	2½ (½)	2½ (½)	5 (1)
Vegetables (cups) [2]	3¾ (¾)	3¾ (¾)	5 (1)
Dark Green Subgroup [3]	½	½	½
Red/Orange Subgroup [3]	¾	¾	1¼
Beans, Peas, and Lentils Subgroup [3]	½	½	½
Starchy Subgroup [3]	½	½	½
Other Vegetables Subgroup [3 4]	½	½	¾
Additional Vegetables from Any Subgroup to Reach Total	1	1	1½
Grains (oz. eq.) [5]	8–9 (1)	8–10 (1)	10–12 (2)
Meats/Meat Alternates (oz. eq.) [6]	8–10 (1)	9–10 (1)	10–12 (2)
Fluid Milk (cups) [7]	5 (1)	5 (1)	5 (1)
Dietary Specifications: Daily Amount Based on the Average for a 5-Day Week [8]			
Minimum-Maximum Calories (kcal)	550–650	600–700	750–850
Saturated Fat (% of total calories)	<10	<10	<10
Added Sugars (% of total calories)	<10	<10	<10
Sodium Limit: In place through June 30, 2027	≤1,110 mg	≤1,225 mg	≤1,280 mg
Sodium Limit: Must be implemented by July 1, 2027	≤935 mg	≤1,035 mg	≤1,080 mg

[1] Food items included in each group and subgroup and amount equivalents.
[2] Minimum creditable serving is ⅛ cup. One quarter-cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100 percent full-strength.
[3] Larger amounts of these vegetables may be served.
[4] This subgroup consists of ''Other vegetables'' as defined in paragraph (c)(2)(ii)(E) of this section. For the purposes of the NSLP, the ''Other vegetables'' requirement may be met with any additional amounts from the dark green, red/orange, and bean, peas, and lentils vegetable subgroups as defined in paragraph (c)(2)(ii) of this section.
[5] Minimum creditable serving is 0.25 oz. eq. At least 80 percent of grains offered weekly (by ounce equivalents) must be whole grain-rich as defined in § 210.2 and the remaining grains items offered must be enriched.
[6] Minimum creditable serving is 0.25 oz. eq.
[7] Minimum creditable serving is 8 fluid ounces. All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less) and must meet the requirements in paragraph (d) of this section.
[8] By July 1, 2027, schools must meet the dietary specification for added sugars. Schools must meet the sodium limits by the dates specified in this chart. Discretionary sources of calories may be added to the meal pattern if within the dietary specifications.

(1) *Age/grade groups.* Schools must plan menus for students using the following age/grade groups: Grades K–5 (ages 5–10), grades 6–8 (ages 11–13), and grades 9–12 (ages 14–18). If an unusual grade configuration in a school prevents the use of these established age/grade groups, students in grades K–5 and grades 6–8 may be offered the same food quantities at lunch provided that the calorie and sodium standards for each age/grade group are met. No customization of the established age/grade groups is allowed.

(2) *Meal components.* Schools must offer students in each age/grade group the meal components specified in this paragraph (c).

(i) *Fruits component.* Schools must offer fruits daily as part of the lunch menu. Fruits that are fresh, frozen, or dried, or canned in light syrup, water or fruit juice may be offered to meet the requirements of this paragraph (c)(2)(i). All fruits are credited based on their volume as served, except that ¼ cup of dried fruit counts as ½ cup of fruit. Only pasteurized, full-strength fruit juice may be offered, and may be credited to meet no more than one-half of the fruits component.

(ii) *Vegetables component.* Schools must offer vegetables daily as part of the lunch menu. Fresh, frozen, or canned vegetables and dry beans, peas, and lentils may be offered to meet this requirement. All vegetables are credited based on their volume as served, except that 1 cup of leafy greens counts as ½ cup of vegetables and tomato paste and puree are credited based on calculated volume of the whole food equivalency. Pasteurized, full-strength vegetable juice may be offered to meet no more than one-half of the vegetables component. Vegetable offerings at lunch over the course of the week must include the following vegetable subgroups, as defined in this section in the quantities specified in the meal pattern in paragraph (c) of this section:

(A) *Dark green vegetables subgroup.* This subgroup includes vegetables such as bok choy, broccoli, collard greens, dark green leafy lettuce, kale, mesclun, mustard greens, romaine lettuce, spinach, turnip greens, and watercress;

(B) *Red/orange vegetables subgroup.* This subgroup includes vegetables such as acorn squash, butternut squash, carrots, pumpkin, tomatoes, tomato juice, and sweet potatoes;

(C) *Beans, peas, and lentils vegetable subgroup.* This subgroup includes vegetables such as black beans, black-eyed peas (mature, dry), garbanzo beans (chickpeas), kidney beans, lentils, navy beans pinto beans, soybeans, split peas, and white beans. Cooked dry beans, peas, and lentils may be counted as either a vegetable or as a meat alternate but not as both in the same dish. When offered toward the protein sources component, beans, peas, and lentils may count toward the weekly beans, peas, and lentils vegetable subgroup requirement, but may not count toward the daily or weekly vegetable component requirement;

(D) *Starchy vegetables subgroup.* This subgroup includes vegetables such as black-eyed peas (not dry), corn, cassava, green bananas, green peas, green lima beans, plantains, taro, water chestnuts, and white potatoes; and

(E) *Other vegetables subgroup.* This subgroup includes all other fresh, frozen, and canned vegetables, cooked or raw, such as artichokes, asparagus, avocados, bean sprouts, beets, Brussels sprouts, cabbage, cauliflower, celery, cucumbers, eggplant, green beans, green peppers, iceberg lettuce, mushrooms,

okra, onions, parsnips, turnips, wax beans, and zucchini.

(iii) *Grains component.* Schools must offer grains daily as part of the lunch menu.

(A) *Whole grain-rich requirement.* Whole grain-rich is the term designated by FNS to indicate that the grain content of a product is between 50 and 100 percent whole grain with any remaining grains being enriched. At least 80 percent of grains offered at lunch weekly must, based on ounce equivalents, meet the whole grain-rich criteria as defined in § 210.2, and the remaining grain items offered must be enriched.

(B) *Breakfast cereals.* By July 1, 2025, breakfast cereals must contain no more than 6 grams of added sugars per dry ounce.

(C) *Desserts.* Schools may count up to two ounce equivalents of grain-based desserts per week toward meeting the grains requirement at lunch. Information on crediting grain-based desserts may be found in FNS guidance.

(D) *Daily and weekly servings.* The grains component is based on minimum daily servings plus total servings over a 5-day school week. Schools serving lunch 6 or 7 days per week must increase the weekly grains quantity by approximately 20 percent (⅕) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (⅕) for each day less than 5.

(iv) *Meats/meat alternates component.* Schools must offer meats/meat alternates daily as part of the lunch meal pattern. The quantity of the meat/meat alternate must be the edible portion as served. This component must be served in a main dish or in a main dish and only one other food item. Schools without daily choices in this component should not serve any one meat/meat alternate or form of meat/meat alternate (for example, ground, diced, pieces) more than three times in the same week. If a portion size of this component does not meet the daily requirement for a particular age/grade group, schools may supplement it with another meat/meat alternate to meet the full requirement. Schools may adjust the daily quantities of this component provided that a minimum of one ounce is offered daily to students in grades K–8 and a minimum of two ounces is offered daily to students in grades 9–12, and the total weekly requirement is met over a 5-day period. Information on crediting meats/meat alternates may be found in FNS guidance.

(A) *Enriched macaroni.* Enriched macaroni with fortified protein as defined in appendix A to this part may be used to meet part of the meats/meat alternates requirement when used as specified in appendix A to this part. An enriched macaroni product with fortified protein as defined in appendix A to this part may be used to meet part of the meats/meat alternates component or the grains component but may not meet both food components in the same lunch.

(B) *Nuts and seeds.* Nuts and seeds and their butters are allowed as a meat alternate. Acorns, chestnuts, and coconuts do not credit as meat alternates because of their low protein and iron content. Nut and seed meals or flours may credit only if they meet the requirements for Alternate Protein Products established in appendix A to this part.

(C) *Yogurt.* Yogurt may be offered to meet all or part of the meats/meat alternates component. Yogurt may be plain or flavored, unsweetened or sweetened. By July 1, 2025, yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce). Noncommercial and/or non-standardized yogurt products, such as frozen yogurt, drinkable yogurt products, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruits and/or nuts or similar products are not creditable. Four ounces (weight) or ½ cup (volume) of yogurt is one ounce equivalent of meats/meat alternates.

(D) *Tofu and soy products.* Commercial tofu and soy products may be offered to meet all or part of the meats/meat alternates component. Noncommercial and/or non-standardized tofu and soy products are not creditable.

(E) *Beans, peas, and lentils.* Cooked dry beans, peas, and lentils may be offered to meet all or part of the meats/meat alternates component. Beans, peas, and lentils are identified in this section and include foods such as black beans, garbanzo beans, lentils, kidney beans, mature lima beans, navy beans, pinto beans, and split peas. Cooked dry beans, peas, and lentils may be counted as either a vegetable or as a meat alternate but not as both in the same dish. When offered as a meat alternate, beans, peas, and lentils may count toward the weekly beans, peas, and lentils vegetable subgroup requirement, but may not count toward the daily or weekly vegetable component requirements.

(F) *Other meat alternates.* Other meat alternates, such as cheese and eggs, may be used to meet all or part of the meats/meat alternates component.

(v) *Fluid milk component.* Fluid milk must be offered daily in accordance with paragraph (d) of this section.

(3) *Grain substitutions.* (i) Schools in American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands may serve any vegetable, including vegetables such as breadfruit, prairie turnips, plantains, sweet potatoes, and yams, to meet the grains component.

(ii) School food authorities and schools that are tribally operated, operated by the Bureau of Indian Education, and that serve primarily American Indian or Alaska Native children, may serve any vegetable, including vegetables such as breadfruit, prairie turnips, plantains, sweet potatoes, and yams, to meet the grains component.

(4) *Adjustments to school menus.* Schools must adjust future menu cycles to reflect production and how often food items are offered. Schools may need to change the foods offerings given students' selections and may need to modify recipes and other specifications to make sure that meal requirements are met.

(5) *Standardized recipes.* All schools must develop and follow standardized recipes. A standardized recipe is a recipe that was tested to provide an established yield and quantity using the same ingredients for both measurement and preparation methods. Standardized recipes developed by USDA/FNS are in the Child Nutrition Database. If a school has its own recipes, they may seek assistance from the State agency or school food authority to standardize the recipes. Schools must add any local recipes to their local databases. Additional information may be found in FNS guidance.

(6) *Processed foods.* The Child Nutrition Database includes a number of processed foods. Schools may use purchased processed foods that are not in the Child Nutrition Database. Schools or the State agency must add any locally purchased processed foods to their local database. The State agencies must obtain the levels of calories, saturated fat, added sugars, and sodium in the processed foods. Additional information may be found in FNS guidance.

(7) *Traditional Indigenous foods.* Traditional Indigenous foods may credit toward the required meal components. Information on food crediting may be found in FNS guidance. Schools are encouraged to serve traditional Indigenous foods as part of their lunch and afterschool snack service. Per the Agriculture Improvement Act of 2014, as amended (25 U.S.C. 1685(b)(5)) traditional foods means food that has traditionally been prepared and

consumed by an American Indian tribe, including wild game meat; fish; seafood; marine mammals; plants; and berries.

(d) *Fluid milk requirements*—(1) *Types of fluid milk.* (i) Schools must offer students a variety (at least two different options) of fluid milk at lunch daily. All milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk with higher fat content is not creditable. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered.

(ii) All fluid milk served in the Program must be pasteurized fluid milk which meets State and local standards for such milk. All fluid milk must have vitamins A and D at levels specified by the Food and Drug Administration and must be consistent with State and local standards for such milk.

(iii) Milk varieties may be unflavored or flavored, provided that unflavored milk is offered at each meal service. By July 1, 2025, flavored milk must contain no more than 10 grams of added sugars per 8 fluid ounces, or for flavored milk sold as competitive food for middle and high schools, 15 grams of added sugars per 12 fluid ounces.

(2) *Fluid milk substitutes for non-disability reasons.* School food authorities may offer fluid milk substitutes to students with dietary needs that are not disabilities. For disability-related meal modifications, see paragraph (m) of this section.

(i) Prior to providing a fluid milk substitute for a non-disability reason, a school food authority must obtain a written request from the student's parent or guardian, a State licensed healthcare professional, or a registered dietitian that identifies the reason for the substitute. A school food authority choosing to offer fluid milk substitutes for a non-disability reason is not required to offer the specific fluid milk substitutes requested but may offer the fluid milk substitutes of its choice, provided the fluid milk substitutes offered meet the requirements of paragraph (d)(2)(ii) of this section. A school food authority must inform the State agency if any schools choose to offer fluid milk substitutes for non-disability reasons.

(ii) If a school food authority chooses to offer one or more fluid milk substitutes for non-disability reasons, the fluid milk substitutes must provide, at a minimum, the nutrients listed in the following table. Fluid milk substitutes must be fortified in accordance with fortification guidelines issued by the Food and Drug Administration.

TABLE 2 TO PARAGRAPH (d)(2)(ii)—NUTRIENT REQUIREMENTS FOR FLUID MILK SUBSTITUTES

Nutrient	Per cup (8 fl. oz.)
Calcium	276 mg.
Protein	8 g.
Vitamin A	150 mcg. retinol activity equivalents (RAE).
Vitamin D	2.5 mcg.
Magnesium	24 mg.
Phosphorus	222 mg.
Potassium	349 mg.
Riboflavin	0.44 mg.
Vitamin B–12	1.1 mcg.

(iii) Expenses incurred when providing fluid milk substitutes that exceed program reimbursements must be paid by the school food authority; costs may be paid from the nonprofit school food service account.

(iv) The fluid milk substitute approval must remain in effect until the student's parent or guardian, the State licensed healthcare professional, or the registered dietitian revokes the request in writing, or until the school food authority changes its fluid milk substitute policy.

(3) *Inadequate fluid milk supply.* If a school food authority cannot get a supply of fluid milk, it can still participate in the Program under the following conditions:

(i) If emergency conditions temporarily prevent a school food authority that normally has a supply of fluid milk from obtaining delivery of such milk, the State agency may allow the school food authority to serve meals during the emergency period with an alternate form of fluid milk or without fluid milk.

(ii) If a school food authority is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may approve the service of meals without fluid milk if the school food authority uses an equivalent amount of canned milk or dry milk in the preparation of the meals. In Alaska, American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, ''fluid milk'' includes reconstituted or recombined fluid milk, or as otherwise allowed by FNS through a written exception.

(4) *Restrictions on the sale of fluid milk.* A school food authority participating in the Program, or a person approved by a school food authority participating in the Program, must not directly or indirectly restrict the sale or marketing of fluid milk (as identified in paragraph (d)(1) of this section) at any time or in any place on school premises or at any school-sponsored event.

(e) *Offer versus serve for grades K through 12.* School lunches must offer daily the five meal components specified in the meal pattern in paragraph (c) of this section. Under offer versus serve, students must be allowed to decline two components at lunch, *except that* the students must select at least 1/2 cup of either the fruit or vegetable component. Senior high schools (as defined by the State educational agency) must participate in offer versus serve. Schools below the senior high level may participate in offer versus serve at the discretion of the school food authority.

(f) *Dietary specifications*—(1) *Calories.* School lunches offered to each age/grade group must meet, on average over the school week, the minimum and maximum calorie levels specified in the following table:

TABLE 3 TO PARAGRAPH (f)(1)—NATIONAL SCHOOL LUNCH PROGRAM CALORIE RANGES

	Grades K–5	Grades 6–8	Grades 9–12
Average Daily Minimum-Maximum Calories (kcal) [1]	550–650	600–700	750–850

[1] The average daily calories must fall within the minimum and maximum levels. Discretionary sources of calories may be added to the meal pattern if within the dietary specifications.

(2) *Saturated fat.* School lunches offered to all age/grade groups must, on average over the school week, provide less than 10 percent of total calories from saturated fat.

(3) *Added sugars.* By July 1, 2027, school lunches offered to all age/grade groups must, on average over the school week, provide less than 10 percent of total calories from added sugars.

(4) *Sodium.* School lunches offered to each age/grade group must meet, on average over the school week, the sodium limits specified in the following table within the established deadlines:

TABLE 4 TO PARAGRAPH (f)(4)—NATIONAL SCHOOL LUNCH PROGRAM SODIUM LIMITS

Age/grade group	Sodium limit: in place through June 30, 2027 (mg)	Sodium limit: must be implemented by July 1, 2027 (mg)
Grades K–5	≤1,110	≤935
Grades 6–8	≤1,225	≤1,035
Grades 9–12	≤1,280	≤1,080

(g) *Compliance assistance.* The State agency and school food authority must provide technical assistance and training to assist schools in planning lunches that meet the meal pattern in paragraph (c) of this section; the dietary specifications established in paragraph (f) of this section; and the meal pattern requirements in paragraphs (o) through (q) of this section, as applicable. Compliance assistance may be offered during trainings, onsite visits, and/or administrative reviews.

(h) *Monitoring dietary specifications.* When required by the Administrative Review process set forth in § 210.18, the State agency must conduct a weighted nutrient analysis to evaluate the average levels of calories, saturated fat, added sugars, and sodium of the lunches offered to students in grades K–12 during one week of the review period. The nutrient analysis must be conducted in accordance with the procedures established in paragraph (i)(3) of this section. If the results of the nutrient analysis indicate that school lunches do not meet the specifications for calories, saturated fat, added sugars, and sodium specified in paragraph (f) of this section, the State agency or school food authority must provide technical assistance and require the reviewed school to take corrective action to meet the requirements.

(i) *Nutrient analyses of school meals*—(1) *Conducting the nutrient analysis.* Any nutrient analysis, whether conducted by the State agency under § 210.18 or by the school food authority, must be performed in accordance with the procedures established in paragraph (i)(3) of this section. The purpose of the nutrient analysis is to determine the average levels of calories, saturated fat, added sugars, and sodium in the meals offered to each age grade group over a school week. The weighted nutrient analysis must be performed as required by FNS guidance.

(2) *Software elements*—(i) *The Child Nutrition Database.* The nutrient analysis is based on the USDA Child Nutrition Database. This database is part of the software used to do a nutrient analysis. Software companies or others developing systems for schools may contact FNS for more information about the database.

(ii) *Software evaluation.* FNS or an FNS designee evaluates any nutrient analysis software before it may be used in schools. FNS or its designee determines if the software, as submitted, meets the minimum requirements. The approval of software does not mean that FNS or USDA endorses it. The software must be able to perform a weighted average analysis after the basic data is entered. The combined analysis of the lunch and breakfast programs is not allowed.

(3) *Nutrient analysis procedures*—(i) *Weighted averages.* The nutrient analysis must include all foods offered as part of the reimbursable meals during one week within the review period. Foods items are included based on the portion sizes and serving amounts. They are also weighted based on their proportionate contribution to the meals offered. This means that food items offered more frequently are weighted more heavily than those not offered as frequently. The weighted nutrient analysis must be performed as required by FNS guidance.

(ii) *Analyzed nutrients.* The analysis determines the average levels of calories, saturated fat, added sugars, and sodium in the meals offered over a school week. It includes all food items offered by the reviewed school over a one-week period.

(4) *Comparing the results of the nutrient analysis.* Once the procedures in paragraph (i)(3) of this section are completed, State agencies must compare the results of the analysis to the calorie, saturated fat, added sugars, and sodium levels established in § 210.10 or § 220.8 of this chapter, as appropriate, for each age/grade group to evaluate the school's compliance with the dietary specifications.

(j) *Responsibility for monitoring meal requirements.* Compliance with the meal requirements in paragraph (b) of this section, including the dietary specifications, and paragraphs (o) through (q) of this section, as applicable, will be monitored by the State agency through administrative reviews authorized in § 210.18.

(k) * * *

(2) *Opportunity to select.* Schools that choose to offer a variety of reimbursable lunches, or provide multiple serving lines, must make all required meal components available to all students, on every lunch line, in at least the minimum required amounts.

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(m) *Modifications and variations in reimbursable meals and afterschool snacks*—(1) *Modifications for disability reasons.* School food authorities must make meal modifications, including

substitutions in lunches and afterschool snacks, for children with a disability and whose disability restricts their diet. The modification requested must be related to the disability or limitations caused by the disability and must be offered at no additional cost to the child or household.

(i) In order to receive Federal reimbursement when a modified meal does not meet the meal pattern requirements specified in this section, the school food authority must obtain from the household a written medical statement signed by a State licensed healthcare professional. By July 1, 2025, school food authorities must also accept a medical statement signed by a registered dietitian. The medical statement must provide sufficient information about the child's dietary restrictions, such as foods to be omitted and recommended alternatives, if appropriate. Modified meals that meet the meal pattern requirements in this section are reimbursable with or without a medical statement.

(ii) School food authorities must ensure that parents, guardians, and children have notice of the procedure for requesting meal modifications for disabilities and the process for procedural safeguards related to meal modifications for disabilities. See §§ 15b.6(b) and 15b.25 of this title.

(iii) Expenses incurred when making meal modifications that exceed program reimbursement rates must be paid by the school food authority; costs may be paid from the nonprofit food service account.

(2) *Variations for non-disability reasons.* School food authorities should consider children's dietary preferences when planning and preparing meals and afterschool snacks. Any variations must be consistent with the meal pattern requirements specified under this section. Expenses incurred from meal pattern variations that exceed program reimbursement rates must be paid by the school food authority; costs may be paid from the nonprofit food service account.

(3) *Exceptions for natural disasters.* If there is a natural disaster or other catastrophe, FNS may temporarily allow school food authorities to serve meals for reimbursement that do not meet the requirements in this section.

* * * * *

(o) *Afterschool snacks.* Eligible schools operating afterschool care programs may be reimbursed for one afterschool snack served to a child (as defined in § 210.2) per day.

(1) *Eligible schools* means schools that:

(i) Operate the National School Lunch Program; and

(ii) Sponsor afterschool care programs as defined in § 210.2.

(2) *Afterschool snack requirements for K–12 children*—(i) *Afterschool snacks served to K through 12 children.* Schools serving afterschool snacks to K–12 children must serve the meal components and quantities required in the snack meal pattern established for the Child and Adult Care Food Program, under § 226.20 of this chapter. In addition, schools serving afterschool snacks to K–12 children must comply with the requirements set forth in paragraphs (a), (c)(3) and (4), (d)(2) through (4), (g), and (m) of this section, as applicable, and § 226.20(d) of this chapter.

(ii) *Afterschool snack meal pattern table for K through 12 children.* Through June 30, 2025, afterschool snacks must either follow the requirements outlined in the following table or must contain two different components from the following four: fluid milk, meats/meat alternates, vegetable or fruit, and/or grains. By July 1, 2025, the minimum amounts of meal components to be served at afterschool snack are as follows:

TABLE 5 TO PARAGRAPH (o)(2)(ii)—AFTERSCHOOL SNACK MEAL PATTERN FOR K–12 CHILDREN

[Ages 6–18]

[Select two of the five components for a reimbursable snack]

Meal components [1]	Minimum quantities [2]
Fluid milk [3]	8 fluid ounces.
Meats/meat alternates [4].	1 ounce equivalent.
Vegetables [5]	¾ cup.
Fruits [5]	¾ cup.
Grains [6]	1 ounce equivalent.

[1] Must serve two of the five components for a reimbursable afterschool snack. Only one of the two components may be a beverage.

[2] May need to serve larger portions to children ages 13 through 18 to meet their nutritional needs.

[3] Must be fat-free (skim) or low-fat (1 percent fat or less). Milk may be unflavored or flavored.

[4] Alternate protein products must meet the requirements in appendix A to part 226 of this chapter. Yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce). Information on crediting meats/meat alternates may be found in FNS guidance.

[5] Juice must be pasteurized, full-strength juice. No more than half of the weekly fruit or vegetable offerings may be in the form of juice.

[6] At least 80 percent of grains offered weekly (by ounce equivalents) must be whole grain-rich, as defined in § 210.2, and the remaining grains items offered must be enriched. Grain-based desserts may not be used to meet the grains requirement. Breakfast cereal must have no more than 6 grams of added sugars per dry ounce. Information on crediting grain items may be found in FNS guidance.

(3) *Afterschool snack requirements for preschoolers*—(i) *Afterschool snacks served to preschoolers.* Schools serving afterschool snacks to preschoolers must serve the food components and quantities required in the snack meal pattern established for the Child and Adult Care Food Program, under § 226.20 of this chapter. In addition, schools serving afterschool snacks to preschoolers must comply with the requirements set forth in paragraphs (a), (c)(3) and (4), (d)(2) through (4), (g), and (m) of this section, as applicable, and § 226.20(d) of this chapter.

(ii) *Preschooler afterschool snack meal pattern table.* The minimum amounts of food components to be served at afterschool snack are as follows:

TABLE 5 TO PARAGRAPH (o)(3)(ii)—AFTERSCHOOL SNACK MEAL PATTERN FOR PRESCHOOLERS

[Select two of the five components for a reimbursable snack]

Meal components [1]	Minimum quantities	
	Ages 1–2	Ages 3–5
Fluid milk [2]	4 fluid ounces	4 fluid ounces.
Meats/meat alternates [3]	½ ounce equivalent	½ ounce equivalent.
Vegetables [4]	½ cup	½ cup.
Fruits [4]	½ cup	½ cup.

TABLE 5 TO PARAGRAPH (o)(3)(ii)—AFTERSCHOOL SNACK MEAL PATTERN FOR PRESCHOOLERS—Continued

[Select two of the five components for a reimbursable snack]

Meal components [1]	Minimum quantities	
	Ages 1–2	Ages 3–5
Grains [5]	½ ounce equivalent	½ ounce equivalent.

[1] Must serve two of the five components for a reimbursable afterschool snack. Only one of the two components may be a beverage.
[2] Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old.
[3] Alternate protein products must meet the requirements in appendix A to part 226 of this chapter. Through September 30, 2025, yogurt must contain no more than 23 grams of total sugars per 6 ounces. By October 1, 2025, yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce). Information on crediting meats/meat alternates may be found in FNS guidance.
[4] Pasteurized full-strength juice may only be offered to meet the vegetable or fruit requirement at one meal, including snack, per day.
[5] At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count toward meeting the grains requirement. Through September 30, 2025, breakfast cereals must contain no more than 6 grams of total sugars per dry ounce. By October 1, 2025, breakfast cereals must contain no more than 6 grams of added sugars per dry ounce.

(4) *Afterschool snack requirements for infants*—(i) *Afterschool snacks served to infants.* Schools serving afterschool snacks to infants ages birth through 11 months must serve the meal components and quantities required in the snack meal pattern established for the Child and Adult Care Food Program, under § 226.20 of this chapter. In addition, schools serving afterschool snacks to infants must comply with the requirements set forth in paragraphs (a), (c)(3) and (4), (g), and (m) of this section, as applicable, and § 226.20(d) of this chapter.

(ii) *Infant afterschool snack meal pattern table.* The minimum amounts of meal components to be served at snack are as follows:

TABLE 6 TO PARAGRAPH (o)(4)(II)—INFANT AFTERSCHOOL SNACK MEAL PATTERN

Birth through 5 months	6 through 11 months
4–6 fluid ounces of breast milk [1] or formula [2]	2–4 fluid ounces breast milk [1] or formula; [2] and 0–½ ounce equivalent bread; [3 4] or 0–¼ ounce equivalent crackers; [3 4] or 0–½ ounce equivalent infant cereal; [2 4] or 0–¼ ounce equivalent ready-to-eat breakfast cereal; [3 4 5 6]and 0–2 tablespoons vegetable or fruit, or a combination of both.[6 7]

[1] Breast milk or formula, or portions of both, must be served; however, it is recommended that breast milk be served from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered at a later time if the infant will consume more.
[2] Infant formula and dry infant cereal must be iron-fortified.
[3] A serving of grains must be whole grain-rich, enriched meal, enriched flour, bran, or germ.
[4] Information on crediting grain items may be found in FNS guidance.
[5] Through September 30, 2025, breakfast cereals must contain no more than 6 grams of total sugars per dry ounce. By October 1, 2025, breakfast cereals must contain no more than 6 grams of added sugars per dry ounce.
[6] A serving of this component is required when the infant is developmentally ready to accept it.
[7] Fruit and vegetable juices must not be served.

(5) *Monitoring afterschool snacks.* Compliance with the requirements of this paragraph (o)(5) is monitored by the State agency as part of the Administrative Review conducted under § 210.18. If snacks offered do not meet the requirements of this paragraph, the State agency or school food authority must provide technical assistance and require corrective action and when applicable, must take fiscal action, as authorized in §§ 210.18(l) and 210.19(c).

(p) *Lunch requirements for preschoolers*—(1) *Lunches served to preschoolers.* Schools serving lunches to preschoolers under the National School Lunch Program must serve the meal components and quantities required in the lunch meal pattern established for the Child and Adult Care Food Program, under § 226.20(a), (c)(2), and (d) of this chapter. In addition, schools serving lunches to this age group must comply with the requirements set forth in paragraphs (a), (c)(3) and (4), (d)(2) through (4), (g), and (k) through (m) of this section.

(2) *Preschooler lunch meal pattern table.* The minimum amounts of meal components to be served at lunch are as follows:

TABLE 7 TO PARAGRAPH (p)(2)—PRESCHOOL LUNCH MEAL PATTERN

[Select the appropriate components for a reimbursable meal]

Meal components and food items [1]	Minimum quantities	
	Ages 1–2	Ages 3–5
Fluid milk	4 fluid ounces [2]	6 fluid ounces [3].
Meats/meat alternates [4]	1 ounce equivalent	1½ ounce equivalents.
Vegetables [5]	⅛ cup	¼ cup.
Fruits [5]	⅛ cup	¼ cup.

TABLE 7 TO PARAGRAPH (p)(2)—PRESCHOOL LUNCH MEAL PATTERN—Continued

[Select the appropriate components for a reimbursable meal]

Meal components and food items [1]	Minimum quantities	
	Ages 1–2	Ages 3–5
Grains [6]	½ ounce equivalent	½ ounce equivalent.

[1] Must serve all five components for a reimbursable meal.
[2] Must serve unflavored whole milk to children age 1.
[3] Must serve unflavored milk to children 2 through 5 years old. The milk must be fat-free, skim, low-fat, or 1 percent or less.
[4] Alternate protein products must meet the requirements in appendix A to part 226 of this chapter. Through September 30, 2025, yogurt must contain no more than 23 grams of total sugars per 6 ounces. By October 1, 2025, yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce). Information on crediting meats/meat alternates may be found in FNS guidance.
[5] Juice must be pasteurized. Full-strength juice may only be offered to meet the vegetable or fruit requirement at one meal or snack, per day. Vegetables may be offered to meet the entire fruits requirement. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.
[6] Must serve at least one whole grain-rich serving, across all eating occasions, per day. Grain-based desserts may not be offered to meet the grains requirement. Through September 30, 2025, breakfast cereals must contain no more than 6 grams of total sugars per dry ounce. By October 1, 2025, breakfast cereal must have no more than 6 grams of added sugars per dry ounce. Information on crediting grain items may be found in FNS guidance.

(q) *Lunch requirements for infants*—(1) *Lunches served to infants.* Schools serving lunches to infants ages birth through 11 months under the National School Lunch Program must serve the meal components and quantities required in the lunch meal pattern established for the Child and Adult Care Food Program, under § 226.20(a), (b), and (d) of this chapter. In addition, schools serving lunches to infants must comply with the requirements set forth in paragraphs (a), (c)(3) and (4), (g), (l), and (m) of this section.

(2) *Infant lunch meal pattern table.* The minimum amounts of meal components to be served at lunch are as follows:

TABLE 8 TO PARAGRAPH (q)(2)—INFANT LUNCH MEAL PATTERN

Birth through 5 months	6 through 11 months
4–6 fluid ounces breast milk [1] or formula [2].	6–8 fluid ounces breast milk [1] or formula; [2] and 0–½ ounce equivalent infant cereal; [2 3] or 0–4 tablespoons meat, fish, poultry, whole egg, cooked dry beans, peas, or lentils; or 0–2 ounces of cheese; or 0–4 ounces (volume) of cottage cheese; or 0–4 ounces or ½ cup of yogurt; [4] or a combination of the above; [5] and
	0–2 tablespoons vegetable or fruit, or a combination of both. [5 6]

[1] Breast milk or formula, or portions of both, must be served; however, it is recommended that breast milk be served from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered at a later time if the infant will consume more.
[2] Infant formula and dry infant cereal must be iron-fortified.
[3] Information on crediting grain items may be found in FNS guidance.
[4] Through September 30, 2025, yogurt must contain no more than 23 grams of total sugars per 6 ounces. By October 1, 2025, yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce).
[5] A serving of this component is required when the infant is developmentally ready to accept it.
[6] Fruit and vegetable juices must not be served.

(r) *Severability.* If any provision of this section is held to be invalid or unenforceable by its terms, or as applied to any person or circumstances, it shall be severable from this section and not affect the remainder thereof. In the event of such holding of invalidity or unenforceability of a provision, the meal pattern requirement covered by that provision reverts to the version that immediately preceded the invalidated provision.

■ 9. In § 210.11:
■ a. Revise paragraph (a)(3);
■ b. Add paragraph (a)(7);
■ c. Revise paragraph (f)(2);
■ d. Revise and republish paragraph (f)(3);
■ e. Remove paragraph (g);
■ f. Redesignate paragraphs (h) through (m) as paragraphs (g) through (l);
■ g. Revise and republish newly redesignated paragraphs (g)(2)(i) and (ii) and (h);
■ h. Revise newly redesignated paragraph (l); and
■ i. Remove paragraph (n).

The revisions and addition read as follows:

§ 210.11 Competitive food service and standards.

(a) * * *

(3) *Entrée item* means an item that is intended as the main dish in a reimbursable meal and is either:

(i) A combination food of a meat/meat alternate and a grain;

(ii) A combination food of a vegetable or fruit and a meat/meat alternate;

(iii) A meat/meat alternate alone with the exception of yogurt, low-fat or reduced fat cheese, nuts, seeds and nut or seed butters, and meat snacks (such as dried beef jerky); or

(iv) A grain only entrée that is served as the main dish in a school breakfast.

* * * * *

(7) *Bean dip* means, for the purpose of competitive food standards, a spread made from ground pulses (beans, peas, and/or lentils), along with one or more of the following optional ingredients:

(i) Ground nut/seed butter (such as tahini [ground sesame] or peanut butter).

(ii) Vegetable oil (such as olive oil, canola oil, soybean oil).

(iii) Seasoning (such as salt, citric acid).

(iv) Vegetables and juice for flavor (such as olives, roasted pepper, garlic, lemon juice).

(v) For manufactured bean dip, contains ingredients necessary as

preservatives and/or to maintain freshness.

* * * * *

(f) * * *

(2) *Exemptions to the total fat requirement.* (i) Seafood with no added fat is exempt from the total fat requirement, but subject to the saturated fat, sugar, calorie, and sodium standards.

(ii) Bean dip (as defined in paragraph (a)(7) of this section), is exempt from the total fat standard, but subject to the saturated fat, sugar, calorie, and sodium standards. This exemption does not apply to combination products that contain bean dip with other ingredients such as crackers, pretzels, pita, manufactured, snack-type vegetable and/or fruit sticks.

(3) *Exemptions to the total fat and saturated fat requirements.* (i) Reduced fat cheese and part skim mozzarella cheese are exempt from the total fat and saturated fat standards, but subject to the sugar, calorie, and sodium standards. This exemption does not apply to combination foods.

(ii) Nuts and seeds and nut/seed butters are exempt from the total fat and saturated fat standards, but subject to the sugar, calorie, and sodium standards. This exemption does not apply to combination products that contain nuts, seeds, or nut/seed butters with other ingredients, such as peanut butter and crackers, trail mix, or chocolate covered peanuts.

(iii) Products that consist of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat are exempt from the total fat, saturated fat, and sugar standards, but subject to the calorie and sodium standards.

(iv) Whole eggs with no added fat are exempt from the total fat and saturated fat standards, but subject to the calorie and sodium standards.

(g) * * *

(2) * * *

(i) Dried whole fruits or vegetables; dried whole fruit or vegetable pieces; and dehydrated fruits or vegetables with no added nutritive sweeteners are exempt from the sugar standard, but subject to the total fat, saturated fat, calorie, and sodium standards. There is also an exemption from the sugar standard for dried fruits with nutritive sweeteners that are required for processing and/or palatability purposes.

(ii) Products that consist of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat are exempt from the total fat, saturated fat, and sugar standards, but subject to the calorie and sodium standards.

(h) *Calorie and sodium content for snack items and side dishes sold as competitive foods.* Snack items and side dishes sold as competitive foods must have not more than 200 calories and 200 mg of sodium per item as packaged or served, including the calories and sodium contained in any added accompaniments such as butter, cream cheese, salad dressing, etc., and must meet all of the other nutrient standards in this section. These snack items and side dishes must have not more than 200 calories and 200 mg of sodium per item as packaged or served.

* * * * *

(l) *Beverages*—(1) *Elementary schools.* Allowable beverages for elementary school-aged students are limited to:

(i) Plain water or plain carbonated water (no size limit);

(ii) Milk and fluid milk substitutes that meet the requirements outlined in § 210.10(d)(1) and (2) (no more than 8 fluid ounces); and

(iii) One hundred (100) percent fruit/vegetable juice, and 100 percent fruit/vegetable juice diluted with water, with or without carbonation and with no added sweeteners (no more than 8 fluid ounces).

(2) *Middle schools.* Allowable beverages for middle school-aged students are limited to:

(i) Plain water or plain carbonated water (no size limit);

(ii) Milk and fluid milk substitutes that meet the requirements outlined in § 210.10(d)(1) and (2) (no more than 12 fluid ounces); and

(iii) One hundred (100) percent fruit/vegetable juice, and 100 percent fruit/vegetable juice diluted with water, with or without carbonation and with no added sweeteners (no more than 12 fluid ounces).

(3) *High schools.* Allowable beverages for high school-aged students are limited to:

(i) Plain water or plain carbonated water (no size limit);

(ii) Milk and fluid milk substitutes that meet the requirements outlined in § 210.10(d)(1) and (2) (no more than 12 fluid ounces);

(iii) One hundred (100) percent fruit/vegetable juice, and 100 percent fruit/vegetable juice diluted with water, with or without carbonation and with no added sweeteners (no more than 12 fluid ounces);

(iv) Calorie-free, flavored water, with or without carbonation (no more than 20 fluid ounces);

(v) Other beverages that are labeled to contain less than 5 calories per 8 fluid ounces, or less than or equal to 10 calories per 20 fluid ounces (no more than 20 fluid ounces); and

(vi) Other beverages that are labeled to contain no more than 40 calories per 8 fluid ounces or 60 calories per 12 fluid ounces (no more than 12 fluid ounces).

■ 10. In § 210.12, revise and republish paragraph (e) to read as follows:

§ 210.12 Student, parent, and community involvement.

* * * * *

(e) *Local school wellness policies.* Local educational agencies must comply with the provisions of § 210.31(d) regarding student, parent, and community involvement in the development, implementation, and periodic review and update of the local school wellness policy.

■ 11. In § 210.14:

■ a. Revise and republish paragraphs (e) introductory text and (e)(5)(ii)(D);

■ b. Remove paragraph (e)(6)(iii); and

■ c. Revise and republish paragraph (f) introductory text.

The revisions read as follows:

§ 210.14 Resource management.

* * * * *

(e) *Pricing paid lunches.* For each school year, school food authorities must establish prices for paid lunches in accordance with this paragraph (e).

* * * * *

(5) * * *

(ii) * * *

(D) Any in-kind contributions converted to direct cash expenditures; and

* * * * *

(f) *Revenue from nonprogram foods.* School food authorities must ensure that the revenue generated from the sale of nonprogram foods complies with the requirements in this paragraph (f).

* * * * *

■ 12. In § 210.15, revise and republish paragraph (b)(9) to read as follows:

§ 210.15 Reporting and recordkeeping.

* * * * *

(b) * * *

(9) Records to document compliance with the local school wellness policy requirements as set forth in § 210.31(f).

■ 13. In § 210.18, revise and republish paragraphs (g)(2)(i) introductory text, (g)(2)(i)(B)(*1*) through (*3*), (h)(2)(v) and (x), (l)(2)(i), (l)(2)(ii)(A), and (l)(2)(iii) introductory text to read as follows:

§ 210.18 Administrative reviews.

* * * * *

(g) * * *

(2) * * *

(i) *Meal components and quantities.* For each school selected for review, the State agency must complete a USDA-approved menu tool, review documentation, and observe the meal service to ensure that meals offered by

the reviewed schools meet the meal patterns for each program. To review this area, the State agency must:

* * * * *

(B) * * *

(*1*) Observe a significant number of program meals, as described in the FNS Administrative Review Manual, at each serving line and review the corresponding documentation to determine whether all reimbursable meal service lines offer all of the required meal components/items and quantities for the age/grade groups being served, as required under § 210.10, as applicable, and § 220.8 of this chapter, as applicable. Observe meals at the beginning, middle and end of the meal service line, and confirm that signage or other methods are used to assist students in identifying the reimbursable meal. If the State agency identifies missing components or inadequate quantities prior to the beginning of the meal service, it must inform the school food authority and provide an opportunity to make corrections. Additionally, if visual observation suggests that quantities offered are insufficient or excessive, the State agency must require the reviewed schools to provide documentation demonstrating that the required amounts of each component were available for service for each day of the review period.

(*2*) Observe a significant number of the program meals counted at the point of service for each type of serving line to determine whether the meals selected by the students contain the meal components and food quantities required for a reimbursable meal under § 210.10, as applicable, and § 220.8 of this chapter, as applicable.

(*3*) If Offer versus Serve is in place, observe whether students select at least three meal components at lunch and at least three food items at breakfasts, and that the lunches and breakfasts include at least ½ cup of fruits or vegetables.

* * * * *

(h) * * *

(2) * * *

(v) *Water.* The State agency must ensure that plain potable water is available and accessible to children at no charge as specified in § 210.10(a)(1)(i) and § 220.8(a)(1) of this chapter.

* * * * *

(x) *Local school wellness.* The State agency must ensure the local educational agency complies with the local school wellness requirements set forth in § 210.31.

* * * * *

(l) * * *

(2) * * *

(i) For missing meal components or missing production records cited under paragraph (g)(2) of this section, the State agency must apply fiscal action.

(ii) * * *

(A) If the meals contain insufficient quantities of the required meal components, the deficient meals may be disallowed and reclaimed.

* * * * *

(iii) For repeated violations of the dietary specifications cited under paragraph (g)(2)(ii) of this section, the State agency has discretion to apply fiscal action to the reviewed school as follows:

* * * * *

■ 14. In § 210.19:

■ a. Revise and republish paragraph (c)(4); and

■ b. Revise paragraph (f).

The revisions read as follows:

§ 210.19 Additional responsibilities.

* * * * *

(c) * * *

(4) *Interest charge.* If an agreement cannot be reached with the State agency for payment of its debts or for offset of debts on its current Letter of Credit, interest will be charged against the State agency from the date the demand letter was sent, at the rate established by the Secretary of Treasury.

* * * * *

(f) *Cooperation with the Child and Adult Care Food Program.* On an annual basis, the State agency must provide the State agency which administers the Child and Adult Care Food Program with a list of all schools in the State participating in the National School Lunch Program in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of the previous October, or other month specified by the State agency. The lists must be provided by February 1 of each year or, if data is based on a month other than October, within 90 calendar days following the end of the month designated by the State agency. The State agency may provide updated free and reduced price enrollment data on individual schools to the State agency which administers the Child and Adult Care Food Program only when unusual circumstances render the initial data obsolete. In addition, the State agency must provide the current list, upon request, to sponsoring organizations of day care homes participating in the Child and Adult Care Food Program.

§ 210.20 [Amended]

■ 15. In § 210.20:

■ a. Remove paragraphs (a)(6) and (7);

■ b. Redesignate paragraphs (a)(8) and (9) as paragraphs (a)(6) and (7), respectively;

■ c. Remove paragraph (b)(10); and

■ d. Redesignate paragraphs (b)(11) through (14) as paragraphs (b)(10) through (13), respectively.

■ 16. In § 210.21, revise paragraphs (d) and (g)(1) to read as follows:

§ 210.21 Procurement.

* * * * *

(d) *Buy American*—(1) *Definitions.* For the purpose of this paragraph (d):

(i) *Domestic commodity or product* means:

(A) An agricultural commodity that is produced in the United States; and

(B) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

(ii) *Substantially using agriculture commodities that are produced in the United States* means over 51 percent of a food product must consist of agricultural commodities that were grown domestically.

(2) *In general.* Subject to paragraph (d)(4) of this section, a school food authority must purchase, to the maximum extent practicable, domestic commodities or products.

(3) *Required language.* School food authorities must include language requiring the purchase of foods that meet the Buy American requirements in paragraph (d)(1) of this section in all procurement procedures, solicitations, and contracts.

(4) *Limitations.* Paragraphs (d)(2) and (3) of this section apply only to:

(i) A school food authority located in the contiguous United States; and

(ii) A purchase of domestic commodity or product for the school lunch program under this part.

(5) *Exceptions.* The purchase of foods not meeting the definition in paragraph (d)(1) of this section is only permissible when the following criteria are met:

(i) The school food authority determines that one of the following limited exceptions is met:

(A) The product is listed in the Federal Acquisitions Regulations (FAR) at 48 CFR 25.104 and/or is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or

(B) Competitive bids reveal the cost of a United States product is significantly higher than the non-domestic product.

(ii) Non-domestic food purchases (those that do not meet the definition of domestic commodity or product, as defined in paragraph (d)(1) of this section) must not exceed the following caps by the established deadlines:

(A) By July 1, 2025, non-domestic food purchases must not exceed 10 percent of total annual commercial food costs that a school food authority purchases per school year.

(B) By July 1, 2028, non-domestic food purchases must not exceed 8 percent of total annual commercial food costs that a school food authority purchases per school year.

(C) By July 1, 2031, non-domestic food purchases must not exceed 5 percent of total annual commercial food costs that a school food authority purchases per school year.

(iii) School food authorities must maintain documentation, except when the item purchased is found on the FAR at 48 CFR 25.104 when using an exception under paragraph (d)(5)(i) of this section.

(iv) School food authorities must maintain documentation, to demonstrate that when using an exception under paragraph (d)(5)(i) of this section their non-domestic food purchases do not exceed the annual threshold specified in paragraph (d)(5)(ii) of this section.

(6) *Harvested fish.* To meet the definition of a domestic commodity or product, harvested fish must meet the following requirements:

(i) Farmed fish must be harvested within the United States or any territory or possession of the United States; and

(ii) Wild caught fish must be harvested within the Exclusive Economic Zone of the United States or by a United States flagged vessel.

(7) *Applicability to Hawaii.* Paragraph (d)(2) of this section applies to school food authorities in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school lunch program under this part.

(8) *Temporary accommodation.* For school food authorities that demonstrate they cannot meet the threshold, State agencies may provide an accommodation for temporary relief from the requirement as the State agency works with the school food authority to increase domestic purchases.

* * * * *

(g) * * *

(1) A school food authority participating in the Program, as well as State agencies making purchases on behalf of such school food authorities, may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products, including the use of ''locally grown'', ''locally raised'', or ''locally caught'' as procurement specifications or selection criteria for unprocessed or minimally processed food items. When utilizing the geographic preference to procure such products, the school food authority making the purchase or the State agency making purchases on behalf of such school food authorities have the discretion to determine the local area to which the geographic preference option will be applied, so long as there are an appropriate number of qualified firms able to compete;

* * * * *

■ 17. In § 210.23, revise and republish paragraph (a) to read as follows:

§ 210.23 Other responsibilities.

(a) *Free and reduced price lunches and afterschool snacks.* State agencies and school food authorities must ensure that lunches and afterschool snacks are made available free or at a reduced price to all children who are determined by the school food authority to be eligible for such benefits. The determination of a child's eligibility for free or reduced price lunches and afterschool snacks must made in accordance with part 245 of this chapter.

* * * * *

■ 18. In § 210.29, revise paragraph (d)(3) introductory text to read as follows:

§ 210.29 Management evaluations.

* * * * *

(d) * * *

(3) *School food authority appeal of FNS findings.* When administrative or follow-up review activity conducted by FNS in accordance with the provisions of paragraph (d)(2) of this section results in the denial of all or part of a Claim for Reimbursement or withholding of payment, a school food authority may appeal the FNS findings by filing a written request with the Food and Nutrition Service in accordance with the appeal procedures specified in this paragraph (d)(3):

* * * * *

■ 19. Revise and republish § 210.30 to read as follows:

§ 210.30 School nutrition program professional standards.

(a) *General.* School food authorities that operate the National School Lunch Program, or the School Breakfast Program (part 220 of this chapter), must establish and implement professional standards for school nutrition program directors, managers, and staff, as defined in § 210.2.

(b) *Minimum standards for all school nutrition program directors.* Each school food authority must ensure that all newly hired school nutrition program directors meet minimum hiring standards and ensure that all new and existing directors have completed the minimum annual training/education requirements for school nutrition program directors, as set forth below:

(1) *Hiring standards.* All school nutrition program directors hired on or after July 1, 2015, must meet the following minimum educational requirements, as applicable:

(i) *School nutrition program directors with local educational agency enrollment of 2,499 students or fewer.* Directors must meet the requirements in paragraph (b)(1)(i)(A), (B), (C), or (D) of this section. However, a State agency may approve a school food authority to use the nonprofit school food service account to pay the salary of a school nutrition program director who does not meet the hiring standards herein so long as the school food authority is complying with a State agency-approved plan to ensure the director will meet the requirements.

(A) A bachelor's degree, or equivalent educational experience, as determined by the State agency, with an academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;

(B) A bachelor's degree, or equivalent educational experience, as determined by the State agency, with any academic major or area of concentration, and either a State-recognized certificate for school nutrition directors, or at least one year of relevant food service experience. At the discretion of the State agency, and on an individual basis, documented relevant food service experience may be unpaid;

(C) An associate's degree, or equivalent educational experience, as determined by the State agency, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field and at least one year of relevant food service experience. At the discretion of the State agency, and on an individual basis, documented relevant food service experience may be unpaid; or

(D) A high school diploma or equivalency (such as the general educational development diploma), and at least three years of relevant food service experience. At the discretion of the State agency, and on an individual basis, documented relevant food service experience may be unpaid. Directors hired under this criterion are strongly encouraged to work toward attaining an associate's degree in an academic major

in at least one of the fields listed in paragraph (b)(1)(i)(C) of this section.

(ii) *School nutrition program directors with local educational agency enrollment of 2,500 to 9,999 students.* Directors must meet the requirements in either paragraph (b)(1)(ii)(A), (B), (C), or (D) of this section.

(A) A bachelor's degree, or equivalent educational experience, as determined by the State agency, with an academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;

(B) A bachelor's degree, or equivalent educational experience, as determined by the State agency, with any academic major or area of concentration, and a State-recognized certificate for school nutrition directors;

(C) A bachelor's degree in any academic major and at least two years of relevant experience in school nutrition programs; or

(D) An associate's degree, or equivalent educational experience, as determined by the State agency, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field and at least two years of relevant school nutrition program experience. Directors hired with an associate's degree are strongly encouraged to work toward attaining a bachelor's degree in an academic major in the fields listed in this paragraph (b)(1)(ii)(D).

(iii) *School nutrition program directors with local educational agency enrollment of 10,000 or more students.* Directors must meet the requirements in either paragraph (b)(1)(iii)(A), (B), or (C) of this section.

(A) A bachelor's degree, or equivalent educational experience, as determined by the State agency, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;

(B) A bachelor's degree, or equivalent educational experience, as determined by the State agency, with any academic major or area of concentration, and a State-recognized certificate for school nutrition directors; or

(C) A bachelor's degree in any major and at least five years of experience in management of school nutrition programs.

(D) School food authorities are strongly encouraged to seek out individuals who possess a master's degree or are willing to work toward a master's degree in the fields listed in this paragraph. At least one year of management experience, preferably in school nutrition, is strongly recommended. It is also strongly recommended that directors have at least three credit hours at the university level in food service management and at least three credit hours in nutritional sciences at the time of hire.

(iv) *Exceptions to the hiring standards.* (A) For a local educational agency with less than 500 students, the State agency may approve the hire of a director who meets one of the educational criteria in paragraphs (b)(1)(i)(B) through (D) of this section but has less than the required years of relevant food service experience.

(B) For a local educational agency with 2,500 or more students, the State agency may approve the hire of a director who does not meet the educational criteria in paragraphs (b)(1)(ii)(A) through (D) or paragraphs (b)(1)(iii)(A) through (C) of this section, as applicable, but who has at least 10 years of school nutrition program experience.

(C) Acting school nutrition program directors are not required to meet the hiring standards established in this paragraph (b)(1) of this section; however, the State agency may require acting school nutrition program directors expected to serve for more than 30 business days to meet the hiring standards established in established in this paragraph (b)(1).

(v) *School nutrition program directors for all local educational agency sizes.* All school nutrition program directors, for all local educational agency sizes, must have completed at least eight hours of food safety training within five years prior to their starting date or complete eight hours of food safety training within 30 calendar days of their starting date. At the discretion of the State agency, all school nutrition program directors, regardless of their starting date, may be required to complete eight hours of food safety training every five years.

(2) [Reserved]

(c) *Continuing education/training standards for all school nutrition program directors.* Each school year, the school food authority must ensure that all school nutrition program directors (including acting directors, at the discretion of the State agency), complete 12 hours of annual continuing education/training. The annual training must include, but is not limited to, administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures), as applicable, and any other specific topics identified by FNS, as needed, to address Program integrity or other critical issues. Continuing education/training required under this paragraph (c) is in addition to the food safety training required in the first year of employment under paragraph (b)(1)(v) of this section.

(d) *Continuing education/training standards for all school nutrition program managers.* Each school year, the school food authority must ensure that all school nutrition program managers have completed 10 hours of annual continuing education/training. The annual training must include, but is not limited to, the following topics, as applicable:

(1) Administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures);

(2) The identification of reimbursable meals at the point of service;

(3) Nutrition;

(4) Health and safety standards; and

(5) Any specific topics identified by FNS, as needed, to address Program integrity or other critical issues.

(e) *Continuing education/training standards for all staff with responsibility for school nutrition programs.* Each school year, the school food authority must ensure that all staff with responsibility for school nutrition programs that work an average of at least 20 hours per week, other than school nutrition program directors and managers, completes 6 hours of annual training in areas applicable to their jobs. Part-time staff working an average of less than 20 hours per week must complete 4 hours of annual training. The annual training must include, but is not limited to, the following topics, as applicable to their positions and responsibilities:

(1) Free and reduced price eligibility;

(2) Application, certification, and verification procedures;

(3) The identification of reimbursable meals at the point of service;

(4) Nutrition;

(5) Health and safety standards; and

(6) Any specific topics identified by FNS, as needed, to address Program integrity or other critical issues.

(f) *Summary of required minimum continued education/training standards.* The annual training requirements for school nutrition program directors, managers, and staff are summarized in the following table.

TABLE 1 TO PARAGRAPH (f)—SUMMARY OF REQUIRED ANNUAL TRAINING [1] [2]

School Nutrition Program Directors	Each year, at least 12 hours of annual education/training. Includes topics such as: • Administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures). • Any specific topics required by FNS, as needed, to address Program integrity and other critical issues. This required continuing education/training is in addition to the food safety training required in the first year of employment, or for all school nutrition program directors if determined by the State agency.
School Nutrition Program Managers	Each year, at least 10 hours of annual education/training. Includes topics such as: • Administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures). • The identification of reimbursable meals at the point of service. • Nutrition, health, and safety standards. • Any specific topics required by FNS, as needed, to address Program integrity or other critical issues.
School Nutrition Program Staff	Each year, at least 6 hours of annual education/training. Includes topics such as: • Free and reduced price eligibility. • Application, certification, and verification procedures. • The identification of reimbursable meals at the point of service. • Nutrition, health, and safety standards. • Any specific topics required by FNS, as needed, to address Program integrity or other critical issues.
Acting and Temporary Staff, Substitutes, and Volunteers.	This requirement applies to staff, other than directors and managers, who work at least 20 hours per week. At the discretion of the State agency, acting and temporary staff, substitutes, and volunteers must complete training in one or more of the following topics within 30 calendar days of their start date: • Free and reduced price eligibility. • Application, certification, and verification procedures. • The identification of reimbursable meals at the point of service. • Nutrition, health, and safety standards. • Any specific topics required by FNS, as needed, to address Program integrity or other critical issues.

[1] School nutrition program directors, managers, and staff may carry over excess annual training hours to an immediately previous or subsequent school year and demonstrate compliance with the training requirements over a period of two school years, provided that some training hours are completed each school year.

[2] Program directors, managers, and staff hired on or after January 1 of each school year must complete half of their required annual training hours by June 30 of the school year in which they were hired.

(g) *Use of food service funds for training costs.* Costs associated with annual continuing education/training required under paragraphs (b)(3), (c) and (d) of this section are allowed provided they are reasonable, allocable, and necessary in accordance with the cost principles set forth in 2 CFR part 225, Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A–87). However, food service funds must not be used to pay for the cost of college credits incurred by an individual to meet the hiring requirements in paragraphs (b)(1)(i) through (iv) and (b)(2) of this section.

(h) *School food authority oversight.* Each school year, the school food authority director must document compliance with the requirements of this section for all staff with responsibility for school nutrition programs, including directors, managers, and staff. Documentation must be adequate to establish, to the State's satisfaction during administrative reviews, that employees are meeting the minimum professional standards. The school food authority must certify that:

(1) The school nutrition program director meets the hiring standards and training requirements set forth in paragraph (b) of this section.

(2) Each employee has completed the applicable training requirements in paragraphs (c) and (d) of this section no later than the end of each school year.

(3) Each employee tasked with Program procurement has completed annual procurement training, as required under § 210.21(h), by the end of each school year.

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

■ 20. The authority citation for part 215 continues to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

■ 21. In § 215.7a, revise paragraph (b) to read as follows:

§ 215.7a Fluid milk and non-dairy milk substitute requirements.

* * * * *

(b) *Fluid milk substitutes for non-disability reasons.* (1) A school food authority or child care institution may offer fluid milk substitutes based on a written request from a child's parent or guardian, a State licensed healthcare professional, or registered dietitian. A school food authority or child care institution choosing to offer fluid milk substitutes for a non-disability reason is not required to offer the specific fluid milk substitutes requested but may offer the fluid milk substitutes of its choice, provided the fluid milk substitutes offered meet the requirements of paragraph (b)(2) of this section.

(2) If a school food authority or child care institution chooses to offer one or more fluid milk substitutes for non-disability reasons, the fluid milk substitutes must provide, at a minimum, the nutrients listed in the following table. Fluid milk substitutes must be fortified in accordance with fortification guidelines issued by the Food and Drug Administration.

TABLE 1 TO PARAGRAPH (b)(2)—NUTRIENT REQUIREMENTS FOR FLUID MILK SUBSTITUTES

Nutrient	Per cup (8 fl. oz.)
Calcium	276 mg.
Protein	8 g.
Vitamin A	150 mcg. retinol activity equivalents (RAE).
Vitamin D	2.5 mcg.
Magnesium	24 mg.
Phosphorus	222 mg.
Potassium	349 mg.
Riboflavin	0.44 mg.
Vitamin B–12	1.1 mcg.

(3) Expenses incurred when providing fluid milk substitutes that exceed program reimbursements must be paid by the school food authority or child care institution; costs may be paid from the nonprofit food service account.

■ 22. In § 215.14a, revise paragraph (e) to read as follows:

§ 215.14a Procurement standards.

* * * * *

(e) *Geographic preference.* A school food authority participating in the Program may apply a geographic preference when procuring milk, including the use of ''locally grown'', ''locally raised'', or ''locally caught'' as procurement specifications or selection criteria for unprocessed or minimally processed food items. When utilizing the geographic preference to procure milk, the school food authority making the purchase has the discretion to determine the local area to which the geographic preference option will be applied, so long as there are an appropriate number of qualified firms able to compete.

PART 220—SCHOOL BREAKFAST PROGRAM

■ 23. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 24. Revise and republish § 220.2 to read as follows:

§ 220.2 Definitions.

For the purpose of this part the term:

2 CFR part 200, means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the National School Lunch Program).

Act means the Child Nutrition Act of 1966, as amended.

Applicable credits shall have the meaning established in 2 CFR part 200 and USDA implementing regulations 2 CFR parts 400 and 415.

Breakfast means a meal which meets the meal requirements set out in § 220.8, and which is served to a child in the morning hours. The meal must be served at or close to the beginning of the child's day at school.

Child means:

(1) A student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under as described in paragraphs (1) and (2) of the definition of ''School'' in this section, including students with a disability who participate in a school program established for persons with disabilities; or

(2) A person under 21 chronological years of age who is enrolled in an institution or center as described in paragraph (3) of the definition of ''School'' in this section.

Contractor means a commercial enterprise, public or nonprofit private organization or individual that enters into a contract with a school food authority.

Cost reimbursable contract means a contract that provides for payment of incurred costs to the extent prescribed in the contract, with or without a fixed fee.

Department means the United States Department of Agriculture.

Distributing Agency means a State agency which enters into an agreement with the Department for the distribution to schools of donated foods pursuant to part 250 of this chapter.

Fiscal year means a period of 12 calendar months beginning on October 1 of any year and ending September 30 of the following year.

Fixed fee means an agreed upon amount that is fixed at the inception of the contract. In a cost reimbursable contract, the fixed fee includes the contractor's direct and indirect administrative costs and profit allocable to the contract.

Fixed-price contract means a contract that charges a fixed cost per meal, or a fixed cost for a certain time period. Fixed-price contracts may include an economic price adjustment tied to a standard index.

FNS means the Food and Nutrition Service, United States Department of Agriculture.

FNSRO means the appropriate Regional Office of the Food and Nutrition Service of the Department.

Food item means a specific food offered within a meal component.

Free breakfast means a breakfast served under the Program to a child from a household eligible for such benefits under part 245 of this chapter and for which neither the child nor any member of the household pays or is required to work.

Infant cereal means any iron fortified dry cereal especially formulated and generally recognized as cereal for infants that is routinely mixed with breast milk or iron-fortified infant formula prior to consumption.

Infant formula means any iron-fortified infant formula intended for dietary use solely as a food for normal healthy infants excluding those formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

Local educational agency means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools. The term also includes any other public or private nonprofit institution or agency having administrative control and direction of a public or private nonprofit elementary school or secondary school, including residential child care institutions, Bureau of Indian Affairs schools, and educational service agencies and consortia of those agencies, as well as the State educational agency in a State or territory in which the State educational agency is the sole educational agency for all public or private nonprofit schools.

Meal component means one of the food groups which comprise reimbursable meals. The meal components are: fruits, vegetables, grains, meats/meat alternates, and fluid milk.

National School Lunch Program means the Program authorized by the National School Lunch Act.

Net cash resources means all monies as determined in accordance with the State agency's established accounting

system, that are available to or have accrued to a School Food Authority's nonprofit school food service at any given time, less cash payable. Such monies may include but are not limited to, cash on hand, cash receivable, earnings or investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

Nonprofit means, when applied to schools or institutions eligible for the Program, exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986.

Nonprofit school food service means all food service operations conducted by the school food authority principally for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food service.

Nonprofit school food service account means the restricted account in which all of the revenue from all food service operations conducted by the school food authority principally for the benefit of school children is retained and used only for the operation or improvement of the nonprofit school food service.

OIG means the Office of the Inspector General of the Department.

Program means the School Breakfast Program.

Reduced price breakfast means a breakfast served under the Program:

(1) To a child from a household eligible for such benefits under part 245 of this chapter;

(2) For which the price is less than the school food authority designated full price of the breakfast and which does not exceed the maximum allowable reduced price specified under part 245 of this chapter; and

(3) For which neither the child nor any member of the household is required to work.

Reimbursement means Federal cash assistance including advances paid or payable to participating schools for breakfasts meeting the requirements of § 220.8 served to eligible children.

Revenue when applied to nonprofit school food service means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

School means:

(1) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings;

(2) Any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; or

(3) Any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, except for residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes.

School Breakfast Program means the program authorized by section 4 of the Child Nutrition Act of 1966.

School in severe need means a school determined to be eligible for rates of reimbursement in excess of the prescribed National Average Payment Factors, based upon the criteria set forth in § 220.9(d).

School food authority means the governing body which is responsible for the administration of one or more schools; and has legal authority to operate the Program therein *or* be otherwise approved by FNS to operate the Program.

School week means the period of time used to determine compliance with the meal requirements in § 220.8. The period must be a normal school week of five consecutive days; however, to accommodate shortened weeks resulting from holidays and other scheduling needs, the period must be a minimum of three consecutive days and a maximum of seven consecutive days. Weeks in which school breakfasts are offered less than three times must be combined with either the previous or the coming week.

Seamless Summer Option means the meal service alternative authorized by Section 13(a)(8) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1761(a)(8), under which public or nonprofit school food authorities participating in the National School Lunch Program or School Breakfast Program offer meals at no cost to children during the traditional summer vacation periods and, for year-round schools, vacation periods longer than 10 school days.

Secretary means the Secretary of Agriculture.

State means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and, as applicable, American Samoa and the Commonwealth of the Northern Marianas.

State agency means:

(1) The State educational agency;

(2) Such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in schools as specified in § 210.3(b) of this chapter; or

(3) The FNSRO, where the FNSRO administers the Program as specified in § 210.3(c) of this chapter.

State educational agency means, as the State legislature may determine:

(1) The chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or

(2) A board of education controlling the State department of education.

Tofu means a soybean-derived food, made by a process in which soybeans are soaked, ground, mixed with water, heated, filtered, coagulated, and formed into cakes. Basic ingredients are whole soybeans, one or more food-grade coagulants (typically a salt or an acid), and water. Tofu products must conform to FNS guidance to count toward the meats/meat alternates component.

USDA implementing regulations include the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

Whole grain-rich is the term designated by FNS to indicate that the grain content of a product is between 50 and 100 percent whole grain with any remaining grains being enriched.

Whole grains means grains that consist of the intact, ground, cracked, or flaked grain seed whose principal anatomical components—the starchy endosperm, germ and bran—are present in the same relative proportions as they exist in the intact grain seed.

Yogurt means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Definition and Standard of Identity for yogurt, 21 CFR 131.200, and low-fat yogurt and non-fat yogurt covered as a standardized food under 21 CFR 130.10.

■ 25. In § 220.3, revise and republish paragraph (a) to read as follows:

§ 220.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program covered by this part.

* * * * *

■ 26. In § 220.7:

■ a. Revise and republish paragraphs (d)(3)(ii) and (iii), (e)(1)(iii), and (e)(2);

■ b. Revise paragraph (e)(4); and

■ c. Revise and republish paragraphs (e)(5), (9), and (13) and (h).

The revisions read as follows:

§ 220.7 Requirements for participation.

* * * * *

(d) * * *

(3) * * *

(ii) The food service management company must have State or local health certification for any facility outside the school in which it proposes to prepare meals and the food service management company must maintain this health certification for the duration of the contract;

(iii) No payment is to be made for meals that are spoiled or unwholesome at time of delivery, do not meet detailed specifications as developed by the school food authority for each meal component specified in § 220.8, or do not otherwise meet the requirements of the contract. Specifications will cover items such a grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time; and

* * * * *

(e) * * *

(1) * * *

(iii) Revenues received by the nonprofit school food service must not be used to purchase land or buildings or to construct buildings;

* * * * *

(2) Serve breakfasts which meet the minimum requirements prescribed in § 220.8;

* * * * *

(4) Serve breakfast free or at a reduced price to all children who are determined by the local education agency to be eligible for such meals under part 245 of this chapter;

(5) Make no discrimination against any child because of the child's inability to pay the full price of the breakfasts;

* * * * *

(9) Purchase, in as large quantities as may be efficiently utilized in its nonprofit school food service, foods designated as plentiful by the State agency;

* * * * *

(13) Upon request, make all accounts and records pertaining to its nonprofit school food service available to the State agency and to FNS for audit or review at a reasonable time and place. Such records must be retained for a period of three years after the end of the fiscal year to which they pertain, except that if audit findings have not been resolved, the records must be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit;

* * * * *

(h) Local educational agencies must comply with the provisions of § 210.31 of this chapter regarding the development, implementation, periodic review and update, and public notification of the local school wellness policy.

■ 27. Revise and republish § 220.8 to read as follows:

§ 220.8 Meal requirements for breakfasts.

(a) *General requirements.* This section contains the meal requirements applicable to school breakfasts for students in grades K through 12, and for children under the age of 5. In general, school food authorities must ensure that participating schools provide nutritious, well-balanced, and age-appropriate breakfasts to all the children they serve to improve their diet and safeguard their health.

(1) *General nutrition requirements.* School breakfasts offered to children age 5 and older must meet, at a minimum, the meal requirements in paragraph (b) of this section. Schools must follow a food-based menu planning approach and produce enough food to offer each child the quantities specified in the meal pattern established in paragraph (c) of this section for each age/grade group served in the school. In addition, school breakfasts must meet the dietary specifications in paragraph (f) of this section. Schools offering breakfasts to children ages 1 to 4 and infants must meet the meal pattern requirements in paragraphs (o) and (p) of this section, as applicable. When breakfast is served in the cafeteria, schools must make plain potable water available and accessible without restriction to children at no charge.

(2) *Unit pricing.* Schools must price each meal as a unit. The price of a reimbursable breakfast does not change if the student does not take a food item or requests smaller portions. Schools must identify, near or at the beginning of the serving line(s), the food items that constitute the unit-priced reimbursable school meal(s).

(3) *Production and menu records.* Schools or school food authorities, as applicable, must keep production and menu records for the meals they produce. These records must show how the meals offered contribute to the required meal components and food quantities for each age/grade group every day. Schools or school food authorities must maintain records of the latest nutritional analysis of the school menus conducted by the State agency. Information on maintaining production and menu records may be found in FNS guidance.

(b) *Meal requirements for school breakfasts.* School breakfasts for children ages 5 and older must reflect food and nutrition requirements specified by the Secretary. Compliance with these requirements is measured as follows:

(1) On a daily basis:

(i) Meals offered to each age/grade group must include the meal components and food quantities specified in the meal pattern in paragraph (c) of this section;

(ii) Meal selected by each student must have the number of meal components required for a reimbursable meal and include at least one fruit or vegetable.

(2) Over a 5-day school week:

(i) Average calorie content of the meals offered to each age/grade group must be within the minimum and maximum calorie levels specified in paragraph (f) of this section;

(ii) Average saturated fat content of the meals offered to each age/grade group must be less than 10 percent of total calories as specified in paragraph (f) of this section;

(iii) By July 1, 2027, average added sugars content of the meals offered to each age/grade group must be less than 10 percent of total calories as specified in paragraph (f) of this section; and

(iv) Average sodium content of the meals offered to each age/grade group must not exceed the maximum level specified in paragraph (f) of this section.

(c) *Meal pattern for school breakfasts for grades K through 12.* A school must offer the meal components and quantities required in the breakfast meal pattern established in the following table:

TABLE 1 TO PARAGRAPH (c) INTRODUCTORY TEXT—SCHOOL BREAKFAST PROGRAM MEAL PATTERN

Meal components	Amount of food [1] per week (minimum per day)		
	Grades K–5	Grades 6–8	Grades 9–12
Fruits (cups) [2]	5 (1)	5 (1)	5 (1)
Vegetables (cups) [2]	0	0	0
Dark Green Subgroup	0	0	0
Red/Orange Subgroup	0	0	0
Beans, Peas, and Lentils Subgroup	0	0	0
Starchy Subgroup	0	0	0
Other Vegetables Subgroup	0	0	0
Grains or Meats/Meat Alternates (oz. eq) [3]	7–10 (1)	8–10 (1)	9–10 (1)
Fluid Milk (cups) [4]	5 (1)	5 (1)	5 (1)
Dietary Specifications: Daily Amount Based on the Average for a 5-Day Week [5]			
Minimum-Maximum Calories (kcal)	350–500	400–550	450–600
Saturated Fat (% of total calories)	<10	<10	<10
Added Sugars (% of total calories)	<10	<10	<10
Sodium Limit: In place through June 30, 2027	≤540 mg	≤600 mg	≤640 mg
Sodium Limit: Must be implemented by July 1, 2027	≤485 mg	≤535 mg	≤570 mg

[1] Food items included in each group and subgroup and amount equivalents.

[2] Minimum creditable serving is ⅛ cup. Schools must offer 1 cup of fruit daily and 5 cups of fruit weekly. Schools may substitute vegetables for fruit at breakfast as described in paragraphs (c)(2)(i) and (ii) of this section.

[3] Minimum creditable serving is 0.25 oz. eq. School may offer grains, meats/meat alternates, or a combination of both to meet the daily and weekly ounce equivalents for this combined component. At least 80 percent of grains offered weekly at breakfast must be whole grain-rich as defined in § 210.2 of this chapter, and the remaining grain items offered must be enriched.

[4] Minimum creditable serving is 8 fluid ounces. All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less) and must meet the requirements in paragraph (d) of this section.

[5] By July 1, 2027, schools must meet the dietary specification for added sugars. Schools must meet the sodium limits by the dates specified in this chart. Discretionary sources of calories may be added to the meal pattern if within the dietary specifications.

(1) *Age/grade groups.* Schools must plan menus for students using the following age/grade groups: Grades K–5 (ages 5–10), grades 6–8 (ages 11–13), and grades 9–12 (ages 14–18). If an unusual grade configuration in a school prevents the use of the established age/grade groups, students in grades K–5 and grades 6–8 may be offered the same food quantities at breakfast provided that the calorie and sodium standards for each age/grade group are met. No customization of the established age/grade groups is allowed.

(2) *Meal components.* Schools must offer students in each age/grade group the meal components specified in meal pattern in this paragraph (c). Meal component descriptions in § 210.10 of this chapter apply to this Program.

(i) *Fruits component.* Schools must offer daily the fruit quantities specified in the breakfast meal pattern in this paragraph (c). Fruits that are fresh, frozen, or dried, or canned in light syrup, water or fruit juice may be offered to meet the fruits component requirements. Vegetables may be offered in place of all or part of the required fruits at breakfast. Schools that choose to offer vegetables in place of fruits at breakfast one day per school week may offer any vegetables, including starchy vegetables. Schools that choose to offer vegetables in place of fruits at breakfast two or more days per school week must offer at least two different vegetable subgroups as defined in § 210.10(c)(2)(ii) of this chapter. All fruits are credited based on their volume as served, except that ¼ cup of dried fruit counts as ½ cup of fruit. Only pasteurized, full-strength fruit juice may be offered, and may be credited to meet no more than one-half of the fruit component.

(ii) *Vegetables component.* Schools are not required to offer vegetables as part of the breakfast menu but may offer vegetables to meet part or all of the fruit requirement. Schools that choose to offer vegetables in place of fruits at breakfast one day per school week may offer any vegetables, including starchy vegetables. Schools that choose to offer vegetables in place of fruits at breakfast two or more days more than one day per school week must offer vegetables from at least two different vegetable subgroups as defined in § 210.10(c)(2)(ii) of this chapter. Fresh, frozen, or canned vegetables and dry beans, peas, and lentils may be offered to meet the fruit requirement. All vegetables are credited based on their volume as served, except that 1 cup of leafy greens counts as ½ cup of vegetables and tomato paste and tomato puree are credited based on calculated volume of the whole food equivalency. Pasteurized, full-strength vegetable juice may be offered to meet no more than one-half of the vegetable component. Cooked dry beans, peas, and lentils may be counted as either a vegetable or as a meat/meat alternate but not as both in the same dish.

(iii) *Grains.* Grains offered at breakfast count toward the combined grains and meats/meat alternates component. Schools may offer grains, meats/meat alternates, or a combination of both to meet the daily and weekly ounce equivalents for this combined component. Information on crediting grain items may be found in FNS guidance.

(A) *Whole grain-rich requirement.* Whole grain-rich is the term designated by FNS to indicate that the grain content of a product is between 50 and 100 percent whole grain with any remaining grains being enriched. At least 80 percent of grains offered at breakfast weekly, based on ounce equivalents, must meet the whole grain-rich criteria as defined in § 220.2, and the remaining grain items offered must be enriched.

(B) *Breakfast cereals.* By July 1, 2025, breakfast cereals must contain no more than 6 grams of added sugars per dry ounce.

(C) *Daily and weekly servings.* The grains component is based on minimum daily servings plus total servings over a 5-day school week. Schools serving breakfast 6 or 7 days per week must increase the weekly grains quantity by approximately 20 percent (⅕) for each additional day. When schools operate less than 5 days per week, they may

decrease the weekly quantity by approximately 20 percent (⅕) for each day less than 5.

(iv) *Meats/meat alternates.* Meats/meat alternates offered at breakfast count toward the combined grains and meats/meat alternates component. Schools may offer grains, meats/meat alternates, or a combination of both to meet the daily and weekly ounce equivalents for this combined component. Information on crediting meats/meat alternates may be found in FNS guidance.

(A) *Enriched macaroni.* Enriched macaroni with fortified protein, as defined in appendix A to part 210 of this chapter, may be used to meet part of the meats/meat alternates requirement when used as specified in appendix A to part 210.

(B) *Nuts and seeds.* Nuts and seeds and their butters are allowed as meat alternates. Acorns, chestnuts, and coconuts do not credit as meat alternates because of their low protein and iron content. Nut and seed meals or flours may credit only if they meet the requirements for Alternate Protein Products established in appendix A to this part.

(C) *Yogurt.* Yogurt may be offered to meet all or part of the combined grains and meats/meat alternates component. Yogurt may be plain or flavored, unsweetened or sweetened. By July 1, 2025, yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce). Noncommercial and/or non-standardized yogurt products, such as frozen yogurt, drinkable yogurt products, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruits and/or nuts or similar products are not creditable. Four ounces (weight) or ½ cup (volume) of yogurt equals one ounce of the meats/meat alternates requirement.

(D) *Tofu and soy products.* Commercial tofu and soy products may be offered to meet all or part of the combined grains and meats/meat alternates component. Noncommercial and/or non-standardized tofu and products are not creditable.

(E) *Beans, peas, and lentils.* Cooked dry beans, peas, and lentils may be used to meet all or part of the combined grains and meats/meat alternates component. Beans, peas, and lentils are identified in this section and include foods such as black beans, garbanzo beans, lentils, kidney beans, mature lima beans, navy beans, pinto beans, and split peas. Cooked dry beans, peas, and lentils may be counted as either a vegetable or as a meat/meat alternate but not as both in the same dish.

(F) *Other meat alternates.* Other meat alternates, such as cheese and eggs, may be used to meet all or part of the combined grains and meats/meat alternates component.

(v) *Fluid milk component.* Fluid milk must be offered daily in accordance with paragraph (d) of this section.

(3) *Grain substitutions.* (i) Schools in American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands may serve any vegetable, including vegetables such as breadfruit, prairie turnips, plantains, sweet potatoes, and yams, to meet the combined grains and meats/meat alternates component.

(ii) School food authorities and schools that are tribally operated, operated by the Bureau of Indian Education, and that serve primarily American Indian or Alaska Native children, may serve any vegetable, including vegetables such as breadfruit, prairie turnips, plantains, sweet potatoes, and yams, to meet the combined grains and meats/meat alternates component.

(4) *Traditional Indigenous foods.* Traditional Indigenous foods may credit toward the required meal components. Information on food crediting may be found in FNS guidance. Schools are encouraged to serve traditional Indigenous foods as part of their breakfast service. Per the Agriculture Improvement Act of 2014, as amended (25 U.S.C. 1685(b)(5)) traditional foods means food that has traditionally been prepared and consumed by an American Indian tribe, including wild game meat; fish; seafood; marine mammals; plants; and berries.

(d) *Fluid milk requirements.* Schools must offer students a variety (at least two different options) of fluid milk at breakfast daily. All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk with higher fat content is not creditable. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered. Milk may be flavored or unflavored, provided that unflavored milk is offered at each meal service. By July 1, 2025, flavored milk must contain no more than 10 grams of added sugars per 8 fluid ounces, or for flavored milk sold as competitive food for middle and high schools, 15 grams of added sugars per 12 fluid ounces. Schools must also comply with other applicable fluid milk requirements in § 210.10(d) of this chapter.

(e) *Offer versus serve for grades K through 12.* School breakfast must offer daily at least the three meal components required in the meal pattern in paragraph (c) of this section. To exercise the offer versus serve option at breakfast, a school food authority or school must offer a minimum of four food items daily as part of the required components. Under offer versus serve, students are allowed to decline one of the four food items, provided that students select at least ½ cup of the fruit component for a reimbursable meal. If only three food items are offered at breakfast, school food authorities or schools may not exercise the offer versus serve option.

(f) *Dietary specifications*—(1) *Calories.* School breakfasts offered to each age/grade group must meet, on average over the school week, the minimum and maximum calorie levels specified in the following table:

TABLE 2 TO PARAGRAPH (f)(1)—SCHOOL BREAKFAST PROGRAM CALORIE RANGES

	Grades K–5	Grades 6–8	Grades 9–12
Average Daily Minimum-Maximum Calories (kcal) [1]	350–500	400–550	450–600

[1] The average daily amount must fall within the minimum and maximum levels. Discretionary sources of calories may be added to the meal pattern if within the dietary specifications.

(2) *Saturated fat.* School breakfast offered to all age/grade groups must, on average over the school week, provide less than 10 percent of total calories from saturated fat.

(3) *Added sugars.* By July 1, 2027, school breakfasts offered to all age/grade groups must, on average over the school week, provide less than 10 percent of total calories from added sugars.

(4) *Sodium.* School breakfasts offered to each age/grade group must meet, on average over the school week, the levels of sodium specified in the following table within the established deadlines:

TABLE 3 TO PARAGRAPH (f)(4)—SCHOOL BREAKFAST PROGRAM SODIUM LIMITS

Age/grade group	Sodium limit: in place through June 30, 2027 (mg)	Sodium limit: must be implemented by July 1, 2027 (mg)
Grades K–5	≤540	≤485
Grades 6–8	≤600	≤535
Grades 9–12	≤640	≤570

(g) *Compliance assistance.* The State agency and school food authority must provide technical assistance and training to assist schools in planning breakfasts that meet the meal pattern in paragraph (c) of this section, the dietary specifications established in paragraph (f) of this section, and the meal pattern in paragraphs (o) and (p) of this section, as applicable. Compliance assistance may be offered during training, onsite visits, and/or administrative reviews.

(h) *State agency responsibilities for monitoring dietary specifications.* When required by the Administrative Review process set forth in § 210.18 of this chapter, the State agency must conduct a weighted nutrient analysis to evaluate the average levels of calories, saturated fat, added sugars, and sodium of the breakfasts offered to students in grades K–12 during one week within the review period. The nutrient analysis must be conducted in accordance with the procedures established in § 210.10(i)(3) of this chapter. If the results of the nutrient analysis indicate that the school breakfasts do not meet the specifications for calories, saturated fat, added sugars, or sodium specified in paragraph (f) of this section, the State agency or school food authority must provide technical assistance and require the reviewed school to take corrective action to meet the requirements.

(i) *Nutrient analyses of school meals.* Any nutrient analysis of school breakfasts conducted under the administrative review process set forth in § 210.18 of this chapter must be performed in accordance with the procedures established in § 210.10(i) of this chapter. The purpose of the nutrient analysis is to determine the average levels of calories, saturated fat, added sugars, and sodium in the breakfasts offered to each age grade group over a school week.

(j) *Responsibility for monitoring meal requirements.* Compliance with the applicable breakfast requirements in paragraph (b) of this section, including the dietary specifications, and paragraphs (o) and (p) of this section will be monitored by the State agency through administrative reviews authorized in § 210.18 of this chapter.

(k) *Menu choices at breakfast.* The requirements in § 210.10(k) of this chapter also apply to this Program.

(l) *Requirements for breakfast period*—(1) *Timing.* Schools must offer breakfasts meeting the requirements of this section at or near the beginning of the school day.

(2) [Reserved]

(m) *Modifications and variations in reimbursable meals.* The requirements in § 210.10(m) of this chapter also apply to this Program.

(n) *Nutrition disclosure.* The requirements in § 210.10(n) of this chapter also apply to this Program.

(o) *Breakfast requirements for preschoolers*—(1) *Breakfasts served to preschoolers.* Schools serving breakfast to preschoolers under the School Breakfast Program must serve the meal components and quantities required in the breakfast meal pattern established for the Child and Adult Care Food Program under § 226.20(a), (c)(1), and (d) of this chapter. In addition, schools serving breakfasts to this age group must comply with the requirements set forth in paragraphs (a), (c)(3), (g), and (k) through (m) of this section, as applicable.

(2) *Preschooler breakfast meal pattern table.* The minimum amounts of meal components to be served at breakfast are as follows:

TABLE 4 TO PARAGRAPH (o)(2)—PRESCHOOL BREAKFAST MEAL PATTERN

[Select the appropriate components for a reimbursable meal]

Meal components and food items [1]	Minimum quantities	
	Ages 1–2	Ages 3–5
Fluid Milk [2]	4 fluid ounces	6 fluid ounces.
Vegetables, Fruits, or portions of both [3]	¼ cup	½ cup.
Grains (oz. eq.) [4]	½ ounce equivalent	½ ounce equivalent.

[1] Must serve all three components for a reimbursable meal.

[2] Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old.

[3] Pasteurized full-strength juice may only be offered to meet the vegetable or fruit requirement at one meal, including snack, per day.

[4] At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count toward meeting the grains requirement. Meats/meat alternates may be offered in place of the entire grains requirement, up to 3 times per week at breakfast. One ounce equivalent of a meat/meat alternate credits equal to one ounce equivalent of grains. Through September 30, 2025, breakfast cereals must contain no more than 6 grams of total sugars per dry ounce. By October 1, 2025, breakfast cereals must contain no more than 6 grams of added sugars per dry ounce. Information on crediting grain items and meats/meat alternates may be found in FNS guidance.

(p) *Breakfast requirements for infants*—(1) *Breakfasts served to infants.* Schools serving breakfasts to infants ages birth through 11 months under the School Breakfast Program must serve the meal components and quantities required in the breakfast meal pattern established for the Child and Adult Care Food Program, under § 226.20(a), (b), and (d) of this chapter. In addition, schools serving breakfasts to infants must comply with the requirements set forth in paragraphs (a), (c)(3), (g), and (k) through (m) of this section as applicable.

(2) *Infant breakfast meal pattern table.* The minimum amounts of meal components to be served at breakfast are as follows:

TABLE 5 TO PARAGRAPH (p)(2)—INFANT BREAKFAST MEAL PATTERN

Birth through 5 months	6 through 11 months
4–6 fluid ounces breast milk [1] or formula [2]	6–8 fluid ounces breast milk [1] or formula; [2] and 0–½ ounce equivalent infant cereal; [2 3] or 0–4 tablespoons meat, fish, poultry, whole egg, cooked dry beans, peas, or lentils; or 0–2 ounces of cheese; or 0–4 ounces (volume) of cottage cheese; or 0–4 ounces or ½ cup of yogurt; [4] or a combination of the above; [5] and 0–2 tablespoons vegetable or fruit, or a combination of both. [5 6]

[1] Breast milk or formula, or portions of both, must be served; however, it is recommended that breast milk be served from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered at a later time if the infant will consume more.
[2] Infant formula and dry infant cereal must be iron-fortified.
[3] Information on crediting grain items may be found in FNS guidance.
[4] Through September 30, 2025, yogurt must contain no more than 23 grams of total sugars per 6 ounces. By October 1, 2025, yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce).
[5] A serving of this component is required when the infant is developmentally ready to accept it.
[6] Fruit and vegetable juices must not be served.

(q) *Severability.* If any provision of this section is held to be invalid or unenforceable by its terms, or as applied to any person or circumstances, it shall be severable from this section and not affect the remainder thereof. In the event of such holding of invalidity or unenforceability of a provision, the meal pattern requirements covered by that provision reverts to the version immediately preceding the invalidated provision.

■ 28. In § 220.13:
■ a. Revise paragraph (b)(3);
■ b. Revise and republish paragraphs (c) and (f)(3); and
■ c. Remove paragraph (l);
■ d. Redesignate paragraph (m) as paragraph (l).

The revisions read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(b) * * *

(3) Each State agency must keep the records supplied by school food authorities showing the number of food safety inspections obtained by schools for the current and three most recent school years.

(c) Each State agency must promptly investigate complaints received or irregularities noted in connection with the operation of either program, and must take appropriate action to correct any irregularities. State agencies must maintain on file evidence of such investigations and actions. FNS will make investigations at the request of the State agency or where FNS determines investigations are appropriate.

* * * * *

(f) * * *

(3) For the purposes of compliance with the meal requirements in § 220.8, the State agency must follow the provisions specified in § 210.18(g) of this chapter, as applicable.

* * * * *

■ 29. In § 220.14, revise and republish paragraphs (c) and (e) to read as follows:

§ 220.14 Claims against school food authorities.

* * * * *

(c) The State agency may refer to FNS for determination any action it proposes to take under this section.

* * * * *

(e) If FNS does not concur with the State agency's action in paying a claim or a reclaim, or in failing to collect an overpayment, FNS will assert a claim against the State agency for the amount of such claim, reclaim, or overpayment. In all such cases the State agency will have full opportunity to submit to FNS evidence or information concerning the action taken. If, in the determination of FNS, the State agency's action was unwarranted, the State agency must promptly pay to FNS the amount of the claim, reclaim, or overpayment.

* * * * *

■ 30. In § 220.16, revise paragraphs (d) and (f)(1) to read as follows:

§ 220.16 Procurement standards.

* * * * *

(d) *Buy American*—(1) *Definitions.* For the purpose of this paragraph (d):

(i) *Domestic commodity or product* means:

(A) An agricultural commodity that is produced in the United States; and

(B) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

(ii) *Substantially using agriculture commodities that are produced in the United States* means over 51 percent of a food product must consist of agricultural commodities that were grown domestically.

(2) *In general.* Subject to paragraph (d)(4) of this section, a school food authority must purchase, to the maximum extent practicable, domestic commodities or products.

(3) *Required language.* School food authorities must include language requiring the purchase of foods that meet the Buy American requirements in paragraph (d)(1) of this section in all procurement procedures, solicitations, and contracts.

(4) *Limitations.* Paragraphs (d)(2) and (3) of this section apply only to:

(i) A school food authority located in the contiguous United States; and

(ii) A purchase of domestic commodity or product for the school breakfast program under this part.

(5) *Exceptions.* The purchase of foods not meeting the definition in paragraph (d)(1) of this section is only permissible when the following criteria are met:

(i) The school food authority determines that one of the following limited exceptions is met:

(A) The product is listed in the Federal Acquisition Regulation (FAR) at 48 CFR 25.104 and/or is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or

(B) Competitive bids reveal the cost of a United States product is significantly higher than the non-domestic product.

(ii) Non-domestic food purchases (those that do not meet the definition of domestic commodity or product, as defined in paragraph (d)(1) of this

section) must not exceed the following caps by the established deadlines:

(A) By July 1, 2025, non-domestic food purchases must not exceed 10 percent of total annual commercial food costs that a school food authority purchases per school year.

(B) By July 1, 2028, non-domestic food purchases must not exceed 8 percent of total annual commercial food costs that a school food authority purchases per school year.

(C) By July 1, 2031, non-domestic food purchases must not exceed 5 percent of total annual commercial food costs that a school food authority purchases per school year.

(iii) School food authorities must maintain documentation, except when the item purchased is found on the FAR at 48 CFR 25.104 when using an exception under paragraph (d)(5)(i) of this section.

(iv) School food authorities must maintain documentation, to demonstrate that when using an exception under paragraph (d)(5)(i) of this section their non-domestic food purchases do not exceed the annual threshold specified in paragraph (d)(5)(ii) of this section.

(6) *Harvested fish.* To meet the definition of a domestic commodity or product, harvested fish must meet the following requirements:

(i) Farmed fish must be harvested within the United States or any territory or possession of the United States; and

(ii) Wild caught fish must be harvested within the Exclusive Economic Zone of the United States or by a United States flagged vessel.

(7) *Applicability to Hawaii.* Paragraph (d)(2) of this section applies to school food authorities in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school breakfast program under this part.

(8) *Temporary accommodation.* For school food authorities that demonstrate they cannot meet the threshold, State agencies may provide an accommodation for temporary relief from the requirement as the State agency works with the school food authority to increase domestic purchases.

* * * * *

(f) * * *

(1) School food authorities participating in the Program, as well as State agencies making purchases on behalf of such school food authorities, may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products, including the use of ''locally grown'', ''locally raised'', or ''locally caught'' as procurement specifications or selection criteria for unprocessed or minimally processed food items. When utilizing the geographic preference to procure such products, the school food authority making the purchase or the State agency making purchases on behalf of such school food authorities have the discretion to determine the local area to which the geographic preference option will be applied, so long as there are an appropriate number of qualified firms able to compete;

* * * * *

PART 225—SUMMER FOOD SERVICE PROGRAM

■ 31. The authority citation for part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

■ 32. In § 225.16:

■ a. Revise paragraphs (d)(1) through (3);

■ b. Revise and republish paragraph (e)(2); and

■ c. Revise paragraphs (e)(5) and (f)(3).

The revisions read as follows:

§ 225.16 Meal service requirements.

* * * * *

(d) * * *

(1) *Breakfast.* The minimum amount of meal components to be served as breakfast are as follows:

TABLE 1 TO PARAGRAPH (d)(1)—BREAKFAST MEAL PATTERN

Meal components	Minimum amount
Vegetables and Fruits	
Vegetable(s) and/or fruit(s)	½ cup.[1]
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	½ cup (4 fluid ounces).
Bread and Bread Alternates[2]	
Bread or	1 slice.
Cornbread, biscuits, rolls, muffins, etc. or	1 serving.[3]
Cold dry cereal or	¾ cup or 1 ounce.[4]
Cooked cereal or cereal grains or	½ cup.
Cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate.	½ cup.
Milk[5]	
Milk, fluid	1 cup (½ pint, 8 fluid ounces).
Meats/Meat Alternates (Optional)	
Lean meat or poultry or fish or	1 ounce.
Alternate protein product[6] or	1 ounce.
Cheese or	1 ounce.
Egg (large) or	½.
Cooked dry beans, peas, or lentils or	¼ cup.
Peanut butter or	2 tablespoons.
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of meats/meat alternates.	4 ounces or ½ cup.

[1] For the purposes of the requirement outlined in the table, a cup means the standard measuring cup.

[2] Bread, pasta or noodle products, and cereal grains (such as rice, bulger, or corn grits) must be whole grain or enriched; cornbread, biscuits, rolls, muffins, etc. must be made with whole grain or enriched meal or flour; cereal must be whole grain, enriched, or fortified.
[3] Information on food crediting, including serving sizes and equivalents, may be found in FNS guidance.
[4] Either volume (cup) or weight (ounces), whichever is less.
[5] Milk must be served as a beverage or on cereal or used in part for each purpose.
[6] Must meet the requirements in appendix A of this part.

(2) *Lunch or supper.* The minimum amounts of meal components to be served as lunch or supper are as follows:

TABLE 2 TO PARAGRAPH (d)(2)—LUNCH OR SUPPER MEAL PATTERN

Meal components	Minimum amount
Meats/Meat Alternates	
Lean meat or poultry or fish or	2 ounces.
Alternate protein products [1] or	2 ounces.
Cheese or	2 ounces.
Egg (large) or	1.
Cooked dry beans, peas, or lentils or	½ cup.[2]
Peanut butter or soynut butter or other nut or seed butters or	4 tablespoons.
Peanuts or soynuts or tree nuts or seeds [3] or	2 ounces.
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of the above meats/meat alternates.	8 ounces or 1 cup.
Vegetables and Fruits	
Vegetables and/or fruits [4]	¾ cup total.
Bread and Bread Alternatives [5]	
Bread or	1 slice.
Cornbread, biscuits, rolls, muffins, etc. or	1 serving.[6]
Cooked pasta or noodle products or	½ cup.
Cooked cereal grains or an equivalent quantity of any combination of bread or bread alternate.	½ cup.
Milk	
Milk, fluid, served as a beverage	1 cup (½ pint, 8 fluid ounces).

[1] Must meet the requirements of appendix A of this part.
[2] For the purposes of the requirement outlined in this table, a cup means a standard measuring cup.
[3] Information on crediting meats/meat alternates, including nuts and seeds, may be found in FNS guidance.
[4] Serve 2 or more kinds of vegetable(s) and/or fruits or a combination of both. Full-strength vegetable or fruit juice may be offered to meet not more than one-half of this requirement.
[5] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) must be whole grain or enriched; cornbread, biscuits, rolls, muffins, etc., must be made with whole grain or enriched meal or flour; cereal must be whole grain, enriched or fortified.
[6] Information on food crediting, including serving sizes and equivalents, may be found in FNS guidance.

(3) *Snacks.* The minimum amounts of meal components to be served as snacks are as follows. Select two of the following four components. (Juice may not be served when milk is served as the only other component.)

TABLE 3 TO PARAGRAPH (d)(3)—SNACK MEAL PATTERN

Meal components	Minimum amount
Meats/Meat Alternates	
Lean meat or poultry or fish or	1 ounce.
Alternate protein products [1] or	1 ounce.
Cheese or	1 ounce.
Egg (large) or	½.
Cooked dry beans, peas, or lentils or	¼ cup.[2]
Peanut butter or soynut butter or other nut or seed butters or	2 tablespoons.
Peanuts or soynuts or tree nuts or seeds [3] or	1 ounce.
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of the above meats/meat alternates.	4 ounces or ½ cup.
Vegetables and Fruits	
Vegetable(s) and/or fruit(s) or	¾ cup.

TABLE 3 TO PARAGRAPH (d)(3)—SNACK MEAL PATTERN—Continued

Meal components	Minimum amount
Full-strength vegetable or fruit juice or an equivalent quantity or any combination of vegetable(s), fruit(s), and juice.	¾ cup (6 fluid ounces).
Bread and Bread Alternates [4]	
Bread or	1 slice.
Cornbread, biscuits, rolls, muffins, etc. or	1 serving.[5]
Cold dry cereal or	¾ cup or 1 ounce.[6]
Cooked cereal or	½ cup.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	½ cup.
Milk [7]	
Milk, fluid	1 cup (½ pint, 8 fluid ounces).

[1] Must meet the requirements in appendix A of this part.
[2] For the purposes of the requirement outlined in this table, a cup means a standard measuring cup.
[3] Information on crediting meats/meat alternates, including nuts and seeds, may be found in FNS guidance.
[4] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) must be whole grain or enriched; cornbread, biscuits, rolls, muffins, etc., must be made with whole grain or enriched meal or flour; cereal must be whole grain, enriched, or fortified.
[5] Information on food crediting, including serving sizes and equivalents, may be found in FNS guidance.
[6] Either volume (cup) or weight (ounces), whichever is less.
[7] Milk should be served as a beverage or on cereal, or used in part for each purpose.

(e) * * *

(2) Cooked dry beans, peas, and lentils may be used as a meat alternate or as a vegetable, but they may not be used to meet both component requirements in a meal.

* * * * *

(5) Nuts and seeds and their butters are allowed as meats/meat alternates. Acorns, chestnuts, and coconuts do not credit as meat alternates due to their low protein content. Nut and seed meals or flours may credit only if they meet the requirements for alternate protein products established in appendix A to this part.

(f) * * *

(3) *Bread and bread alternative substitutions.* In American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands, and for sponsors in any State that serve primarily American Indian or Alaska Native children, any vegetable, including vegetables such as breadfruit, prairie turnips, plantains, sweet potatoes, and yams, may be served to meet the bread and bread alternatives requirement.

* * * * *

■ 33. In § 225.17, revise paragraph (e)(1) to read as follows:

§ 225.17 Procurement standards.

* * * * *

(e) * * *

(1) Sponsors participating in the Program may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products, including the use of ''locally grown'', ''locally raised'', or ''locally caught'' as procurement specifications or selection criteria for unprocessed or minimally processed food items. When utilizing the geographic preference to procure such products, the sponsor making the purchase has the discretion to determine the local area to which the geographic preference option will be applied, so long as there are an appropriate number of qualified firms able to compete;

* * * * *

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 34. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 35. In § 226.2:
■ a. Revise the definition of ''Functionally impaired adult'';
■ b. Add in alphabetical order a definition for ''Meal component'';
■ c. Revise the definition of ''Persons with disabilities'';
■ d. Add in alphabetical order a definition for ''State licensed healthcare professional''; and
■ e. Add in alphabetical order a definition for ''Whole grain-rich''.

The revisions and additions read as follows:

§ 226.2 Definitions.

* * * * *

Functionally impaired adult means chronically impaired disabled persons 18 years of age or older, including persons with neurological and organic brain dysfunction, with physical or mental impairments to the extent that their capacity for independence and their ability to carry out activities of daily living is markedly limited. Activities of daily living include, but are not limited to, adaptive activities such as cleaning, shopping, cooking, taking public transportation, maintaining a residence, caring appropriately for one's grooming or hygiene, using a telephone, or using a post office. Marked limitations refer to the severity of impairment, and not the number of limited activities, and occur when the degree of limitation is such as to seriously interfere with the ability to function independently.

* * * * *

Meal component meals means one of the food groups which comprise reimbursable meals. The meal components are: fruits, vegetables, grains, meats/meat alternates, and fluid milk.

* * * * *

Persons with disabilities means persons of any age who have a physical or mental impairment that substantially limits one or more major life activities, have a record of such an impairment, or have been regarded as having such an impairment, and who are enrolled in an institution or child care facility serving a majority of persons who are age 18 and under.

* * * * *

State licensed healthcare professional means an individual who is authorized to write medical prescriptions under State law. This may include, but is not limited to, a licensed physician, nurse

practitioner, or physician's assistant, depending on State law.

* * * * *

Whole grain-rich is the term designated by FNS to indicate that the grain content of a product is between 50 and 100 percent whole grain with any remaining grains being enriched.

* * * * *

■ 36. Revise and republish § 226.20 to read as follows:

§ 226.20 Requirements for meals.

(a) *Meal components.* Except as otherwise provided in this section, each meal served in the Program must contain, at a minimum, the indicated components:

(1) *Fluid milk.* Fluid milk must be served as a beverage or on cereal, or a combination of both. Lactose-free and reduced-lactose milk that meet the fat content and flavor specifications for each age group may also be offered.

(i) *Children 1 year old.* Unflavored whole milk must be served.

(ii) *Children 2 through 5 years old.* Either unflavored low-fat (1 percent) or unflavored fat-free (skim) milk must be served.

(iii) *Children 6 years old and older.* Low-fat (1 percent fat or less) or fat-free (skim) milk must be served. Milk may be unflavored or flavored.

(iv) *Adults.* Low-fat (1 percent fat or less) or fat-free (skim) milk must be served. Milk may be unflavored or flavored. Six ounces (weight) or ¾ cup (volume) of yogurt may be used to fulfill the equivalent of 8 ounces of fluid milk once per day. Yogurt may be counted as either a fluid milk substitute or as a meat alternate, but not as both in the same meal.

(2) *Vegetables.* A serving may contain fresh, frozen, or canned vegetables, dry beans, peas, and lentils, or vegetable juice. All vegetables are credited based on their volume as served, except that 1 cup of leafy greens counts as ½ cup of vegetables.

(i) Pasteurized, full-strength vegetable juice may be used to fulfill the entire requirement. Vegetable juice or fruit juice may only be served at one meal, including snack, per day.

(ii) Cooked dry beans, peas, and lentils may be counted as either a vegetable or as a meat alternate, but not as both in the same dish.

(3) *Fruits.* A serving may contain fresh, frozen, canned, dried fruits, or fruit juice. All fruits are based on their volume as served, except that ¼ cup of dried fruit counts as ½ cup of fruit.

(i) Pasteurized, full-strength fruit juice may be used to fulfill the entire requirement. Fruit juice or vegetable juice may only be served at one meal, including snack, per day.

(ii) A vegetable may be used to meet the entire fruit requirement at lunch and supper. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.

(4) *Grains*—(i) *Enriched and whole grains.* All grains must be made with enriched or whole grain meal or flour.

(A) At least one serving per day, across all eating occasions of bread, cereals, and grains, must be whole grain-rich, as defined in § 226.2. Whole grain-rich is the term designated by FNS to indicate that the grain content of a product is between 50 and 100 percent whole grain with any remaining grains being enriched.

(B) A serving may contain whole grain-rich or enriched bread, cornbread, biscuits, rolls, muffins, and other bread products; or whole grain-rich, enriched, or fortified cereal grain, cooked pasta or noodle products, or breakfast cereal; or any combination of these foods.

(ii) *Breakfast cereals.* Breakfast cereals are those as defined by the Food and Drug Administration in 21 CFR 170.3(n)(4) for ready-to-eat and instant and regular hot cereals. Through September 30, 2025, breakfast cereals must contain no more than 6 grams of total sugars per dry ounce. By October 1, 2025, breakfast cereals must contain no more than 6 grams of added sugars per dry ounce.

(iii) *Desserts.* Grain-based desserts do not count toward meeting the grains requirement.

(5) *Meats/meat alternates*—(i) *Serving meats/meat alternates.* Meats/meat alternates must be served in a main dish, or in a main dish and one other menu item. The creditable quantity of meats/meat alternates must be the edible portion as served of:

(A) Lean meat, poultry, or fish;

(B) Alternate protein products;

(C) Cheese, or an egg;

(D) Cooked dry beans, peas, and lentils;

(E) Peanut butter; or

(F) Any combination of these foods.

(ii) *Nuts and seeds.* Nuts and seeds and their butters are allowed as meat alternates. Information on crediting nuts and seeds may be found in FNS guidance.

(A) Nut and seed meals or flours may credit only if they meet the requirements for alternate protein products established in appendix A of this part.

(B) Acorns, chestnuts, and coconuts do not credit as meat alternates because of their low protein and iron content.

(iii) *Yogurt.* Four ounces (weight) or ½ cup (volume) of yogurt equals one ounce of the meats/meat alternates component. Yogurt may be used to meet all or part of the meats/meat alternates component as follows:

(A) Yogurt may be plain or flavored, unsweetened, or sweetened;

(B) Through September 30, 2025, yogurt must contain no more than 23 grams of total sugars per 6 ounces. By October 1, 2025, yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce);

(C) Noncommercial or commercial standardized yogurt products, such as frozen yogurt, drinkable yogurt products, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruits or nuts, or similar products are not creditable; and

(D) For adults, yogurt may only be used as a meat alternate when it is not also being used as a fluid milk substitute in the same meal.

(iv) *Tofu and soy products.* Commercial tofu and soy products may be used to meet all or part of the meats/meat alternates component in accordance with FNS guidance and appendix A of this part. Non-commercial and non-standardized tofu and soy products cannot be used.

(v) *Beans, peas, and lentils.* Cooked dry beans, peas, and lentils may be used to meet all or part of the meats/meat alternates component. Beans, peas, and lentils include black beans, garbanzo beans, lentils, kidney beans, mature lima beans, navy beans, pinto beans, and split peas. Beans, peas, and lentils may be counted as either a meat/meat alternate or as a vegetable, but not as both in the same dish.

(vi) *Other meat alternates.* Other meat alternates, such as cheese, eggs, and nut butters may be used to meet all or part of the meats/meat alternates component.

(b) *Infant meals*—(1) *Feeding infants.* Foods in reimbursable meals served to infants ages birth through 11 months must be of a texture and a consistency that are appropriate for the age and development of the infant being fed. Foods must also be served during a span of time consistent with the infant's eating habits.

(2) *Breastmilk and iron-fortified formula.* Breastmilk or iron-fortified infant formula, or portions of both, must be served to infants birth through 11 months of age. An institution or facility must offer at least one type of iron-fortified infant formula. Meals containing breastmilk or iron-fortified infant formula supplied by the institution or facility, or by the parent or guardian, are eligible for reimbursement.

(i) *Parent or guardian provided breastmilk or iron-fortified formula.* A parent or guardian may choose to accept the offered formula, or decline the offered formula and supply expressed breastmilk or an iron-fortified infant formula instead. Meals in which a mother directly breastfeeds her child at the child care institution or facility are also eligible for reimbursement. When a parent or guardian chooses to provide breastmilk or iron-fortified infant formula and the infant is consuming solid foods, the institution or facility must supply all other required meal components in order for the meal to be reimbursable.

(ii) *Breastfed infants.* For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered. In these situations, additional breastmilk must be offered at a later time if the infant will consume more.

(3) *Solid foods.* The gradual introduction of solid foods may begin at six months of age, or before or after six months of age if it is developmentally appropriate for the infant and in accordance with FNS guidance.

(4) *Infant meal pattern.* Infant meals must have, at a minimum, each of the food components indicated, in the amount that is appropriate for the infant's age.

(i) *Birth through 5 months*—(A) *Breakfast.* Four to 6 fluid ounces of breastmilk or iron-fortified infant formula, or portions of both.

(B) *Lunch or supper.* Four to 6 fluid ounces of breastmilk or iron-fortified infant formula, or portions of both.

(C) *Snack.* Four to 6 fluid ounces of breastmilk or iron-fortified infant formula, or portions of both.

(ii) *6 through 11 months.* Breastmilk or iron-fortified formula, or portions of both, is required. Meals are reimbursable when institutions and facilities provide all the components in the meal pattern that the infant is developmentally ready to accept.

(A) *Breakfast, lunch, or supper.* Six to 8 fluid ounces of breastmilk or iron-fortified infant formula, or portions of both; and 0 to ½ ounce equivalent of iron-fortified dry infant cereal; or 0–4 tablespoons meat, fish, poultry, whole egg, cooked dry beans, peas, and lentils; or 0 to 2 ounces (weight) of cheese; or 0 to 4 ounces (volume) of cottage cheese; or 0 to 4 ounces of yogurt; and 0 to 2 tablespoons of vegetable, fruit, or portions of both. Fruit juices and vegetable juices must not be served.

(B) *Snack.* Two to 4 fluid ounces of breastmilk or iron-fortified infant formula; and 0 to ½ ounce equivalent bread; or 0–¼ ounce equivalent crackers; or 0–½ ounce equivalent infant cereal or ready-to-eat cereals; and 0 to 2 tablespoons of vegetable or fruit, or portions of both. Fruit juices and vegetable juices must not be served. A serving of grains must be whole grain-rich, enriched meal, or enriched flour.

(5) *Infant meal pattern table.* The minimum amounts of meal components to serve to infants, as described in paragraph (b)(4) of this section, are:

TABLE 1 TO PARAGRAPH (b)(5)—INFANT MEAL PATTERNS

Infants	Birth through 5 months	6 through 11 months
Breakfast, Lunch, or Supper.	4–6 fluid ounces breast milk[1] or formula[2]	6–8 fluid ounces breast milk[1] or formula;[2] and 0–½ ounce equivalent infant cereal;[2 3] or 0–4 tablespoons meat, fish, poultry, whole egg, cooked dry beans, peas, and lentils; or 0–2 ounces of cheese; or 0–4 ounces (volume) of cottage cheese; or 0–4 ounces or ½ cup of yogurt;[4] or a combination of the above;[5] and 0–2 tablespoons vegetable or fruit, or a combination of both.[5 6]
Snack	4–6 fluid ounces breast milk[1] or formula[2]	2–4 fluid ounces breast milk[1] or formula;[2] and 0–½ ounce equivalent bread;[3 7] or 0–¼ ounce equivalent crackers;[3 7] or 0–½ ounce equivalent infant cereal;[2 3] or 0–¼ ounce equivalent ready-to-eat breakfast cereal;[3 5 7 8] and 0–2 tablespoons vegetable or fruit, or a combination of both.[5 6]

[1] Breast milk or formula, or portions of both, must be served; however, it is recommended that breast milk be served from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered at a later time if the infant will consume more.

[2] Infant formula and dry infant cereal must be iron-fortified.

[3] Information on crediting grain items may be found in FNS guidance.

[4] Through September 30, 2025, yogurt must contain no more than 23 grams of total sugars per 6 ounces. By October 1, 2025, yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce).

[5] A serving of this component is required when the infant is developmentally ready to accept it.

[6] Fruit and vegetable juices must not be served.

[7] A serving of grains must be whole grain-rich, enriched meal, enriched flour, bran, or germ.

[8] Through September 30, 2025, breakfast cereals must contain no more than 6 grams of total sugars per dry ounce. By October 1, 2025, breakfast cereals must contain no more than 6 grams of added sugars per dry ounce.

(c) *Meal patterns for children age 1 through 18 and adult participants.* Institutions and facilities must serve the meal components and quantities specified in the following meal patterns for children and adult participants in order to qualify for reimbursement.

(1) *Breakfast.* Fluid milk, vegetables or fruit, or portions of both, and grains are required components of the breakfast meal. Meats/meat alternates may be offered to meet the entire grains requirement a maximum of three times per week. The minimum amounts of meal components to be served at breakfast are as follows:

TABLE 2 TO PARAGRAPH (c)(1)—CHILD AND ADULT CARE FOOD PROGRAM BREAKFAST

[Select the appropriate components for a reimbursable meal]

Meal components and food items [1]	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 [2]	Adult participants
Fluid Milk	4 fluid ounces [3]	6 fluid ounces [4]	8 fluid ounces [5]	8 fluid ounces [5]	8 fluid ounces.[6]
Vegetables, fruits, or portions of both [7]	¼ cup	½ cup	½ cup	½ cup	½ cup.
Grains [8]	½ ounce equivalent	½ ounce equivalent	1 ounce equivalent	1 ounce equivalent	2 ounce equivalents.

[1] Must serve all three components for a reimbursable meal. Offer versus serve is an option for at-risk afterschool care and adult day care centers.
[2] At-risk afterschool programs and emergency shelters may need to serve larger portions to children ages 13 through 18 to meet their nutritional needs.
[3] Must serve unflavored whole milk to children age 1.
[4] Must serve unflavored milk to children 2 through 5 years old. The milk must be fat-free, skim, low-fat, or 1 percent or less.
[5] May serve unflavored or flavored milk to children ages 6 and older. The milk must be fat-free, skim, low-fat, or 1 percent or less.
[6] May serve unflavored or flavored milk to adults. The milk must be fat-free, skim, low-fat, or 1 percent or less. Yogurt may be offered in the place of milk once per day for adults. Yogurt may count as either a fluid milk substitute or as a meat alternate, but not both, in the same meal. Six ounces (by weight) or ¾ cup (by volume) of yogurt is the equivalent of 8 ounces of fluid milk. Through September 30, 2025, yogurt must contain no more than 23 grams of total sugars per 6 ounces. By October 1, 2025, yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce).
[7] Juice must be pasteurized. Full-strength juice may only be offered to meet the vegetable or fruit requirement at one meal or snack, per day.
[8] Must serve at least one whole grain-rich serving, across all eating occasions, per day. Grain-based desserts may not be used to meet the grains requirement. Meats/meat alternates may be offered in place of the entire grains requirement, up to 3 times per week at breakfast. One ounce equivalent of meats/meat alternates credits equal to one ounce equivalent of grains. Through September 30, 2025, breakfast cereals must contain no more than 6 grams of total sugars per dry ounce. By October 1, 2025, breakfast cereals must contain no more than 6 grams of added sugars per dry ounce. Information on crediting grain items and meats/meat alternates may be found in FNS guidance.

(2) *Lunch and supper.* Fluid milk, meats/meat alternates, vegetables, fruits, and grains are required components in the lunch and supper meals. The minimum amounts of meal components to be served at lunch and supper are as follows:

TABLE 3 TO PARAGRAPH (c)(2)—CHILD AND ADULT CARE FOOD PROGRAM LUNCH AND SUPPER

[Select the appropriate components for a reimbursable meal]

Meal components and food items [1]	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 [2]	Adult participants
Fluid milk	4 fluid ounces [3]	6 fluid ounces [4]	8 fluid ounces [5]	8 fluid ounces [5]	8 fluid ounces.[6]
Meats/meat alternates [7]	1 ounce equivalent	1½ ounce equivalents	2 ounce equivalents	2 ounce equivalents	2 ounce equivalents.
Vegetables [8]	⅛ cup	¼ cup	½ cup	½ cup	½ cup.
Fruits [8]	⅛ cup	¼ cup	¼ cup	¼ cup	½ cup.
Grains [9]	½ ounce equivalent	½ ounce equivalent	1 ounce equivalent	1 ounce equivalent	2 ounce equivalents.

[1] Must serve all five components for a reimbursable meal. Offer versus serve is an option for at-risk afterschool care and adult day care centers.
[2] At-risk afterschool programs and emergency shelters may need to serve larger portions to children ages 13 through 18 to meet their nutritional needs.
[3] Must serve unflavored whole milk to children age 1.
[4] Must serve unflavored milk to children 2 through 5 years old. The milk must be fat-free, skim, low-fat, or 1 percent or less.
[5] May serve unflavored or flavored milk to children ages 6 and older. The milk must be fat-free, skim, low-fat, or 1 percent or less.
[6] May serve unflavored or flavored milk to adults. The milk must be fat-free, skim, low-fat, or 1 percent or less. Yogurt may be offered in place of milk once per day for adults. Yogurt may count as either a fluid milk substitute or as a meat alternate, but not both, in the same meal. Six ounces (by weight) or ¾ cup (by volume) of yogurt is the equivalent of 8 ounces of fluid milk. A serving of fluid milk is optional for suppers served to adult participants.
[7] Alternate protein products must meet the requirements in appendix A to this part. Through September 30, 2025, yogurt must contain no more than 23 grams of total sugars per 6 ounces. By October 1, 2025, yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce). Information on crediting meats/meat alternates may be found in FNS guidance.
[8] Juice must be pasteurized. Full-strength juice may only be offered to meet the vegetable or fruit requirement at one meal or snack, per day. A vegetable may be offered to meet the entire fruit requirement. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.
[9] Must serve at least one whole grain-rich serving, across all eating occasions, per day. Grain-based desserts may not be used to meet the grains requirement. Through September 30, 2025, breakfast cereals must contain no more than 6 grams of total sugars per dry ounce. By October 1, 2025, breakfast cereal must contain no more than 6 grams of added sugars per dry ounce. Information on crediting grain items may be found in FNS guidance.

(3) *Snack.* Serve two of the following five components: Fluid milk, meats/meat alternates, vegetables, fruits, and grains. Fruit juice, vegetable juice, and milk may comprise only one component of the snack. The minimum amounts of meal components to be served at snacks are as follows:

TABLE 4 TO PARAGRAPH (c)(3)—CHILD AND ADULT CARE FOOD PROGRAM SNACK

[Select two of the five components for a reimbursable snack]

Meal components and food items [1]	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 [2]	Adult participants
Fluid milk	4 fluid ounces [3]	4 fluid ounces [4]	8 fluid ounces [5]	8 fluid ounces [5]	8 fluid ounces.[6]
Meats/meat alternates [7]	½ ounce equivalent	½ ounce equivalent	1 ounce equivalent	1 ounce equivalent	1 ounce equivalent.
Vegetables [8]	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Fruits [8]	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Grains [9]	½ ounce equivalent	½ ounce equivalent	1 ounce equivalent	1 ounce equivalent	1 ounce equivalent.

[1] Must serve two of the five components for a reimbursable snack. Milk and juice may not be served as the only two items in a reimbursable snack.
[2] At-risk afterschool programs and emergency shelters may need to serve larger portions to children ages 13 through 18 to meet their nutritional needs.
[3] Must serve unflavored whole milk to children age 1.
[4] Must serve unflavored milk to children 2 through 5 years old. The milk must be fat-free, skim, low-fat, or 1 percent or less.
[5] May serve unflavored or flavored milk to children ages 6 and older. The milk must be fat-free, skim, low-fat, or 1 percent or less.
[6] May serve unflavored or flavored milk to adults. The milk must be fat-free, skim, low-fat, or 1 percent or less. Yogurt may be offered in place of milk, once per day for adults. Yogurt may count as either a fluid milk substitute or as a meat alternate, but not both, in the same meal. Six ounces (by weight) or ¾ cup (by volume) of yogurt is the equivalent of 8 ounces of fluid milk.

[7] Alternate protein products must meet the requirements in appendix A to this part. Through September 30, 2025, yogurt must contain no more than 23 grams of total sugars per 6 ounces. By October 1, 2025, yogurt must contain no more than 12 grams of added sugars per 6 ounces (2 grams of added sugars per ounce). Information on crediting meats/meat alternates may be found in FNS guidance.

[8] Juice must be pasteurized. Full-strength juice may only be offered to meet the vegetable or fruit requirement at one meal or snack, per day.

[9] Must serve at least one whole grain-rich serving, across all eating occasions, per day. Grain-based desserts may not be used to meet the grains requirement. Through September 30, 2025, breakfast cereals must contain no more than 6 grams of total sugars per dry ounce. By October 1, 2025, breakfast cereal must contain no more than 6 grams of added sugar per dry ounce. Information on crediting grain items may be found in FNS guidance.

(d) *Food preparation.* Deep-fat fried foods that are prepared on-site cannot be part of the reimbursable meal. For this purpose, deep-fat frying means cooking by submerging food in hot oil or other fat. Foods that are pre-fried, flash-fried, or par-fried by a commercial manufacturer may be served, but must be reheated by a method other than frying.

(e) *Unavailability of fluid milk*—(1) *Temporary.* When emergency conditions prevent an institution or facility normally having a supply of milk from temporarily obtaining milk deliveries, the State agency may approve the service of breakfast, lunches, or suppers without milk during the emergency period.

(2) *Continuing.* When an institution or facility is unable to obtain a supply of milk on a continuing basis, the State agency may approve service of meals without milk, provided an equivalent amount of canned, whole dry or fat-free dry milk is used in the preparation of the components of the meal set forth in paragraph (a) of this section. (f) *Grain substitutions.* In American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands, and in institutions or facilities in any State that serve primarily American Indian or Alaska Native participants, any vegetable, including vegetables such as breadfruit, prairie turnips, plantains, sweet potatoes, and yams, may be served to meet the grains requirement.

(g) *Modifications and variations in reimbursable meals and snacks as described in paragraphs (a) through (c) of this section*—(1) *Modifications for disability reasons.* Institutions and facilities must make meal modifications including substitutions in meals and snacks described in this section for participants with a disability and whose disability restricts their diet. The modification requested must be related to the disability and must be offered at no additional cost to the child or adult participant.

(i) In order to receive Federal reimbursement when a modified meal does not meet the meal pattern requirements specified in this section, the institution or facility must obtain from the household a written medical statement signed by a State licensed healthcare professional. By October 1, 2025, institutions and facilities must also accept a medical statement signed by a registered dietitian. The medical statement must provide sufficient information about the child or adult participant's dietary restrictions, such as foods to be omitted and recommended alternatives, if appropriate. Modified meals that meet the meal pattern requirements in this section are reimbursable with or without a medical statement.

(ii) Institutions and facilities must ensure that parents and guardians, and their children when age-appropriate at institution or facility discretion; adult participants; and persons on behalf of adult participants have notice of the procedure for requesting meal modifications for disabilities and the process for procedural safeguards related to meal modifications for disabilities. See §§ 15b.6(b) and 15b.25 of this title.

(iii) Expenses incurred when making meal modifications that exceed Program reimbursement rates must be paid by the institution or facility; costs may be paid from the institution or facility's nonprofit food service account.

(iv) A parent, guardian, adult participant, or a person on behalf of an adult participant may supply one or more components of the reimbursable meal as long as the institution or facility provides at least one required meal component.

(2) *Variations for non-disability reasons.* (i) Institutions and facilities should consider participants' dietary preferences when planning and preparing meals and snacks. Any variations must be consistent with the meal pattern requirements specified in this section.

(ii) Expenses incurred from variations that exceed program reimbursement rates must be paid by the institution or facility; costs may be paid from the institution or facility's nonprofit food service account.

(iii) A parent, guardian, adult participant, or a person on behalf of an adult participant may supply one component of the reimbursable meal as long as the component meets the requirements described in this section and the institution or facility provides the remaining components.

(3) *Fluid milk substitutes for non-disability reasons.* (i) An institution or facility may offer fluid milk substitutes based on a written request from a child's parent or guardian, an adult participant, a person on behalf of an adult participant, a State licensed healthcare professional, or registered dietitian for participants with dietary needs that are not disabilities that identifies the reason for the substitute. An institution or facility choosing to offer fluid milk substitutes for a non-disability reason is not required to offer the specific fluid milk substitutes requested but may offer the fluid milk substitutes of its choice, provided the fluid milk substitutes offered meet the requirements of paragraph (g)(3)(ii) of this section. For disability-related meal modifications, see paragraph (g)(1) of this section.

(ii) If an institution or facility chooses to offer one or more fluid milk substitutes for non-disability reasons, the fluid milk substitutes must provide, at a minimum, the nutrients listed in the following table. Fluid milk substitutes must be fortified in accordance with fortification guidelines issued by the Food and Drug Administration.

TABLE 5 TO PARAGRAPH (g)(3)(ii)—NUTRIENT REQUIREMENTS FOR FLUID MILK SUBSTITUTES

Nutrient	Per cup (8 fl. oz.)
Calcium	276 mg.
Protein	8 g.
Vitamin A	150 mcg. retinol activity equivalents (RAE).
Vitamin D	2.5 mcg.
Magnesium	24 mg.
Phosphorus	222 mg.
Potassium	349 mg.

TABLE 5 TO PARAGRAPH (g)(3)(ii)—NUTRIENT REQUIREMENTS FOR FLUID MILK SUBSTITUTES—Continued

Nutrient	Per cup (8 fl. oz.)
Riboflavin	0.44 mg.
Vitamin B–12	1.1 mcg.

(iii) Expenses incurred when providing fluid milk substitutes that exceed Program reimbursements must be paid by the participating institution or facility; costs may be paid from the institution or facility's nonprofit food service account.

(h) *Special variations.* FNS may approve variations in the meal components of the meals on an experimental or continuing basis in any institution or facility where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(i) *Meals prepared in schools.* The State agency must allow institutions and facilities which serve meals to children 5 years old and older and are prepared in schools participating in the National School Lunch and School Breakfast Programs to substitute the meal pattern requirements of the regulations governing those Programs (parts 210 and 220 of this chapter, respectively) for the meal pattern requirements contained in this section.

(j) *Meal planning.* Institutions and facilities must plan for and order meals on the basis of current participant trends, with the objective of providing only one meal per participant at each meal service. Records of participation and of ordering or preparing meals must be maintained to demonstrate positive action toward this objective. In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed and to reduce the resultant waste, any excess meals that are ordered may be served to participants and may be claimed for reimbursement, unless the State agency determines that the institution or facility has failed to plan and prepare or order meals with the objective of providing only one meal per participant at each meal service.

(k) *Time of meal service.* State agencies may require any institution or facility to allow a specific amount of time to elapse between meal services or require that meal services not exceed a specified duration.

(l) *Sanitation.* Institutions and facilities must ensure that in storing, preparing, and serving food proper sanitation and health standards are met which conform with all applicable State and local laws and regulations. Institutions and facilities must ensure that adequate facilities are available to store food or hold meals.

(m) *Donated commodities.* Institutions and facilities must efficiently use in the Program any foods donated by the Department and accepted by the institution or facility.

(n) *Family style meal service.* Family style is a type of meal service which allows children and adults to serve themselves from common platters of food with the assistance of supervising adults. Institutions and facilities choosing to exercise this option must be in compliance with the following practices:

(1) A sufficient amount of prepared food must be placed on each table to provide the full required portions of each of the components, as outlined in paragraphs (c)(1) and (2) of this section, for all children or adults at the table and to accommodate supervising adults if they wish to eat with the children and adults.

(2) Children and adults must be allowed to serve the meal components themselves, with the exception of fluids (such as milk). During the course of the meal, it is the responsibility of the supervising adults to actively encourage each child and adult to serve themselves the full required portion of each meal component of the meal pattern. Supervising adults who choose to serve the fluids directly to the children or adults must serve the required minimum quantity to each child or adult.

(3) Institutions and facilities which use family style meal service may not claim second meals for reimbursement.

(o) *Offer versus Serve.* (1) Each adult day care center and at-risk afterschool program must offer its participants all of the required food servings as set forth in paragraphs (c)(1) and (2) of this section. However, at the discretion of the adult day care center or at-risk afterschool program, participants may be permitted to decline:

(i) *For adults*—(A) *One of the four food* items required at breakfast (one serving of fluid milk; one serving of vegetable or fruit, or a combination of both; and two servings of grains, or meat or meat alternates);

(B) *Two of the five* meal components required at lunch (fluid milk; vegetables; fruit; grain; and meat or meat alternate); and

(C) *One of the four* meal components required at supper (vegetables; fruit; grain; and meat or meat alternate).

(ii) *For children. Two of the five* meal components required at supper (fluid milk; vegetables; fruit; grain; and meat or meat alternate).

(2) In pricing programs, the price of the reimbursable meal must not be affected if a participant declines a food item.

(p) *Prohibition on using foods and beverages as punishments or rewards.* Meals served under this part must contribute to the development and socialization of children. Institutions and facilities must not use foods and beverages as punishments or rewards.

(q) *Severability.* If any provision of this section is held to be invalid or unenforceable by its terms, or as applied to any person or circumstances, it shall be severable from this section and not affect the remainder thereof. In the event of such holding of invalidity or unenforceability of a provision, the meal pattern requirements covered by that provision reverts to the version that immediately preceded the invalidated provision.

■ 37. In § 226.22, revise paragraph (c)(1) to read as follows:

§ 226.22 Procurement standards.

* * * * *

(c) * * *

(1) Institutions participating in the Program may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products, including the use of ''locally grown'', ''locally raised'', or ''locally caught'' as procurement specifications or selection criteria for unprocessed or minimally processed food items. When utilizing the geographic preference to procure such products, the institution making the purchase has the discretion to determine the local area to which the geographic preference option will be applied so long as there are an

appropriate number of qualified firms able to compete;

* * * * *

Cynthia Long,

Administrator, Food and Nutrition Service.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Impact Analysis

I. Statement of Need

On February 7, 2023, USDA published a proposed rule, *Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Dietary Guidelines for Americans,* to further align school meal nutrition requirements with the goals of the *Dietary Guidelines for Americans, 2020–2025 (Dietary Guidelines).*[1] USDA is now finalizing that proposed rule with the expectation that these changes will continue to improve the health of meals and snacks served in child nutrition programs in the coming years. To develop the rule, USDA considered broad stakeholder input, including written public comments received in response to the proposed rule, and a comprehensive review of the latest *Dietary Guidelines.* The rule represents the next stage of the rulemaking process to permanently update and improve school meal pattern requirements. This rule includes a focus on nutrition requirements for sodium, whole grains, and milk in school meals as well as new requirements to limit added sugars. Further, in addition to addressing these and other nutrition requirements, this rule finalizes a variety of changes to school meal requirements from the 2020 proposed rule, *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs.*[2] Updates for the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP) are also included in certain provisions of this rule. Finally, USDA is issuing a final rule of the provisions of this rulemaking that strengthen the Buy American requirement.[3]

II. Background

The National School Lunch Program (NSLP) and School Breakfast Program (SBP) were established in 1946 and 1966, respectively. Both programs provide nutritionally balanced and low or no-cost meals to children in schools each day. In 2012, USDA issued a final rule that increased the availability of nutritious foods like fruits, vegetables, and whole grains and established limits for sodium in school meals, among other key changes. Since then, school nutrition professionals, industry partners, and other stakeholders have made tremendous strides in improving the nutritional quality of school meals, and recent research shows that school meals are the healthiest meals children eat during the day.[4] Many components of the 2012 nutrition requirements were successfully implemented, such as vegetable subgroups at lunch and calorie ranges for school meals. However, some requirements faced challenges, including Congressional intervention and administrative policies that delayed implementation or allowed less stringent requirements for milk, whole grains, and sodium. In addition, during the COVID–19 public health emergency, schools required meal pattern flexibilities to ensure that children had continued access to nutritious meals amid supply chain challenges. Program operators continue to face pandemic-related and supply chain challenges. To that end, this rule considers those challenges and uses a phased-in approach to implementation to strengthen the nutritional quality of school meals over time and provide ongoing support to school nutrition professionals. This rule builds on USDA's prior rulemakings, such as *Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans* proposed rule and *Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium* (87 FR 6984), from February 7, 2022, to further align school meal nutrition requirements with the goals of the *Dietary Guidelines, 2020–2025.*

III. Comments

USDA received 51 comments on the Regulatory Impact Analysis (RIA) in response to the 2023 proposed rule *Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Dietary Guidelines for Americans.* The majority (45 respondents) commented on the costs, 2 respondents commented on long-term benefits, and 3 respondents commented on gaps in the RIA of the proposed rule.

There were 26 comments on the RIA for the 2020 proposed rule *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs.* This rule includes five provisions from the 2020 proposed rule:

- Meats/Meat Alternates at Breakfast
- Dry Beans, Peas, and Lentils at Lunch
- Meal Modifications
- Clarification on Potable Water Requirements
- Synthetic Trans Fats

The comments received on the regulatory impacts of the 2020 proposed rule did not include any comments related to expected impacts of the specific provisions included in this rule.

Comments on the 2023 Proposed Rule Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans

- Respondents expressed concern that implementation of the 2023 proposed rule would cause school districts to take on more debt or make budget cuts in other areas to fund school meals that meet the updated requirements. Respondents noted that though scratch cooking may be the most efficient way to reduce sodium levels in meals, it could be costly and should be accounted for in the cost-benefit-analysis. Other respondents pointed out that schools could face additional costs passed along from manufacturers having to reformulate their products and change their labels.

USDA Response

The decisions around the rule have taken into consideration the comments received on the 2023 proposed rule regarding costs to school districts. This rule maintains the current flavored milk requirements (Alternative B), which is the less restrictive and less costly option. This RIA also estimates $7 million in average annual cost savings associated with aligning afterschool snacks with CACFP snack requirements and $5 million in average annual cost savings from simplifying requirements for schools that choose to substitute vegetables for fruits at breakfast. This rule provides additional operational or administrative flexibilities for geographic preference, meats/meat alternates as breakfast, nuts and seeds, and beans, peas and lentils at lunch.

The sodium limits finalized in this rule are less restrictive and intended to be more attainable as compared to the proposed limits. Instead of three 10 percent reductions in NSLP and two 10 percent reductions in SBP over several years, this rule includes one reduction in each program to meet Target 2 levels from the 2012 rule, effective school year (SY) 2027–2028. USDA recognizes that in order to meet the sodium limits included in this rule, additional recipe and product reformulation may need to occur over time. To that end, to develop the sodium limits in this rulemaking, USDA considered the Food and Drug Administration's (FDA) voluntary sodium reduction goals, which aim to reduce sodium across the U.S. food supply. USDA expects that aligning school meal sodium limits with FDA's voluntary sodium reduction goals may help support children's acceptance of school lunches and breakfasts with less sodium, as the school meal reductions will occur alongside sodium reductions in the broader U.S. food supply. While USDA recognizes that schools may choose to introduce more scratch and quick-scratch cooking to meet the sodium limits, USDA lacks data to fully estimate those costs. However, potential equipment costs associated with increased scratch cooking are estimated in the ''Uncertainties/Limitations'' section and table 29 of this RIA. The ''Uncertainties/Limitations'' section also includes discussion of other uncertainties in

[1] U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020–2025. 9th Edition. December 2020. Available at *DietaryGuidelines.gov.*

[2] Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs (85 FR 4094, January 23, 2020). Available at: *https://www.federalregister.gov/documents/2020/01/23/2020-00926/simplifying-meal-service-and-monitoring-requirements-in-the-national-school-lunch-and-school.*

[3] Statutory language can be found in the Richard B. Russell National School Lunch Act (NSLA) section 12(n) on page 56: *https://www.fns.usda.gov/nsla.*

[4] Liu J, Micha R, Li Y, Mozaffarian D. Trends in Food Sources and Diet Quality Among US Children and Adults, 2003–2018. JAMA Netw Open. 2021;4(4):e215262. doi:10.1001/jamanetworkopen.2021.5262. This study found that foods consumed at schools provided the best mean diet quality of major US food sources.

this analysis and their potential impact on the costs and benefits of this rule.

The weekly average sodium limits are approximately a 15 percent reduction for lunch and 10 percent reduction for breakfast and will take effect in SY 2027–2028. Schools can maintain current sodium limits (Target 1A) prior to the SY 2027–2028 reduction. This will allow time and flexibility for a variety of sodium reduction practices that the RIA has estimated costs for, including product reformulation, scratch cooking, menu adjustments, reducing the frequency of offering higher sodium foods, and recipe alterations.

• Respondents mentioned areas of impact that were not considered in the proposed RIA. These respondents noted that CACFP and costs specific to its sponsors and providers were largely excluded from the RIA. One respondent suggested applying the methods used to estimate the reporting and record keeping costs for the Buy American provision to the other proposed provisions. Another respondent recommended that USDA conduct a marginal analysis on the cost of single-percent changes to the Buy American non-domestic ceiling and provide more information on the benefits of this provision on child nutrition.

USDA Response

The reporting and record keeping administrative burden hours estimated in this RIA are in accordance with the information collection request for these activities approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. USDA anticipates regulatory familiarization costs, including state administrative costs, local level training costs, and costs associated with adjusting purchasing patterns and menus at the local level. The administrative costs associated with this familiarization period were also expected for the 2012 final rule, which is used as a reference for the administrative costs for this rule; see Administrative Costs section.

Anticipated costs to CACFP sponsors and providers have been incorporated into the RIA in response to public comment. Costs include reporting and record keeping costs, administrative costs, familiarization costs, and local training costs, as well as costs associated with changes in purchasing patterns and menus. CACFP purchasing patterns and menu impacts are most likely to occur due to the added sugars provision, specifically the added sugars limit of 12 grams per 6 oz of yogurt. This replaces the existing limit of 23 grams of total sugars per 6 oz of yogurt for CACFP menus. The cost impact for CACFP is estimated to be about $2 million (table 6). Other provisions that apply to CACFP in this rule are not estimated to have a cost impact because they are technical corrections, clarifications, or add flexibility to menu planning.

The costs associated with the Buy American provision are based on increases in reporting and record keeping burden due to the final rule. Instead of a 5 percent ceiling as proposed, the final rule institutes a phased approach over seven school years to reach the 5 percent ceiling on the non-domestic commercial foods a school food authority may purchase per school year. The phased implementation will begin in SY 2025–2026 with a 10 percent non-domestic food cost cap, with an 8 percent cap beginning in SY 2028–2029, and finally a 5 percent cap in SY 2031–2032. We estimate a $3 million annual total food cost increase once the phased in non-domestic foods ceiling reaches 5 percent. Based on the average use of exceptions by school food authorities (8.5 percent), each single-percent reduction in the cap equals approximately $0.8 million in annual costs. These estimates are further detailed in the ''Buy American'' section (table 18). In response to public comments that suggested a 5 percent cap is too restrictive under current procurement conditions, USDA intends to help schools, State agencies, and other stakeholders adjust to the new requirement and achieve compliance with the Buy American provision through a phased in approach. The mission of Child Nutrition Programs is to serve children nutritious meals and support American agriculture.

IV. Summary of Impacts

The estimated impacts of this rule primarily reflect changes in the foods purchased for use in school meals, administrative familiarization, and labor costs incurred by schools for meal production. While this rule takes effect SY 2024–2025, the required changes will be gradually phased in over time. Program operators will not be required to make any changes to their menus as a result of this rule until SY 2025–2026 at the earliest. USDA estimates this rule will cost [5] schools between $0.02 and $0.04 per meal,[6] or an average of $206 million [7] annually including both the SBP and NSLP starting in SY 2024–2025, accounting for the fact that changes will be implemented gradually and adjusting for annual inflation.[8] Annual costs range from $53 million to $283 million over eight school years, adjusting for yearly inflation (table 20). While some changes—such as aligning the NSLP snack meal pattern with that of CACFP or simplifying requirements for schools that choose to substitute vegetables for fruits at breakfast—are estimated to reduce school food costs or have no cost impact, other changes, such as added sugars and sodium limits, are estimated to increase food costs. There are no estimated changes in Federal costs due to the changes in this final rule, as the rule does not impact the Federal reimbursement rate for school meals and is not expected to significantly impact baseline participation.

The changes in this rule are achievable and realistic for schools and address the need for strong nutrition requirements in school meals. This analysis provides nine-year cost streams to project potential impacts over each impacted fiscal year (FY), though FY 2024 and FY 2032 are shown as half year costs to account for the fact that implementation of this rule spans eight total school years (table 1). These same data are presented in table A in the ''Appendix'' section by school year.

[5] Except where noted in the participation impacts, the terms ''costs'' and ''savings'' are used in this analysis to describe the school level shifts in food purchases and labor associated with school meal production.

[6] This is about 0.5% of the average cost to SFAs per breakfast and lunch, in 2024 dollars. Factoring 4% annual inflation, breakfast costs $4.03 and lunch costs $5.64 for SFAs to produce. Based on School Nutrition Meal Cost Study (SNMCS) Report—Volume 3, the average SFA had a reported cost of $3.81 per NSLP lunch and $2.72 per SBP breakfast in SY 2014–2015 (*https://fns-prod.azureedge.us/sites/default/files/resource-files/SNMCS-Volume3.pdf*).

[7] This annual average is based on this rulemaking finalizing Milk Alternative B in the proposed rule.

[8] Using 2023 dollars and not adjusting for annual inflation results in $1.256 billion dollars over eight school years (over nine fiscal years) or $52 to $227 million annually ($0.03 per meal), see appendix.

TABLE 1: STREAM OF QUANTIFIABLE COSTS TO SCHOOLS DURING THE 9 YEARS OF IMPLEMENTATION, IN 2023 DOLLARS[9,10]

	FISCAL YEAR ($ MILLIONS)									
	2024[11]	2025[12]	2026	2027	2028	2029	2030	2031	2032[13]	Total[14]
NOMINAL COST STREAM[15]										
ADMINISTRATIVE COSTS	$21	$41	$21	$21	$21	$0	$0	$0	$0	$124
ADDED SUGARS	$0	$52	$103	$103	$103	$103	$103	$103	$52	$722
MILK	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
SODIUM	$0	$0	$0	$45	$91	$91	$91	$91	$45	$454
AFTERSCHOOL SNACKS	$0	-$4	-$8	-$8	-$8	-$8	-$8	-$8	-$4	-$59
SUBSTITUTE VEGETABLES FOR FRUITS AT BREAKFAST	-$2	-$4	-$4	-$4	-$4	-$4	-$4	-$4	-$2	-$31
BUY AMERICAN	$7	$10	$4	$4	$4	$4	$4	$5	$3	$45
TOTAL	**$26**	**$94**	**$116**	**$161**	**$207**	**$186**	**$186**	**$186**	**$94**	**$1,256**
% COST OF BASELINE[16]	**0.2%**	**0.4%**	**0.4%**	**0.6%**	**0.7%**	**0.6%**	**1.1%**	**1.1%**	**0.5%**	**0.6%**
DISCOUNTED COST STREAM										
3 PERCENT	$26	$92	$109	$147	$184	$160	$155	$156	$78	$874
7 PERCENT	$26	$88	$101	$131	$158	$132	$124	$124	$62	$761

As required by OMB Circular A–4, in table 2 below, the Department has prepared an accounting statement showing the annualized estimates of benefits, costs, and transfers associated with the provisions of this rule. The next section provides an impact analysis for each change.

[9] No adjustment for inflation was done for this table aside for inflation from the time-period of data collection up to 2023.

[10] For data in 2023 dollars presented by school years (July–June) instead of fiscal years (October–September), see table A in the 'Appendix' section. Totals are the same as table 1 and the breakdown of costs is shown across the eight school years.

[11] First year of provision implementation presents half a year of costs from SY 2024–2025 (first half of the school year).

[12] Including costs from the second half of SY 2024–2025 and the first half of SY 2025–2026; this style is also true of FY 2026 through 2031.

[13] Presenting half a year of costs from SY 2030–2031 (second half of the school year).

[14] This is eight full fiscal years, including 7 full fiscal years and two half years.

[15] The nominal cost stream values are based upon 2023 participation levels and assumes participation holds steady through FY 2032.

[16] The percentage of baseline is calculated as total costs of the proposed changes divided by the total expected costs of the NSLP, SBP, and CACFP programs in each fiscal year. Expected costs for NSLP, SBP and CACFP are inflated from FY 2019 based on actual and forecasted food price inflation.

TABLE 2: ACCOUNTING STATEMENT

Benefits	Range	Estimate	Year Dollar	Discount Rate	Period Covered	
Qualitative: Establishes achievable requirements that are expected to improve the nutritional content of meals served through USDA child nutrition programs and therefore diet quality and health of children who consume those meals. Additional provisions will also increase meal planning flexibility and improve program administration. Strengthens the Buy American provision to ensure that school meals use foods produced in the US to the extent feasible.						
	Annualized Monetized ($millions/year)	n.a.	n.a.	n.a.	n.a.	FY 2024-2032
Costs Incurred by Schools	**Range**	**Estimate**	**Year Dollar**	**Discount Rate**	**Period Covered**	
Quantitative: Costs result from changes in food purchase patterns to meet the new requirements, labor associated with changes in meal preparation, and administrative familiarization costs.						
Annualized Monetized ($millions/year)	Total	$140	2023	7 percent	FY 2024-2032	
		$155	2023	3 percent		
Federal Costs	**Range**	**Estimate**	**Year Dollar**	**Discount Rate**	**Period Covered**	
Qualitative and Quantitative: There are no estimated changes in Federal reimbursement levels associated with this rule. It is assumed participation will not measurably change from the baseline approximated by the status quo.						
Annualized Monetized ($millions/year)	n.a.	n.a.	n.a.	n.a.	FY 2024-2032	

V. Section by Section Analysis

This rule finalizes the following provisions from the 2023 proposed rule:

- Added Sugars
- Milk
- Whole Grains
- Sodium
- Substituting Vegetables for Grains in Tribal Communities
- Traditional Indigenous Foods
- Afterschool Snacks
- Substituting Vegetables for Fruits at Breakfast
- Nuts and Seeds
- Competitive Foods: Bean Dip Exemption
- Professional Standards: Hiring Exemption for Medium and Large Local Educational
- Agencies
- Buy American
- Geographic Preference
- Miscellaneous Changes

This rule also finalizes the following provisions from the 2020 proposed rule:

- Meats/Meat Alternates at Breakfast
- Beans, Peas, and Lentils at Lunch
- Meal Modifications
- Clarification on Potable Water Requirements
- Synthetic Trans Fats

USDA worked closely with program stakeholders to gather input for the proposed rule. The public was also invited to submit comments on the transitional standards rule, the 2023 proposed rule, the 2020 proposed rule, and their accompanying Regulatory Impact Analyses. Analyses below detail the financial impacts of each provision of this rule.

A. Key Assumptions

Impacts in this analysis are based on data collected during SY 2014–2015 for the School Nutrition and Meal Cost Study (SNMCS).[17] Distribution of the types and quantities of foods school districts purchase may have changed since that time due to pandemic supply chain challenges, meal pattern flexibilities, implementation of the transitional standards, changing consumer preferences, and industry changes. Using a 10-year average of the Consumer Price Index (CPI) for all food (including food consumed away from home and at home) from 2015 to the 2024 and the predicted 2023 and 2024 years, cost data were inflated four percent annually for the analyses detailed below.[18] The analyses in this rule assume that the significant progress schools made toward serving healthier meals after 2012 rule was implemented will continue.

These analyses assume that school meal participation (average daily participation and meal counts) will normalize to be consistent with the service levels in FY 2023, as that is the most recent full year of typical program operations. USDA acknowledges that changes in the food served have the potential to impact participation. This impact could be either positive or negative, depending on how specific menu or product changes are implemented. Additional students may participate due to the availability of Healthy School Meals for All in several States in recent years, where all students receive breakfast and lunch at no cost to their families. Discussion of potential participation impacts are included in this Regulatory Impact Analysis under the ''Uncertainties/Limitations'' section as a sensitivity analysis. The analyses in this Regulatory Impact Analysis assume participation returns to more typical, pre-pandemic levels and projects participation will hold steady each school year during the time period between SY 2024–2025 and SY 2029–2030.

For discussion of health benefits of the rule, expected impacts of specific provisions on diet quality are estimated based on the SNMCS and prior data from School Nutrition Dietary Assessment Study (SNDA) IV.[19] Between SY 2009–2010 and SY 2014–2015, ''Healthy Eating Index–2010'' (HEI–2010) scores [20] of diet quality for NSLP and SBP meals increased significantly. The Healthy Eating Index is a tool to ''measure of diet quality that can be used to assess how well a set of foods aligns with key recommendations of the *Dietary Guidelines.*'' [21] At the time of data collection in the SNMCS, the HEI–2010 score was used

[17] *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.*

[18] *https://www.ers.usda.gov/data-products/food-price-outlook/.*

[19] *https://www.fns.usda.gov/school-nutrition-dietary-assessment-study-iv.*

[20] The Healthy Eating Index is a measure of diet quality used to assess how well a set of foods aligns with key recommendations of the *Dietary Guidelines for Americans* that is periodically updated with each edition of the Guidelines. HEI–2010 and HEI–2015 scores are cited/calculated in this impact analysis. At this time, no HEI–2020 score version has been released.

[21] *https://www.fns.usda.gov/healthy-eating-index-hei.*

for evaluation so that there could be a direct comparison in diet quality between SY 2009–2010 and SY 2014–2015. Over this period, the overall mean HEI–2010 score for NSLP lunches served increased from 57.9 to 81.5 out of a possible 100 points, and the mean HEI–2010 score for SBP breakfasts increased from 49.6 to 71.3 out of a possible 100 points. USDA assumes these improvements were due to the 2012 rule. This impact analysis assumes that the dietary content of served school meals continued to improve until 2019 and potentially even during the pandemic for some schools because of the 2012 rule. However, USDA acknowledges that following implementation of the 2012 rule, there have been changes to the school meal pattern requirements because of USDA rulemakings related to the milk, whole grains, and sodium requirements, as well as COVID meal pattern waivers, which might have resulted in changes in the dietary content of meals served.

With regards to added sugars, USDA assumes that schools will use a variety of menu changes to reduce added sugars to 10 percent or less of the weekly calorie content at school lunch and breakfast. Because added sugars have not been part of school meal regulations in the past, there may be a learning curve for school food authorities to adjust as the product specific and weekly average limits are gradually implemented. Analyses of milk product data were conducted with the assumption that some products that meet the finalized flavored milk added sugars limit of 10 grams per 8 fluid ounces are available. At the time data were collected for SNMCS in SY 2014–2015, no products met a 10-gram added sugars limit; the mean added sugars content in flavored milk was 12.2 g. However, data collected by USDA in 2022 from a limited number of K–12 school and food service catalogs suggest that there has been a shift in the added sugars content of milk products available to schools in the last 7 years.[22] More information can be found in the ''Added Sugars'' subsection of the ''Impacts'' section below. Additionally, in April 2023, milk processors representing more than 90 percent of the school milk volume in the United States committed to provide school flavored milk options with no more than 10 grams of added sugar per 8 fluid ounce serving beginning in SY 25–26.[23]

Because flavored milk is the main source of added sugars in school meals, there is some overlap in the impact analyses of added sugars and milk changes in this rule. In this rule, USDA adopts the milk provision described as Alternative B in the proposed rule, which maintains the current requirement allowing all K–12 schools to offer flavored and unflavored milks. Because this rule maintains the current flavored milk requirements, child nutrition program operators will not need to make changes to their menus to comply with this provision, beyond those changes described in *Section 2: Added Sugars.*

For the analysis of the sodium provision of this rule, several assumptions were made. The sodium content of school meals has been trending downwards since implementation of the 2012 rule. From SY 2009–2010 to SY 2014–2015 HEI–2010 sodium component scores increase by almost 270 percent (from 10 to 27 percent of the maximum score). A sodium component score of 10 indicates a meal with sodium density content that is less than or equal to 1100 mg of sodium per 1000 calories. A higher score indicates lower meal sodium content. USDA assumes that the sodium content of school meals continued to decrease until the pandemic waivers allowed flexibility to the meal requirements, including sodium, beginning in 2020 due to the COVID–19 pandemic disruptions to school meal operations. Additionally, USDA assumes that sodium reductions in school meals will take place in a variety of ways and that there are a multitude of strategies schools can use to reduce the sodium content of meals served. As a result, this impact analysis analyzed a variety of meal pattern food and portion combinations to account for the various ways that sodium levels could be reduced.

Assumptions were also made in order to measure the impacts of sections of the rule that pertain to substituting vegetables for grains in Tribal communities, traditional Indigenous foods, afterschool snacks, substituting vegetables for fruits at breakfast, nuts and seeds, and the Buy American provision. As our baseline for current school meal program operations, it was assumed that the proportion of the relevant food items or food groups offered would be the same as, or similar to, foods offered in SY 2014–2015, which is the most recent school year data available. This assumption provided a baseline to simulate the impact of the updates to foods served at school that will occur as a result of this rule. For instance, since we do not have the data to know what combination of food and drink items schools currently serve to meet snack program requirements, USDA assumed the proportion of offered food components in afterschool snacks would be comparable to the proportion of food components offered in school meals in the current school year (SY 2023–2024). Similarly, the baseline assumes that the proportion of foods purchased under an exemption in the Buy American provision would be comparable to purchasing patterns from prior years.

For all analyses, the baseline for meals served was the number of breakfasts, lunches, and afterschool snacks served in fiscal year 2023 (table 3). There were approximately 4.1 billion lunches served in the NSLP, 2.1 billion breakfasts served in the SBP, and about 148 million snacks served through NSLP afterschool snacks. As noted, while this rulemaking takes effect in SY 2024–2025, USDA is gradually phasing in required changes over time. Program operators will not be required to make any changes to their menus as a result of this rulemaking until school year 2025–2026, at the earliest.

TABLE 3. TOTAL MEALS SERVED IN 2023 - VALUES USED FOR IMPACT CALCULATIONS

MEALS	N
BREAKFASTS	2,105,299,111
LUNCHES	4,118,346,313
SNACKS	148,028,994

B. Impacts

Baseline

The goal of this rule is to align school meal nutrition requirements more closely with recommendations in the *Dietary Guidelines for Americans, 2020–2025* and strengthen the existing Buy American requirement. It is assumed that the costs detailed in the Regulatory Impact Analysis for the transitional standards rule will carry forward from SY 2022–2023 through SY 2023–2024, accounting for inflation. For this RIA, SY 2022–2023—the year in which the transitional standards rule was implemented in the school meal programs—is used as the baseline for measuring changes schools would need to make in order to meet the new requirements included in this rule. Since USDA expects the rule to be gradually implemented beginning in SY 2024–2025, this is the starting point for estimating the annual costs of the new requirements.

Based on the total costs of the NSLP, SBP, and CACFP programs from FY 2023, the most recent full year of typical program operations, costs have been forecasted to the

[22] This was not an exhaustive data collection of milk products across the marketplace, simply a fact-finding search. See 'Added Sugars' subsection of the 'Impacts' section below.

[23] International Dairy Foods Association. IDFA Announces 'Healthy School Milk Commitment' to Provide Nutritious Milk with Less Added Sugar for Students in Public Schools, Surpassing USDA Standards. April 5, 2023. Available at: *https://www.idfa.org/news/idfa-announces-healthy-school-milk-commitment-to-provide-nutritious-milk-with-less-added-sugar-for-students-in-public-schools-surpassing-usda-standards.*

time-period between FY 2024 and FY 2032. Absent this rule, we expect the overall baseline program cost to be approximately $208 billion over the eight fiscal years, seven full fiscal years and two half fiscal years. The estimated cost to implement this rule of $1.2 billion (table 1) represents a 0.6 percent [24] increase over the baseline cost of the three largest child nutrition programs. Throughout the 'Impacts' section, annual cost estimates are presented for SY 2024–2025, meaning that they are based on data that has been inflated to SY 2024–2025 from the time of data collection.

Administrative Costs

In order to implement this rule between SY 2024–2025 and SY 2031–2032, it is expected that there will be some regulatory familiarization costs, including state administrative costs, local level training costs, and costs associated with adjusting purchasing patterns and menus at the local level. While USDA has not collected data on this element of rule implementation in the past, comparable measures were used in the 2012 final rule. For that rule, Congress provided $50 million per year for state administrative costs (for two years, FY 2013 and 2014), and raised Federal reimbursements for schools by 6 cents for all lunches in schools that serve both breakfasts and lunches that meet meal pattern regulations and nutrition requirements.[25] Since this rule includes more gradual and smaller changes than the 2012 rule, USDA expects state administrative costs to amount to $25 million annually during the three school years of gradual rule implementation, SY 2024–2025, SY 2025–2026, and SY 2027–2028,[26] for a total of $75 million. Congress has not provided additional funding for this rule change; school food authorities will need to account for them within their operations. The same is true of the local costs detailed in the next paragraph. State agencies may use State Administrative Expense funds (SAE) available in FY 2024 and FY 2025 towards administrative familiarization costs. Fiscal year 2024 SAE funds were substantially higher than in FY 2023 due to pandemic waivers allowing schools to serve meals at no cost to students reimbursed at SFSP rates.

For familiarization costs at the local level, USDA based the estimates on the additional reimbursement rate (from the 2012 final rule) of $0.06 per school lunch and about half of other non-production labor costs. The proportion of cost breakdown used in the transitional standards rule was 45 percent labor, 45 percent food, and 10 percent other. Labor costs include both production (meal-prep) and non-production labor costs; the latter represent 19.8 percent of total labor and would include familiarization costs as well as other costs like nutrition education.[27] We assume non-production costs are evenly split between these 2 activities, so overall, familiarization would represent about 10 percent of labor costs. Therefore, USDA assumes that 45 percent of the $0.06 addition reimbursement represents labor costs, and 10 percent of this amount, or $0.003 ($0.004 after adjusting for inflation up to 2024 per lunch), was the expected cost associated with becoming familiar with the rule and making necessary adjustments. This would then cost $17 million annually at the local level during the three school years of rule implementation during which new changes will be implemented, $51 million overall. In total with state and local costs, this would be $130 million dollars over the course of the rule that would be incurred by school food authorities during rule implementation, or $42 million annually (table 4).

TABLE 4: ESTIMATED ADMINISTRATIVE COSTS (MILLIONS), ADJUSTED FOR ESTIMATED INFLATION TO SY 2024-2025

CATEGORY	Estimated Annual Cost	Estimated 3 Year Cost[28]
STATE	$25	$75
LOCAL	$17	$51
TOTAL	**$42**	**$126**

Added Sugars

In this rule, USDA finalizes the proposed added sugars product-based and weekly limits to school lunch and breakfasts. The product-based limits will take effect in SY 2025–2026, allowing schools to make gradual changes to their menus. The weekly dietary limits will take effect two school years after the product-based limits are implemented. With added sugars now included on the food and beverage product Nutrition Facts label and the recommendation in the *Dietary Guidelines for Americans, 2020–2025* to limit intake of added sugars to less than 10 percent of calories per day, added sugars limits in school meals will help students to achieve a healthy dietary pattern without restricting naturally occurring sugars. Effective SY 2025–2026, for school lunch and breakfast, this rule establishes the following product-based added sugars limits in school meals:

- For school lunch and school breakfast, breakfast cereals are limited to no more than 6 grams of added sugars per dry ounce. This limit will also apply to CACFP starting October 1, 2025.
- For school lunch and school breakfast, yogurt is limited to no more than 12 grams of added sugars per 6 ounces. This limit will also apply to CACFP starting October 1, 2025.
- For school lunch and for school breakfast, flavored milk is limited to no more than 10 grams of added sugars per 8 fluid ounces. This limit does not extend to CACFP.

The weekly dietary limit, which will take effect in SY 2027–2028, limits added sugars to less than 10 percent of calories per week in the school lunch and breakfast programs. This weekly limit will be in addition to the product-based limits described above and aligns with the *Dietary Guidelines* recommendation to limit added sugars to less than 10 percent of calories. The weekly limit does not extend to CACFP.

While the NSLP and SBP have not had total sugar or added sugars limits in the past, product-based total sugar limits have been in place in CACFP since 2017. The current CACFP product-based limits apply to breakfast cereals (≤6 g total sugar/1 dry oz) and yogurt (≤23 g total sugar/6 oz). This final rule applies the product-based added sugars limits for breakfast cereals and yogurts to the CACFP, effective October 1, 2025; the added sugars limits will replace the current total sugar limits for breakfast cereals and yogurts. This aligns the yogurt and breakfast cereal added sugars limits between the two programs, simplifying program administration for schools that operate both programs and simplifying any necessary product reformulation.

The product-based limits for breakfast cereals and yogurts were supported by food label data collected by USDA in May 2022.[29] These data were used to estimate the proportion of recently available products that could meet the added sugars limits and demonstrated a shift in the proportion of products currently meeting existing CACFP total sugar limits. SNMCS data shows that in SY 2014–2015, only nine percent of served yogurt products met the existing CACFP total sugar yogurt limit and 35 percent of hot and cold cereal products met the CACFP total sugar cereal limit. Based on food label data, about 90 percent of yogurt products and 44 percent of hot and cold cereal products

[24] These costs are school food authority costs as a percentage of reimbursement baselines at this time (not Federal costs).

[25] *https://www.cbo.gov/sites/default/files/111th-congress-2009-2010/costestimate/healthyhungerfreekidsact0.pdf.*

[26] Refer to Preamble section 21B: Table of Changes by Program.

[27] SNMCS Study Report Volume 3: Table 2.6.

[28] Three school years when provisions of the rule take effect: SY 2024–2025, SY 2025–2026, and SY 2027–2028.

[29] USDA Food and Nutrition Service, Office of Policy Support data collection of nutrition label information from major cereal and yogurt manufacturer K–12 and food service catalogs.

available during SY 2021–2022 met the existing CACFP total sugar limits.[30] This indicates that in recent years manufacturers were able to make considerable changes in the sugar content of both yogurt and cereal products. The CACFP does not have any flavored milk total sugar limits. This analysis compares the cost of products that met the added sugars limits finalized in this rule to those that did not during SNMCS data collection. Since there is now wider market availability of products with a lower sugar content than there were during SY 2014–2015, it is possible that the actual cost of these changes may be lower than estimated due to a higher number of lower sugar product options.

Breakfast Cereals

The estimated cost of sweetened and unsweetened cold cereals was the same per dry ounce regardless of added sugars content. All hot cereal products met the added sugars limit in SY 2014–2015. While hot cereal is about half the price of cold cereal per dry ounce, it is not widely served; only five percent of menus included hot cereal and an even lower proportion of students consumed hot cereal. The cost of hot cereal per dry ounce also does not account for potentially costly toppings, such as nuts, seeds, or dried fruit. Toppings for hot cereal such as brown sugar or chocolate chips would also contain additional added sugars that are not accounted for in SNMCS data. Because it is unknown whether the proportion of schools serving hot cereal would increase under the final rule and because there is no cost difference among cold cereals based on added sugars content, we expect that this final rule will result in no change in annual cost for breakfast cereals despite the introduction of the added sugars limit. Of those hot and cold cereal products available during data collection in 2022,[31] 50 percent of products available met the added sugars limit of ≤ 6 g added sugars per ounce.

The added sugars limit for breakfast cereals extends to NSLP, SBP, and CACFP. The new 6 grams of added sugars limit for breakfast cereals is similar to the current CACFP limit of 6 grams of total sugars, but focuses on added sugars rather than total sugars, consistent with *Dietary Guidelines* recommendations. Therefore, USDA estimates it will not have a cost impact for CACFP as operators will continue to be able to serve breakfast cereals currently allowed in the program. Alignment of this limit across child nutrition programs may simplify program administration for State agencies and local program operators.

Yogurt

About 1.1 billion portions of yogurt are served annually at school breakfast and lunch combined. During SY 2014–2015, almost all yogurt products exceeded 12 grams of added sugars per 6 ounces. However, of the yogurt products available during SY 2021–2022, 57 percent of yogurt nutrition labels, or approximately 627 million portions, met the added sugars limit finalized in this rule.[32] The recent nutrition label data collection indicates that manufacturers have already made significant changes to yogurt products since the implementation of the CACFP total sugars limit in 2017, but also indicates that there is room for product reformulation in at least 43 percent of currently available products. For this analysis, to more accurately reflect currently available products, USDA used the SY 2021–2022 nutrition label data that indicated 57 percent of yogurt products meet the added sugars limit finalized in this rule.

When school meal cost data were last collected in SY 2014–2015, low-fat and fat-free yogurt products that met the added sugars limit cost $0.05 more than those products that did not meet the limit. On average, yogurt products with more than 12 grams of added sugars per 6-ounce container cost $0.42 and those with 12 grams or less of added sugars cost $0.47. This estimate assumes the cost of yogurt products is the same for CACFP providers, and that, based on program year 2016–2017, CACFP providers served yogurt at snacks and suppers.[33] If the added sugars limit is met in every meal and snack that includes yogurt, 43 percent of yogurt portions served would need to shift to products with fewer added sugars. This would cost an estimated $32 million total for NSLP, SBP, and CACFP, assuming the products that meet the added sugar limit cost $0.05 more per meal (about $0.07 after adjusting for inflation) (table 6).

TABLE 6. ANNUAL COST OF IMPLEMENTING YOGURT ADDED SUGARS LIMIT (MILLIONS), ADJUSTED FOR ESTIMATED INFLATION TO SY 2024-2025

	100% of yogurt products offered meeting limit			57% of yogurt products meeting limit (based on 2022 data)			Difference in Cost
	# of servings meeting limit (millions)	# of servings not meeting limit	Cost	# of servings offered meeting limit (millions)	# of servings not meeting limit	Cost	
SBP	526	NA	$366	300	226	$349	$17
NSLP	412	NA	$287	235	177	$273	$13
CACFP	57	NA	$39	32	24	$38	$2
TOTAL*	995	NA	$692	567	428	660	32

***DUE TO ROUNDING, SOME TOTALS MAY NOT CORRESPOND WITH THE SUM OF THE SEPARATE FIGURES**

Flavored Milk

This rule establishes a flavored milk added sugars limit of 10 grams of added sugars per 8 fluid ounces or, for flavored milk sold as a competitive food for middle and high schools, 15 grams of added sugars per 12 fluid ounces. As detailed in *Section 3A: Flavored Milk* of the rule preamble, schools may continue to offer fat-free and low-fat milk, flavored and unflavored, to all K–12 students. Effective SY 2025–2026, flavored milk must meet the product-based added sugars limit. In SY 2014–2015, there were no flavored milk products that met the new added sugars limit (≤10 g added sugars/8 fluid ounces); therefore, USDA could not compare the cost of flavored milk products that did and did not meet the added sugars limit. Instead, cost analyses are based on the difference in cost of unflavored and flavored milk, using unflavored milk as a proxy for milk that meets the added sugars limit.

The SY 2014–2015 data indicate that the cost of milk varied by fat content, but not

[30] USDA Food and Nutrition Service, Office of Policy Support internal analysis using collected nutrition label data during the development of the rule. Data were collected on 110 total yogurt products and 191 total cereal products.

[31] USDA Food and Nutrition Service, Office of Policy Support data collection of nutrition label information from major cereal and yogurt manufacturer K–12 and food service catalogs. Data were collected on 191 total cereal products.

[32] USDA Food and Nutrition Service, Office of Policy Support data collection of nutrition label information from major cereal and yogurt manufacturer K–12 and food service catalogs. Data were collected on 110 total yogurt products.

[33] *https://www.fns.usda.gov/cn/study-nutrition-activity-childcare-settings-usdas-cacfp.*

consistently. On average, low-fat, flavored milk cost $0.01 more than low-fat, unflavored milk per carton (8 fluid ounces). However, fat-free, flavored milk cost $0.01 less than fat-free, unflavored milk per carton. Low-fat, flavored milk was the least offered milk variety based on the SNMCS report (table 7). Low-fat, unflavored milk and fat-free, flavored milk were offered on a majority of menus at both breakfast and lunch, whereas fat-free, unflavored milk was offered on about half of menus for both breakfast and lunch.

TABLE 7. PERCENTAGE OF DAILY SBP AND NSLP MENUS THAT OFFERED MILK PRODUCTS IN SY 2014-2015[34]

	SBP	NSLP
LOW-FAT, FLAVORED	6%	7%
LOW-FAT, UNFLAVORED	91%	91%
FAT-FREE, FLAVORED	76%	91%
FAT-FREE, UNFLAVORED	51%	50%

To estimate the cost of serving milk that meets the added sugars limit, the cost of serving 100 percent unflavored milk (low-fat and fat-free), was compared to the estimated cost of all milk served during SY 2014–2015 (table 8). In lieu of data on milk served in school meals that meets the added sugars limit, the cost of unflavored milk is used as a proxy. The cost increase from serving milk with ≤10 grams added sugars per 8 fluid ounces is approximately $76 million annually, assuming the same proportion of servings as SY 2014–2015 menus. In addition to fat-free, unflavored milk costing $0.01 more than fat-free, flavored milk, this cost increase reflects that there was a much higher proportion of fat-free, flavored milk served compared to low-fat flavored milk during that school year.

TABLE 8. ANNUAL COST OF IMPLEMENTING FLAVORED MILK ADDED SUGARS LIMIT (MILLIONS), ADJUSTED FOR ESTIMATED INFLATION TO SY 2024-2025

	100% unflavored milk (proxy for milk with ≤10 grams added sugars per 8 fluid ounces)		Based on SY 2014-2015 menu proportions		Difference in cost
	# of servings of milk	**Cost**	**# of servings of milk**	**Cost**	
SBP					
LOW-FAT, FLAVORED	NA	NA	124	$46	-$46
LOW-FAT, UNFLAVORED	2,037	$737	1,913	$692	$45
FAT-FREE, FLAVORED	NA	NA	1,600	$568	-$568
FAT-FREE, UNFLAVORED	2,665	$986	1,065	$394	$592
NSLP					
LOW-FAT, FLAVORED	NA	NA	296	$110	-$110
LOW-FAT, UNFLAVORED	4,048	$1,464	3,751	$1,357	$107
FAT-FREE, FLAVORED	NA	NA	3,747	$1,331	-$1,331
FAT-FREE, UNFLAVORED	5,806	$2,149	2,059	$762	$1,387
TOTAL	14,558	$5,336	14.558	$5,261	$76

It is possible that prices of milk types have aligned since SY 2014–2015 and that the annual cost changes from reducing added sugars in flavored milks will be minimal. These estimates use the most recent school food authority-representative data available. During SY 2014–2015, flavored milk products had a mean added sugars content of 12.2 grams (minimum: 10.4 grams, maximum: 17.8 grams). Public comment on proposed rule that preceded the 2022 transitional standards rule [35] from the International Dairy Foods Association and National Milk Producers Federation indicated that the average added sugars content of flavored milk has declined from 16.7 to 7.1 grams in an eight-ounce serving of flavored school milk between SY 2006–2007 and SY 2019–2020. Despite the fact that no flavored milk products served in SY 2014–2015 met the added sugars limit, an internally conducted search of recent K–12 and food service product catalogs containing milk products indicated that there are some flavored milks now available to schools that meet the 10 grams of added sugar per eight fluid ounces limit.[36] At least four manufacturers had at least one flavored milk product with under 10 grams of added sugars per eight fluid ounce serving, and three manufacturers had products with 6 grams of added sugars per eight fluid ounce serving. A total of 10 flavored milk products from

[34] SNMCS Report—Volume 2.

[35] *https://www.regulations.gov/comment/FNS-2020-0038-4702.*

[36] This was not an exhaustive data collection of milk products across the marketplace, simply a fact-finding search.

four companies were below the 10 grams limit. The catalogs used for data collection generally showed that there were lower and higher sugar versions of flavored milk available. However, it is likely that additional product reformulation will be necessary for those manufacturers that have yet to reduce added sugars content of their flavored milk products. More recently, in April 2023, the International Dairy Foods Association announced a commitment to provide flavored milk with no more than 10 grams of added sugars per 8 fluid ounces, consistent with the limit established by this rule. This commitment was made by 37 school milk processors representing more than 90 percent of the school milk volume in the U.S.[37]

Product Limit Total Impact

In total, across all four product categories, we estimate the cost to meet the added sugars limits would be around $107 million per year. This total reflects the cost impacts of cereal, yogurt, and flavored milk products added sugars limits. These estimated annual costs, adjusted for inflation, are shown in table 9.

TABLE 9: ESTIMATED COST OF PRODUCT-SPECIFIC ADDED SUGAR LIMITS (MILLIONS), ADJUSTED FOR ESTIMATED INFLATION TO SY 2024-2025

PRODUCT TYPE	Estimated Annual Cost
BREAKFAST CEREALS (SBP+CACFP ONLY)	$0
YOGURT	$32
FLAVORED MILK (NSLP+SBP ONLY)	$76
TOTAL*	$107

*DUE TO ROUNDING, TOTALS MAY NOT CORRESPOND WITH THE SUM OF THE SEPARATE FIGURES

Weekly Limit

This rule also finalizes a weekly limit of less than 10 percent of calories per week from added sugars in the school lunch and breakfast programs, effective SY 2027–2028. Considerable menu changes will be required to meet the weekly limit at breakfast. In SY 2014–2015 approximately 11 percent of calories offered at lunch and 17 percent at breakfast were from added sugars.[38] Since there are so many approaches to reduce added sugars across menus, there is not an accurate way to estimate the cost change of reducing all breakfast menus to containing less than 10 percent of calories per week from added sugars. In school breakfasts during SY 2014–2015, fat-free, flavored milk contributed 30 percent of added sugars content, with sweetened cold cereals contributing 13 percent, grain-based desserts contributing 12 percent, and condiments/toppings contributing 12 percent.[39] Schools may find that replacing flavored with unflavored milk is an effective way to begin to approach the weekly limits. Flavored milk in school meals has an average of 12 g of added sugar (minimum 10.4 g and maximum 17.8 g). If all flavored milk products were replaced with unflavored milk products, the percentage of calories from added sugars drops to six percent at lunch and to 13 percent at breakfast.[40] School food authorities could also use a more moderate approach of reducing, but not eliminating, flavored milk offerings at school breakfast; for example, offering unflavored milk varieties only certain days of the school week. Although this approach is not required in this final rule, it would be a simple and effective way to initiate a decrease in the added sugars content of weekly menus. School food authorities may also choose to reduce or eliminate grain-based desserts, sweetened cold cereals, and/or some condiments. This final rule allows schools to more easily offer meats/meat alternates at breakfast by removing the requirement for schools to meet a minimum grains requirement each day at breakfast. Under this provision (see: *Section 6: Meats/Meat Alternates at Breakfast*), schools may offer grains, meats/meat alternates, or a combination of both to meet the combined grains and meats/meat alternates component. Consequently, schools have more flexibility to replace grains that are high in added sugars with meats/meat alternates, such as scrambled eggs, which could help schools to meet the weekly added sugars limit at breakfast upon implementation. In making menu changes, school food authorities will likely choose to balance making the best economic decision for their operations with the need to minimize impacts on student participation and acceptance of new foods. The phased-in approach of this final rule, first with the product specific limits and then with a weekly average limit of added sugars, will help to temper any potential participation changes.

Health Benefits

A major source of added sugars, sugar-sweetened beverages (SSBs), has been studied widely as it relates to health outcomes. The World Health Organization defines SSBs as all beverages containing free sugars, including carbonated or non-carbonated soft drinks, liquid and power concentrates, flavored water, energy and sports drinks, ready-to-drink tea, ready-to-drink coffee, and flavored milk drinks.[41] Flavored milk is the top source of added sugar in school meals, and other SSBs may be sold as competitive foods to high school students under specific competitive food requirements.[42] [43] Consumption of SSBs is related to risk of type 2 diabetes (T2D),[44] cardiovascular disease (CVD),[45] [46] and chronic kidney disease.[47] Tooth decay and cavities are also associated with increased SSB consumption.[48] Other top sources of added sugars in school meals include sweetened cold cereal and grain-based desserts. If a third of school children met the *Dietary Guidelines* recommendation for

[37] International Dairy Foods Association. IDFA Announces 'Healthy School Milk Commitment' to Provide Nutritious Milk with Less Added Sugar for Students in Public Schools, Surpassing USDA Standards. April 5, 2023. Available at: *https://www.idfa.org/news/idfa-announces-healthy-school-milk-commitment-to-provide-nutritious-milk-with-less-added-sugar-for-students-in-public-schools-surpassing-usda-standards.*

[38] Added Sugars in School Meals and Competitive Foods.

[39] Fox MK, Gearan EC, Schwartz C. Added Sugars in School Meals and the Diets of School-Age Children. *Nutrients.* 2021;13(2):471. Published 2021 Jan 30. doi:10.3390/nu13020471.

[40] Based on an internal USDA analysis using SNMCS–II data.

[41] World Health Organization Taxes on Sugary Drinks: Why Do It? World Health Organization. 2017 Available online: *https://apps.who.int/iris/handle/10665/260253.*

[42] See 7 CFR 210.11(m)(3) *https://www.ecfr.gov/current/title-7/part-210#p-210.11(m)(3)* and *https://www.fns.usda.gov/cn/nutrition-standards-all-foods-sold-school-summary-chart.*

[43] Fox MK, Gearan EC, Schwartz C. Added Sugars in School Meals and the Diets of School-Age Children. *Nutrients.* 2021;13(2):471. Published 2021 Jan 30. doi:10.3390/nu13020471.

[44] Warshaw H, Edelman SV. Practical Strategies to Help Reduce Added Sugars Consumption to Support Glycemic and Weight Management Goals. *Clin Diabetes.* 2021;39(1):45–56. doi:10.2337/cd20–0034.

[45] Malik VS, Hu FB. Sugar-Sweetened Beverages and Cardiometabolic Health: An Update of the Evidence. *Nutrients.* 2019;11(8):1840. Published 2019 Aug 8. doi:10.3390/nu11081840.

[46] O'Connor L, Imamura F, Brage S, Griffin SJ, Wareham NJ, Forouhi NG. Intakes and sources of dietary sugars and their association with metabolic and inflammatory markers. *Clin Nutr.* 2018;37(4):1313–1322. doi:10.1016/j.clnu.2017.05.030.

[47] Bomback AS, Derebail VK, Shoham DA, et al. Sugar-sweetened soda consumption, hyperuricemia, and kidney disease. *Kidney Int.* 2010;77(7):609–616. doi:10.1038/ki.2009.500.

[48] Valenzuela MJ, Waterhouse B, Aggarwal VR, Bloor K, Doran T. Effect of sugar-sweetened beverages on oral health: a systematic review and meta-analysis. *Eur J Public Health.* 2021;31(1):122–129. doi:10.1093/eurpub/ckaa147.

added sugars consumption into adulthood, it could prevent an estimated 12,260 adult deaths related to CVD and cancer and save $6.01 billion in medical costs per year.[49] Gradual reduction in added sugars content to 10 percent of calories per week at school lunch and breakfast will align meals with the goals of the *Dietary Guidelines* and will promote improved lifestyle habits and health outcomes during childhood that can track into adulthood.[50]

Milk

This final rule codifies the proposal to maintain the current regulation allowing all schools the option to offer fat-free and low-fat milk, flavored and unflavored, to K–12 students, and to sell fat-free and low-fat milk, flavored and unflavored, à la carte. No annual change in the cost of milk is expected due to maintaining the transitional milk standards.

Several additional provisions would apply under this requirement. The added sugars requirement for flavored milk, which limits flavored milks to 10 grams of added sugars per 8 fluid ounces, effective SY 2025–2026, applies to milk served in reimbursable school lunches and breakfasts, and to milks sold as a competitive beverage.[51] Consistent with current requirements, this rule would require that unflavored milk be offered at each school meal service. This rule also continues to allow fat-free and low-fat milk, flavored and unflavored, to be offered to participants ages 6 and older in the SMP and CACFP.

Health Benefits

In the transitional standards rule, the decision to allow fat-free, flavored milk and low-fat, flavored milk reflected concerns about declining milk consumption and the importance of the key nutrients provided by milk for school-aged children.[52] However, USDA recognizes that flavored milk is the highest source of added sugars in school meals, which is why the product-specific added sugars limit has been finalized. Under this limit, flavored milk must contain no more than 10 grams of added sugars per 8 fluid ounces of milk. Both flavored milk and unflavored milk contain protein, calcium, potassium, vitamin A, vitamin D, and many more essential nutrients. About 90 percent of the U.S. population does not meet dairy recommendations. Most individuals would benefit by increasing intake of dairy in fat-free or low-fat forms of milk. Calcium, potassium, dietary fiber, and vitamin D are considered dietary components of public health concern for the general U.S. population because low intakes are associated with health concerns.[53] Low-fat dairy was also shown in some evidence to be part of a healthy dietary pattern in children that was associated with lower blood pressure and improved blood lipid levels later in life.[54] These potential health benefits combined with the fact that milk is a nutrient-dense beverage support the continued serving of both fat-free and low-fat flavored and unflavored milk. With flavored milk also meeting added sugar limits, all milk options schools offer will better align with the *Dietary Guidelines for Americans* regardless of student flavor preferences.

Whole Grains

This rule maintains the current requirement that at least 80 percent of the weekly grains offered are whole grain-rich, based on ounce equivalents of grains served in the school lunch and breakfast programs. The definition of whole grain-rich, which is codified in this final rule, reads as follows: *Whole grain-rich is the term designated by FNS to indicate that the grain content of a product is between 50 and 100 percent whole grain with any remaining grains being enriched.* This definition does not change the meaning of whole grain-rich, which has previously been communicated in USDA guidance, but is simply a clarification for school food authorities. The definition is included in NSLP, SBP, and CACFP regulations. There is no cost change expected as a result of these provisions because the requirement that at least 80 percent of weekly grains offered are whole grain-rich is carried forward from the 2022 transitional standards rule.

Health Benefits

The 2022 transitional standards rule required that at least 80 percent of grains offered be whole grain-rich. This was an increase from the 2018 rule which required that at least 50 percent of grains offered be whole grain-rich, in light of the challenges schools were facing in meeting the 2012 rule requirements. Despite these challenges, schools have made considerable progress offering whole grain-rich products. On average, in SY 2014–2015, 70 percent of the weekly menus offered at least 80 percent of the grain items as whole grain-rich for both breakfast and lunch.[55] This rule continues to emphasize the importance of consuming a dietary pattern with grains that are whole grain-rich, but also carries forward manageable, achievable goals.

Prepared NSLP lunches in SY 2014–2015 scored 95 percent of the maximum HEI–2010 whole grains component score, on average, and prepared breakfasts in the SBP scored 92 percent of the maximum.[56] NSLP participants scored the maximum HEI–2010 whole grains component score for lunches consumed on average in SY 2014–2015 and nonparticipants scored only 63 percent of the maximum score, a significant difference. SBP participants scored 98 percent of the maximum HEI–2010 whole grain component score on breakfasts consumed, whereas nonparticipants scored 68 percent of the maximum score.[57] A maximum whole grain component score in the HEI–2010 is achieved with at least 1.5 ounces equivalent of whole grains per 1000 kilocalories of intake, a measure of nutrient density. In SY 2014–2015, school meal programs were matching recommendations from the *Dietary Guidelines* at a high level with regards to whole grains.

Whole grains are considered to be a nutrient dense food, and the Dietary Guidelines recommend making half of your grains whole grains. However, almost all (98 percent) of Americans fall below recommendations for whole grains, while most (74 percent) exceed limits for refined grains, underscoring the importance of school meal requirements that encourage children's consumption of whole grain-rich foods. Throughout the lifespan, consumption of whole grains has also been shown to reduce the risk of type 2 diabetes.[58] Additionally, if children consume whole grains at the level recommended in the *Dietary Guidelines* through to adulthood, it could prevent an estimated 2,940 CVD- and cancer-related deaths and save $6.01 billion in medical costs per year.[59] Whole grains are shown in some evidence to be part of a healthy dietary pattern in children that was associated with lower blood pressure and improved blood lipid levels later in life.[60]

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[49] Wang L, Cohen J, Maroney M, et al. Evaluation of health and economic effects of United States school meal standards consistent with the 2020–2025 dietary guidelines for Americans. The American Journal of Clinical Nutrition. 2023. DOI: *https://doi.org/10.1016/j.ajcnut.2023.05.031.*

[50] Lioret S, Campbell KJ, McNaughton SA, et al. Lifestyle Patterns Begin in Early Childhood, Persist and Are Socioeconomically Patterned, Confirming the Importance of Early Life Interventions. *Nutrients.* 2020;12(3):724. Published 2020 Mar 9. doi:10.3390/nu12030724.

[51] USDA is finalizing a higher added sugars limit for flavored milk sold as a competitive food in middle and high schools due to the larger serving size. The serving size for milk offered as part of a reimbursable meal is 8 fluid ounces. Milks sold to middle and high school students as a competitive food may be up to 12 fluid ounces.

[52] *https://www.gpo.gov/fdsys/pkg/FR-2017-11-30/pdf/2017-25799.pdf.*

[53] U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020–2025. 9th Edition. December 2020. Available at *DietaryGuidelines.gov.*

[54] Bouchey C, Ard J, Bazzano L, Heymsfield S, Mayer-Davis E, Sabaté J, Snetselaar L, Van Horn L, Schneeman B, English LK, Bates M, Callahan E, Butera G, Terry N, Obbagy J. Dietary Patterns and Risk of Cardiovascular Disease: A Systematic Review. July 2020. U.S. Department of Agriculture, Food and Nutrition Service, Center for Nutrition Policy and Promotion, Nutrition Evidence Systematic Review. Available at: *https://doi.org/10.52570/NESR.DGAC2020.SR0102.*

[55] Based on an internal USDA analysis using data from: U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[56] SNMCS Volume 2—Figures 5.2 and 5.5.

[57] SNMCS Volume 4—Figures 9.2 and 12.2.

[58] Chanson-Rollé A., Meynier A., Aubin F., Lappi J., Poutanen K., Vinoy S., Braesco V. Systematic Review and Meta-Analysis of Human Studies to Support a Quantitative Recommendation for Whole Grain Intake in Relation to Type 2 Diabetes. PLoS ONE. 2015;10:e0131377. doi: 10.1371/journal.pone.0131377.

[59] Wang L., Cohen J., Maroney M., et al. Evaluation of health and economic effects of United States school meal standards consistent with the 2020–2025 dietary guidelines for Americans. The American Journal of Clinical Nutrition. 2023. DOI: *https://doi.org/10.1016/j.ajcnut.2023.05.031.*

[60] Bouchey C., Ard J., Bazzano L., Heymsfield S., Mayer-Davis E., Sabaté J., Snetselaar L., Van Horn L., Schneeman B., English L.K., Bates M., Callahan E., Butera G., Terry N., Obbagy J., Dietary Patterns and Risk of Cardiovascular Disease: A Systematic Review. July 2020. U.S. Department of Agriculture, Food and Nutrition Service, Center for Nutrition

Factors that contribute to increased consumption of whole grains in children include providing a variety of whole grain options, serving whole grains in school programs, and improving appearance of package and product marketing.[61] The documented health benefits of the consumption of whole grain-rich products and strategies to increase whole grain intake in children both support a continued whole grain requirement in school meals.

Sodium

This rule updates the approach to sodium reduction in school meals. Lessons learned from the 2012 rule indicate that smaller, incremental reductions in sodium content may be more achievable given the need for industry to reformulate products and for schools to modify both the products they serve and their preparation methods. Based on these lessons learned and on comments received on the proposed rule, the current sodium limits (implemented in the 2022 transitional standards rule) will be maintained over the next three school years, and a single reduction will be implemented in SY 2027–2028. This final rule sets forth an approximate 15 percent reduction for school lunch and an approximate 10 percent reduction for school breakfast from the current sodium limits. The sodium limits in this rulemaking are informed by the *Dietary Guidelines* and FDA's voluntary sodium reduction goals, which aim to reduce sodium across the U.S. food supply.

To provide context, the previous three sodium targets from the 2012 rule and the targets from the 2022 transitional standards rule are presented below (table 10). The transitional standards rule required schools to meet Sodium Target 1 for school lunch and breakfast, effective SY 2022–2023. For school lunch only, schools were required to meet Sodium Target 1A beginning in SY 2023–2024. This final rule maintains the current limits under Target 1A for lunch and Target 1 for breakfast through the end of SY 2026–2027 and adds new limits that conform to the Target 2 limits from the 2012 rule, effective SY 2027–2028 (table 11).

TABLE 10: THREE 2012 SODIUM TARGETS AND TARGETS FROM THE TRANSITIONAL STANDARDS RULE (MG) FOR CURRENT SCHOOL LUNCH AND SCHOOL BREAKFAST

	NSLP				
AGE/GRADE GROUP	2012 TARGET 1	2012 TARGET 2	2012 TARGET 3	TARGET 1 SY 2022-2023	TARGET 1A SY 2023-2024
K-5	1,230	935	640	1,230	1,110
6-8	1,360	1,035	710	1,360	1,225
9-12	1,420	1,080	740	1,420	1,280
	SBP				
	2012 TARGET 1	2012 TARGET 2	2012 TARGET 3	TARGET 1 SY 2022-2023 AND SY 2023-2024	
K-5	540	485	430	540	
6-8	600	535	470	600	
9-12	640	570	500	640	

TABLE 11: FINAL RULE SODIUM LIMITS (MG) FOR SCHOOL LUNCH AND SCHOOL BREAKFAST

	NSLP	
AGE/GRADE GROUP	Current: In effect through June 30, 2027	Effective July 1, 2027
K-5	< 1,110	≤ 935
6-8	< 1,225	≤ 1,035
9-12	< 1,280	≤ 1,080
	SBP	
K-5	≤ 540	≤ 485
6-8	≤ 600	≤ 535
9-12	≤ 640	≤ 570

The school lunch baseline for this analysis is the menu-served sodium content from SY 2014–2015, in which elementary, middle, and high school lunch menus had sodium content, on average, of 1135 mg, 1235 mg, and 1330 mg, respectively. The school breakfast baseline for this analysis is the menu-served sodium content from SY 2014–2015, in which elementary, middle, and high school breakfast menus had sodium content, on average, of 510 mg, 570 mg, and 580 mg, respectively. This indicates that the majority of schools were already meeting Sodium Target 1 from the 2012 rule for both breakfast and lunch in SY 2014–2015, and almost meeting Sodium Target 1A from the 2022 transitional standards rule for school lunch. More specifically, 72 percent of weekly lunch menus and about 66 percent of weekly breakfast menus were meeting Sodium Target 1 in SY 2014–2015.[62]

Policy and Promotion, Nutrition Evidence Systematic Review. Available at: *https://doi.org/10.52570/NESR.DGAC2020.SR0102.*

[61] Meynier A., Chanson-Rollé A., Riou E., Main Factors Influencing Whole Grain Consumption in Children and Adults—A Narrative Review. Nutrients. 2020;12(8):2217. Published 2020 Jul 25. doi:10.3390/nu12082217.

[62] SNMCS Report Volume 2.

Because this final rule maintains the current sodium limits, no additional costs are expected through the end of SY 2026–2027. In order to simulate the potential increase in costs due to the final rule sodium limits effective SY 2027–2028, we determined whether products served in schools met the FDA short-term voluntary sodium targets.[63] For products that did not meet the FDA voluntary targets, we simulated the change in sodium by capping the sodium amount at the appropriate FDA category voluntary target. This simulation was originally used to estimate the cost of the proposed sodium limits, which was a series of 10 percent reductions over multiple school years. The analysis described in the subsection below ''Analyses Related to Gradual Sodium Reduction'' found that when foods served in school meals met the FDA voluntary sodium reduction targets the overall sodium content of menus decreased by approximately 10 percent. We assume this is true for estimating the cost impact of the final sodium limit. The cost difference was estimated by comparing the cost of a meal with foods that either already meet, or are not subject to, the FDA short-term voluntary targets to the cost of a meal with foods that do not meet, and are being subject to, the FDA short-term voluntary targets and represents the cost difference associated with a 10 percent sodium reduction. The average cost of multiple food group combinations in sample menus was used for both breakfast and lunch to simulate the cost of a variety of menus that might be created and used by school food authorities. This cost difference was used to estimate the total cost for the 10 percent sodium reduction applicable to breakfast in this final rule. For the 15 percent sodium reduction for lunch, the estimated cost difference for a 10 percent reduction was increased by 50 percent to reflect the additional costs associated with the larger sodium reduction.

When comparing higher sodium school meals (those containing more foods being targeted by FDA voluntary sodium guidance) to lower sodium school meals, higher sodium meals were found to be less expensive. Meals from SY 2014–2015 with higher sodium foods were $0.09 cheaper per SBP meal and $0.05 cheaper per NSLP meal than those meals that contained lower sodium products when only considering food costs. Adjusted for inflation, this was a $0.08 difference per meal, on average, for breakfast and lunch. We use those per meal food cost differences, adjusted for inflation, to estimate the food cost of the final rule sodium limits. We include in the total cost impact an added 25 percent labor costs associated with increased scratch cooking, totaling $2 million annually for labor from rule implementation. We assume scratch cooking will only increase about 25 percent since products should already be available that would allow schools to meet the final rule sodium limits (table 12). The approximate cost of implementing the sodium reduction is $118 million, with food costs totaling $94 million annually from rule implementation. The breakdown by meal type of annual total food costs are $27 million for breakfast and $68 million for lunch. Potential equipment costs are detailed in the ''Uncertainties/Limitations'' section below. The existing sodium limits will remain in effect through the end of SY 2026–2027, and there are no costs associated with current limits already in effect.

TABLE 12: ESTIMATED COST OF SODIUM REDUCTION (MILLIONS), ADJUSTED FOR ESTIMATED INFLATION TO SY 2024-2025

CATEGORY	Estimated Annual Cost Beginning SY 2027-2028
FOOD	$94
LABOR	$24
TOTAL	**$118**

Food and labor costs account for almost all of the costs to produce a meal in a school (about 45 percent for labor and 45 percent for food, on average). The impact analysis of the new sodium limits used the same method to estimate labor costs that was used in the 2022 transitional standards rule RIA. It also assumes a need for increased scratch cooking, staffing changes, and time needed for manufacturer product reformulation. The USDA study, ''Successful Approaches to Reduce Sodium in School Meals,'' found that school districts served more fresh fruits and vegetables to reduce sodium content. This may cause a reduction in food costs if items purchased to prep and serve fresh or to cook from scratch are less expensive; however, these costs may be offset by higher quantities needed or additional foods needed to prepare meals from scratch.

While meeting the 10 percent sodium reduction in breakfast is possible with products already available, the 15 percent reduction for lunch may require some product reformulation or new preparation methods such as scratch-cooking which, in turn, require changes in staffing and equipment. This is supported by the USDA study on ''Successful Approaches to Reduce Sodium in School Meals,'' [64] in which schools, Food Service Management Companies, and manufacturers noted similar effects from the original sodium targets in the 2012 rule. Previous studies have shown that many schools have some capacity to conduct scratch-cooking, but that new equipment and more staff may be necessary to achieve recipe reformulation and cooking or baking from scratch.[65] Because data have not been collected since SY 2014–2015, it is possible that further product reformulation and recipe restructuring occurred prior to or during the COVID–19 pandemic. Likewise, it is unclear how much menus changed during the pandemic and what the baseline level of sodium in menus will be for SY 2022–2023 due to a lack of recent data. The USDA study, ''Successful Approaches to Reduce Sodium in School Meals,'' also noted that reducing sodium can be challenging, especially when using pre-packaged products. Schools may no longer purchase high-sodium items, and manufacturers may eliminate certain product lines.[66] However, the FDA's voluntary sodium goals may have already led to the reduced use of high-sodium pre-packaged foods and reformulation of some products, which may help to reduce the transition challenges.

Analyses Related to Gradual Sodium Reduction

A variety of factors may affect the reduction of sodium in school meals, including the short-term FDA sodium voluntary targets, improved sodium component Healthy Eating Index (HEI) scores, an adjustment for actual consumption of meals by students, and palatable reduction over time. Additionally, a comparison to sodium requirements in other organizations and a summary of health benefits of sodium reduction may inform further reduction of sodium content in school meals. These points may be considered alongside the expected additional cost of the final rule sodium limits.

[63] *https://www.fda.gov/food/cfsan-constituent-updates/fda-issues-sodium-reduction-final-guidance.*

[64] Gordon, E.L., Morrissey, N., Adams, E., Wieczorek, A. Glenn, M.E., Burke, S & Connor, P. (2019). Successful Approaches to Reduce Sodium in School Meals Final Report. Prepared by 2M Research under Contract No. AG–3198–P–15–0040. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service.

[65] Standing, Kim, Joe Gasper, Jamee Riley, Laurie May, Frank Bennici, Adam Chu, and Sujata Dixit-Joshi. Special Nutrition Program Operations Study: State and School Food Authority Policies and Practices for School Meals Programs School Year 2012–13. Project Officer: John R. Endahl. Prepared by Westat for the U.S. Department of Agriculture, Food and Nutrition Service, October 2016.

[66] Gordon, E.L., Morrissey, N., Adams, E., Wieczorek, A. Glenn, M.E., Burke, S & Connor, P. (2019). Successful Approaches to Reduce Sodium in School Meals Final Report. Prepared by 2M Research under Contract No. AG–3198–P–15–0040. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service.

The FDA sodium voluntary targets are designed to support a reduction in average daily sodium intake of 12 percent nationwide by targeting products across almost all available food categories containing commercially processed, packaged, and prepared foods.[67] An internal USDA analysis of school foods that met or did not meet the FDA voluntary food guidance used a matching process between categories of food products shown to have been on menus in the SNMCS and the FDA food categories. For products that did not meet the FDA voluntary sodium reduction guidance, the sodium content of these products was capped at the FDA short-term targets across all the potential food categories for the item to simulate reduction in those targeted food groups. This analysis found that when foods served in school meals met the FDA voluntary sodium reduction targets the overall sodium content of menus decreased by approximately 10 percent. Some foods served in school meals, including milk, fresh fruits and vegetables, and fresh cooked meats are not targeted for sodium reduction because most contain naturally occurring sodium. Condiments/accompaniments, breads/grains, combination entrees, some cheeses and a variety of other foods are targeted, leading to an estimated total reduction of 10 percent of menu sodium content. As detailed in the rule preamble, FDA's goals are not intended to focus on food or beverages that contain only naturally occurring sodium, but rather, to focus on items where actionable reductions in sodium are feasible. The sodium limits in this final rule account for naturally occurring sodium levels in foods and beverages in the current food supply. Therefore, foods and beverages containing naturally occurring sodium are not exempt from these sodium limits; rather, the sodium limits in this final rule account for naturally occurring sodium.

This analysis also showed that many products were available in SY 2014–2015 that would meet a 10 percent sodium reduction in breakfasts and lunches if menus are changed to include these products. At lunch, about 70 percent of accompaniments/condiments and combination entrees available already met the FDA voluntary sodium targets. At breakfast, 96 percent of accompaniments and 85 percent of combination entrees met the FDA sodium targets. Replacing condiments and combination entrees served at lunch would require the most effort with regards to sodium reduction through scratch cooking, menu changes, and product reformulation. However, minimal scratch cooking and reformulation is needed to reduce sodium by 10 percent. It is of note that current FDA voluntary targets are short-term and equal to a 10 percent reduction when applied to the NSLP and SBP menus,[68] and this rule finalizes a gradual 15 percent reduction for the NSLP and 10 percent reduction for the SBP.

The benefits of the new sodium limits are best measured with the HEI component scores. While the HEI is usually used to measure nutritional quality for daily dietary intake (ex. 24-hour recalls, food diaries), it can also be used to evaluate the alignment of single meals to the *Dietary Guidelines.* The maximum score for sodium is 10, indicating ≤1.1 grams of sodium per 1,000 calories, and the minimum score available is zero, indicating ≥2.0 grams of sodium per 1,000 calories.[69] A lower score indicates a higher sodium level in foods (higher sodium density), so a score of 10 is best and indicates lower levels of sodium in line with the *Dietary Guidelines.* This formula for scoring the sodium component is the same in the HEI–2010, HEI–2015, and HEI–2020[70] scoring versions.[71] The SNMCS reports[72] use the HEI–2010 version, but because the sodium component score did not change in 2015, HEI scores in tables 13 and 14 could be considered either HEI–2010 or HEI–2015. Intakes between the minimum and maximum levels of sodium are scored proportionately. Tables 13 and 14 show the HEI scores for menus that meet the sodium targets in the transitional standards rule and as finalized in this rule. The scores demonstrate improved consistency with the goals of the *Dietary Guidelines* through a decreased level of sodium density. For lunch, the sodium limit corresponds to an increase of 263 percent in HEI sodium component scores over the five years of implementation for elementary, middle, and high schools, respectively (table 14). Breakfast menu HEI scores were already 10 for the sodium component in SY 2014–2015 (table 13). However, further improvement is necessary to reach sodium intake levels recommended in the 2019 sodium dietary reference intakes (DRIs),[73] which have also been recommended in the *Dietary Guidelines for Americans, 2020–2025.* HEI sodium component scores are a good measure of sodium density, but Dietary Reference Intakes for sodium also provide recommendations for daily sodium intake by age group in the U.S. and Canada.[74] The latest edition of the sodium and potassium DRIs was released in 2019 and also included Chronic Disease Reduction Risk (CDRR) values that are a recommended maximum daily intake level to prevent chronic disease (table 15). Various organizations, including both the USDA through the *Dietary Guidelines* and non-Federal groups[75] [76] have indicated support for usage of these CDRR proportions as the goal for sodium consumption in school meals.

[67] *https://www.fda.gov/food/cfsan-constituent-updates/fda-issues-sodium-reduction-final-guidance.*

[68] Internal USDA analysis using FDA targets and SNMCS data.

[69] *https://www.fns.usda.gov/how-hei-scored.*

[70] HEI–2020 was published in September 2023, after this analysis was complete. For application to school age children in this RIA, using HEI–2010, HEI–2015 or HEI–2020 produces the same scores.

[71] *https://epi.grants.cancer.gov/hei/comparing.html.*

[72] *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.*

[73] *https://nap.nationalacademies.org/catalog/25353/dietary-reference-intakes-for-sodium-and-potassium.*

[74] National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Food and Nutrition Board; Committee to Review the Dietary Reference Intakes for Sodium and Potassium; Oria M., Harrison M., Stallings V.A., editors. Dietary Reference Intakes for Sodium and Potassium. Washington (DC): National Academies Press (US); 2019 Mar 5. Available from: *https://www.ncbi.nlm.nih.gov/books/NBK538102/* doi: 10.17226/25353.

[75] *https://www.cspinet.org/sites/default/files/2022-03/CSPI%20Transition%20Final%20Rule%20Comment%202022.pdf.*

[76] *https://www.heart.org/-/media/Files/About-Us/Policy-Research/Fact-Sheets/Access-to-Healthy-Food/INFOGRAPHIC-Lowering-Sodium-in-School-Foods.pdf.*

TABLE 13: SODIUM LEVELS AND CORRESPONDING HEI SODIUM COMPONENT SCORES AT BREAKFAST BY MAXIMUM CALORIE LEVEL

SODIUM LEVELS BY SCHOOL AGE/GRADE GROUP	SY 2022-2023 and SY 2023-2024 (transitional standards rule)	SY 2014-2015 Menu Sodium Served	SY 2027-2028 Limit
ELEMENTARY (500 KCAL)	540	432	485
ELEMENTARY HEI SCORE	10	10	10
MIDDLE (550 KCAL)	600	447	535
MIDDLE HEI SCORE	10	10	10
HIGH (600 KCAL)	640	449	570
HIGH HEI SCORE	10	10	10

TABLE 14: SODIUM LEVELS AND CORRESPONDING HEI SODIUM COMPONENT SCORES AT LUNCH BY MAXIMUM CALORIE LEVEL

SODIUM LEVELS BY SCHOOL AGE/GRADE GROUP	SY 2023-2024 (transitional standards rule)	SY 2014-2015 Menu Sodium Served	SY 2027-2028 Limit
ELEMENTARY (650 KCAL)	1,110	1,057	935
ELEMENTARY HEI SCORE	3.2	4.2	6.2
MIDDLE (700 KCAL)	1,225	1,101	1,035
MIDDLE HEI SCORE	2.8	4.7	5.8
HIGH (850 KCAL)	1,280	1,236	1,080
HIGH HEI SCORE	5.5	6.1	8.1

TABLE 15. ESTIMATED SODIUM DIETARY REFERENCE INTAKES (CHRONIC DISEASE REDUCTION RISK VALUES) BY AGE/GRADE GROUP AND MEAL (MG)

	Elementary	Middle	High
BREAKFAST	340	390	500
LUNCH	510	580	740

School meal consumption data yields differing HEI scores from the menu data presented above. The sodium component HEI scores of consumed lunches in SY 2014–2015 were 4.2 on average for NSLP participants of all age/grade groups and a slightly better score than 4.0 on average for non-participants.[77] NSLP participants had a lunch sodium component score of 4.7, 4.6, and 3.0 for elementary, middle, and high schools, respectively. For breakfast, sodium component HEI scores in SY 2014–2015 were 8.7 on average for SBP participants and 7.9 on average for non-participants across age/grade groups. SBP participants had a breakfast sodium component score of 9.6, 9.0, and 6.7 for elementary, middle, and high schools, respectively.[66] Since both breakfast and lunch consumption data include competitive foods and foods brought from home, it is difficult to compare the menu sodium scores to the scores based on the consumed amount of sodium. Overall lunch HEI–2010 scores (scored out of 100), including all elements of the meal consumed, were 80.1 for NSLP participants and 65.1 for students that were not NSLP participants. Overall breakfast HEI–2010 scores were 66.1 for SBP participants and 58.9 for students that were not SBP participants.[78] While participants of school meal programs have higher meal HEI scores, indicating a higher adherence to the recommendations of the *Dietary Guidelines,*[79] there is room for improvement overall. For sodium, there is especially room for improvement in lunches at all ages and in high school breakfasts. The final rule sodium limits would improve these scores even when accounting for foods consumed that are not part of a reimbursable meal.

[77] SNMCS Report Volume 4 Appendices I to P—Tables J.1 to J.4 and Tables M.1 to M.4.

[78] SNMCS Report Volume 4.

[79] The HEI–2010 score corresponds to the *Dietary Guidelines for Americans, 2010–2015.*

Other reasons to finalize a single sodium reduction with a longer implementation timeline include palatability and the need for product reformulation. Manufacturers have found that a 10 percent reduction in sodium for individual products is manageable with regards to product reformulation and consumer approval in the past, as well as in internal discussions with USDA.[80] Various studies agree with gradual reduction being manageable for consumers both at an individual and population level.[81] [82] [83] Additionally, small reductions of sodium (2 to 5 percent) are generally not noticed by consumers.[84] The 15 percent and 10 percent reduction will not affect every single food product equally but will be spread across the lunch and breakfast menus, respectively, at varying levels. For instance, some products may easily be reduced in sodium content by 20 percent, whereas only a 5 percent change may be possible in others. Manufacturers also may have existing lower sodium product lines in their portfolio that they may be able to use without needing to reformulate existing products. Additionally, manufacturers may already be making strides in adjusting products as a result of the short-term FDA voluntary sodium guidance that was released in October 2021, especially with additional updated guidance expected to come out in 2024.

USDA completed a limited search of other food service operations in the U.S. in order to compare their sodium requirements to those finalized in this rule. The CDC Food Service Guidelines for Federal Facilities were designed to be used in Federal, State, and local government facilities, as well as hospitals, health care facilities, colleges and universities, private worksites, stadiums, and recreation centers.[85] This set of guidelines recommends that all meals, defined as an entrée and two sides, contain ≤800 milligrams of sodium. Entrees alone should contain ≤600 milligrams of sodium and all side items alone contain ≤230 milligrams of sodium. Though these guidelines are directed toward adults, it is helpful that beverages are included in these guidelines unlike other available measures since the NSLP and SBP require milk as part of the school food pattern. The U.S. Army Food Program Implementation Guide for Nutrition Standards[86] and the Healthier Campus Initiative Guidelines[87] also advise that lunch and dinner meals should contain ≤800 milligrams of sodium. The National Restaurant Association's Kids Live Well program[88] advises that at least two of the children's meal options served in restaurants should contain ≤700 milligrams of sodium, including at least two different food groups (fruit, vegetable, non/low-fat dairy, meat/meat alternative, and whole grains) and at least one of the two food groups must be a fruit or vegetable. No mention is made in the Kids Live Well program materials if a beverage is included as part of a meal when calculating the total sodium content. An 8-ounce carton of milk contains up to 130 milligrams of sodium, indicating that the lunch sodium limits of 935 milligrams, 1,035 milligrams, and 1,080 milligrams for elementary, middle, and high schools are achievable relative to organization limits when accounting for milk and the full meal pattern requirements.

Health Benefits

The most important reason for sodium reduction in school meals is the health benefits. Closer alignment of school meals with the goals of the *Dietary Guidelines for Americans, 2020–2025* is meant to promote a healthy lifestyle and prevent chronic disease by meeting dietary needs. During SY 2011–2012, U.S. elementary, middle, and high school age school children consumed about 3,050 mg, 3,115 mg, and 3,565 mg of sodium daily, respectively.[89] This exceeds the recommended daily sodium DRI values[90] for school age children; 1,500 mg for age 4 to 8 years, 1,800 mg for age 9 to 13 years, and 2,300 mg for age 14 to 18 years. Sodium DRI values are presented by age group so there is some overlap when comparing to school age groups.

Reducing sodium intake has been shown to reduce blood pressure in children, birth to age 18 years. This was shown in a systematic review conducted in 2015 by the Dietary Guidelines Advisory Committee (DGAC).[91] The 2015 DGAC also conducted an update on the 2013 Institute of Medicine (IOM) (now NASEM) and National Heart, Lung, and Blood Institute (NHLBI) systematic reviews that evaluated the relationship between sodium intake and the risk of cardiovascular disease (CVD). The DGAC found agreement with the NHLBI review, which concluded that ''a reduction in sodium intake by approximately 1,000 mg per day reduces CVD events by about 30 percent'' and that ''higher dietary sodium intake is associated with a greater risk for fatal and nonfatal stroke and CVD.'' The DGAC also found agreement with the IOM review that found that there is evidence to support a positive relationship between higher levels of sodium intake and risk of CVD and is consistent with blood pressure serving as a surrogate indicator of CVD risk.[80] Blood pressure tracks over the life course, meaning that reducing sodium intake and maintaining a healthy blood pressure level in childhood can benefit individuals into adulthood.[92] A recent study suggests that among the three major dietary groups addressed in this rule (sodium, added sugars, and whole grains), children's consumption of sodium at the D*ietary Guidelines, 2020–2025* recommendations into adulthood has the largest potential health and economic impacts. The maintenance of this dietary pattern from school age was associated with 5,580 fewer adult deaths from CVD and cancer and $8.26 billion in reduced healthcare-related costs per year.[93] Evidence is strong to support the conclusion that reduction in sodium intake reduces blood pressure and in turn reduces CVD risk and CVD events. A gradual reduction in sodium content of school meals will likely contribute to an improvement of dietary habits, blood pressure, and CVD risk factors in NSLP and SBP participants that could track into adulthood.

Meats/Meat Alternates at Breakfast

This rule codifies the combined grains and meats/meat alternates meal component at breakfast and removes the requirement for schools to offer 1.0 ounce equivalent of grains each day at breakfast, included from the 2020 proposed rule *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs.* Schools may offer grains, meats/meat alternates, or a combination of both to meet this combined component requirement. The minimum daily requirement (1 ounce equivalent) and minimum weekly requirement (7–9 ounce equivalents, depending on the age/grade group) for this component remain the same. This rule allows for these daily and weekly requirements to be met with grains and/or meat/meat alternates. This provision does not require school food authorities to change their breakfast meal service. Schools should balance this

[80] Cobb L.K., Appel L.J., Anderson C.A., Strategies to reduce dietary sodium intake. *Curr Treat Options Cardiovasc Med.* 2012;14(4):425–434. doi:10.1007/s11936–012–0182–9.

[81] Liem D.G., Miremadi F., Keast R.S., Reducing sodium in foods: the effect on flavor. *Nutrients.* 2011;3(6):694–711. doi:10.3390/nu3060694.

[82] Levings J.L., Cogswell M.E., Gunn J.P., Are reductions in population sodium intake achievable? *Nutrients.* 2014;6(10):4354–4361. Published 2014 Oct 16. doi:10.3390/nu6104354.

[83] Dehmer S.P., Cogswell M.E., Ritchey M.D., et al. Health and Budgetary Impact of Achieving 10-Year U.S. Sodium Reduction Targets. *Am J Prev Med.* 2020;59(2):211–218. doi:10.1016/j.amepre.2020.03.010.

[84] Drake S.L., Lopetcharat K., Drake M.A., Salty taste in dairy foods: can we reduce the salt? [published correction appears in *J Dairy Sci.* 2012 Dec;95(12):7429]. *J Dairy Sci.* 2011;94(2):636–645. doi:10.3168/jds.2010–3509.

[85] *https://www.cdc.gov/obesity/downloads/guidelines_for_federal_concessions_and_vending_operations.pdf.*

[86] *https://quartermaster.army.mil/jccoe/Operations_Directorate/QUAD/nutrition/Implementation-Guide-for-Go-for-Green-Army.pdf.*

[87] *https://www.ahealthieramerica.org/healthier-campus-initiative-20#resource_grid-292.*

[88] *https://restaurant.org/getmedia/f829f35b-917a-432d-8192-9b1c79864d0d/kids-livewell-getting-started.pdf.*

[89] Quader ZS, Gillespie C, Sliwa SA, et al. Sodium Intake among US School-Aged Children: National Health and Nutrition Examination Survey, 2011–2012. *J Acad Nutr Diet.* 2017;117(1):39–47.e5. doi:10.1016/j.jand.2016.09.010.

[90] 2019 Sodium Chronic Disease Reduction Risk (Dietary Reference Intake) values.

[91] 2015 *Dietary Guidelines* Advisory Committee and Nutrition Evidence Library. Systematic Reviews of the Cross-Cutting Topics of Public Health Importance Subcommittee. 2015 *Dietary Guidelines* Advisory Committee Project. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Center for Nutrition Policy and Promotion, March 2017. Available at: *https://nesr.usda.gov/2015-dietary-guidelines-advisory-committee-systematic-reviews.*

[92] Cheng S, Xanthakis V, Sullivan LM, Vasan RS. Blood pressure tracking over the adult life course: patterns and correlates in the Framingham heart study. *Hypertension.* 2012;60(6):1393–1399. doi:10.1161/HYPERTENSIONAHA.112.201780.

[93] Wang L, Cohen J, Maroney M, et al. Evaluation of health and economic effects of United States school meal standards consistent with the 2020–2025 dietary guidelines for Americans. The American Journal of Clinical Nutrition. 2023. DOI: *https://doi.org/10.1016/j.ajcnut.2023.05.031.*

flexibility while still offering grains to ensure adequate nutrition of school breakfasts. In SY 2014–2015, whole grain-rich offerings in the SBP helped school breakfasts meet the *Dietary Guidelines* recommendations for grains.[94] This change allows school food authorities the flexibility to develop SBP menus that include meats/meat alternates without a requirement to serve a minimum amount of grains. This change is not anticipated to impact program costs, but rather, to provide flexibility for school food authorities to balance resources and meal pattern requirements with student preferences when planning SBP menus.

Substituting Vegetables for Grains in Tribal Communities

Current regulations allow program operators in American Samoa, Puerto Rico, and the U.S. Virgin Islands to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains or breads component. This rule allows school food authorities and schools that are tribally operated, operated by the Bureau of Indian Education, and that serve primarily American Indian or Alaska Native children to serve vegetables to meet the grains requirement in NSLP and SBP. For SFSP and CACFP, this final rule allows sponsors, institutions, and facilities, as applicable, that serve primarily American Indian or Alaska Native children to substitute vegetables for grains or breads. This rule also allows all program operators in Guam and Hawaii to substitute vegetables for grains or breads in NSLP, SBP, SFSP, and CACFP. This final rule clarifies that under this provision, any vegetable may substitute for the grains or bread component. However, USDA emphasizes the importance of traditional and culturally relevant vegetables, including traditional vegetables such as breadfruit and prairie turnips, for grains.

USDA has limited data regarding consumption of these foods in the SBP and NSLP and the cost of these specific foods to schools serving American Indian and/or Alaska Native children specifically. However, SNMCS data from SY 2014–2015 indicate that starchy vegetables, including potatoes, and red/orange vegetables such as sweet potatoes, cost $0.18 per portion on average and bread/grain items also cost $0.18 per portion on average. Based on this data we expect this provision will lead to minimal, if any, cost change per meal. Further, program operators would not be required to make any changes to their menus under this rule and may continue to serve grain items to meet the grains component requirement if that is most cost-effective.

Traditional Indigenous Foods

This rule states in regulation that traditional Indigenous foods may be served in reimbursable school meals. USDA acknowledges that many traditional Indigenous foods may already be served in school meal programs; the goal of this provision is to draw attention to this option and support efforts to incorporate these foods into school meals. By ''traditional food,'' USDA means the definition included in the Agriculture Improvement Act of 2014 [95] which defines traditional food as ''food that has traditionally been prepared and consumed by an American Indian tribe,'' which includes wild game meat, fish, seafood, marine mammals, plants, and berries.

Due to limited data regarding the consumption and cost of traditional Indigenous foods in the SBP and NSLP, no cost analysis can be done to predict how this provision would affect child nutrition programs. Traditional Indigenous foods may be served in school meals under existing guidance, and this provision encourages rather than requires schools to serve traditional Indigenous foods, so it is expected to result in a negligible annual cost change for food service operations.

Afterschool Snacks

USDA aligns NSLP snack requirements for school-aged children with the CACFP snack requirements in this final rule, effective SY 2025–2026. NSLP requirements for snacks served to infants and preschool-aged children remain in effect. For school-aged children, under this final rule, reimbursable snacks include two of the following five components: milk, vegetables, fruits, grains, and meats/meat alternates. USDA also requires that NSLP snacks adapt these existing CACFP snack requirements: (1) only one of the two components served at snack may be a beverage; (2) milk served to children age 6 and older must be fat-free or low-fat and may be flavored or unflavored; (3) grain-based desserts do not count toward meeting the grains requirement, and (4) foods that are deep-fat fried on-site are not reimbursable NSLP snacks. Additionally, the added sugars product limits for breakfast cereals and yogurt finalized in this rule apply to NSLP snacks, effective SY 2025–2026. The component options for afterschool snacks are the same categories as previously, aside from fruits and vegetables now being separate components.

The number of afterschool snacks served represents four percent of the number of lunches served, based on 2023 data.[96] Of those snacks served, over 80 percent were breads/grains, fruits, and milk. SNMCS data from SY 2014–2015 indicate that under half of snack items served were beverages. Milk served was already meeting the final rule requirement to be fat-free or low-fat, flavored or unflavored. Combination entrees were not considered in this analysis because they are very rarely served as snacks.

This provision will require schools to replace grain-based desserts with other grains and to limit breakfast cereals and yogurts to those that meet the product-based added sugars limits, upon implementation. Cereal costs the same per dry ounce regardless of added sugars content, so there would be no cost change. In SY 2014–2015, grain-based desserts made up 14 percent of items served at snacks, and about half of the grain items in snacks were grain-based desserts. On average, grain-based desserts cost $0.35 per ounce equivalent and other grain items cost $0.19 per ounce equivalent, about a $0.22 difference after adjusting for inflation. Switching those to grains/breads that are not grain-based desserts would save approximately $9.4 million. Since yogurt was not as widely served as a snack item, the cost of switching to yogurt products with no more than 12 grams of added sugars per 6 ounces—an increase of $0.05 per portion—is under half a million dollars. In total, the final rule that aligns NSLP snack requirements with CACFP snack requirements is estimated to save around $9 million on average (table 16).

TABLE 16: ESTIMATED COST OF AFTERSCHOOL SNACKS RULE BY EACH AFFECTED PRODUCT (MILLIONS), ADJUSTED FOR ESTIMATED INFLATION TO SY 2024-2025

PRODUCT TYPE	Estimated Annual Cost
GRAIN-BASED DESSERTS	-$9.4
BREAKFAST CEREALS	$0
YOGURT	$0.3
TOTAL	**-$9.1**

[94] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals* Project Officer: John Endahl. Alexandria, VA: April 2019. Available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.*

[95] Agriculture Improvement Act of 2014, as amended (25 U.S.C. 1685(b)(5)).

[96] USDA—Food and Nutrition Service National Database Publicly Available Data.

Substituting Vegetables for Fruits at Breakfast

This rule establishes that schools can continue to substitute vegetables for fruits at breakfasts but simplifies the vegetable variety requirement. Under this final rule, schools that substitute vegetables more than one day per school week will be required to offer vegetables from at least two subgroups. The vegetable subgroups include starchy; red and orange; dark green; beans, peas, and lentils; and ''other'' vegetables. Starchy vegetables are consumed at a higher rate in children and adolescents compared to the other vegetable subgroups, so this provision continues to encourage consumption of a variety of vegetables at breakfast, in cases where schools opt to substitute vegetables for fruit.

SNMCS data from SY 2014–2015 showed that only about three percent of fruits were substituted for vegetables at breakfast. Of the servings of vegetables substituted for fruits in SY 2014–2015, half were starchy, and the other half were primarily red and orange vegetables. USDA expects more vegetables to be offered in breakfast meals in order to meet the required reduction in added sugars. This may lead to vegetables being offered alongside servings of eggs or in breakfast burritos, for example. However, it is also expected that fruits will be served in most breakfasts since fruits are easy to incorporate in meals and menus, and fresh fruits contain no added sugars, only naturally occurring sugars. Depending on the local prices, school food authorities will decide the most cost-effective menus for their operations, but this provision continues to promote vegetable variety at breakfast.

TABLE 17: ESTIMATED ANNUAL COST OF SUBSTITUTING VEGETABLES FOR FRUITS AT BREAKFAST (MILLIONS), ADJUSTED FOR ESTIMATED INFLATION TO SY 2024-2025

PRODUCT TYPE	10% OF FRUIT SERVINGS SWITCHED TO VEGETABLES	25% OF FRUIT SERVINGS SWITCHED TO VEGETABLES
# OF TOTAL FRUIT SERVINGS	1,705	1,705
# OF FRUIT SERVINGS TO SWITCH	170	426
COST	-$4	-$10

An internal USDA analysis simulated switching between 10 and 25 percent of fruit servings at breakfast to vegetables. This simulation assumed that half of the vegetables would be starchy vegetables and the other half would be non-starchy vegetable subgroups (red and orange; dark green; beans, peas, and lentils, and ''other'' vegetables), following the pattern of substitution shown in SNMCS. In SY 2014–2015, starchy vegetables served at breakfast and lunch cost approximately $0.18 per portion, and all other vegetables served cost approximately $0.20 per portion, on average. Fruits served at breakfast were $0.21 per portion, on average. Using these prices per portion and the number of breakfasts served in 2023, there would be a savings ranging from $4 million to $10 million resulting from a substitution of 10 to 25 percent of fruit servings with vegetable servings (table 17).

Nuts and Seeds

This rule allows nuts and seeds to credit for the full meats/meat alternates component in all child nutrition programs and meals. It removes the 50 percent crediting limit for nuts and seeds at breakfast, lunch, and supper. USDA expects that nuts and seeds will most often continue to be offered in snacks or in small amounts at breakfast, lunch, or supper alongside other meats/meat alternates. Nuts and seeds are most often offered in school meals in the form of a nut butter (or nut butter alternative, such as soy or sunflower seed butter) in a sandwich.

About 17 percent of daily lunch menus in SY 2014–2015 offered ''other protein items'' in the form of eggs, seeds, nuts, beans, and peas.[97] Of combination entrees served in the NSLP, about six percent were peanut butter and jelly sandwiches,[98] including variations with sunflower seed butter and almond butter.[99] Nuts, seeds, or nut/seed butters represented less than one percent of meat and meat alternate food items offered on NSLP menus [100] Very few instances of serving whole nuts and seeds were found in this analysis at either breakfast or lunch. Because USDA expects that nuts and seeds will be minimally offered as the sole meat/meat alternate at a meal and because this change may take shape in a variety of combinations across menus, this element of the rule is not expected to result in a measurable per-meal cost change. The saturated fat content of school meals must be less than ten percent of total calories per week and replacing some lean sources of meat with nuts or seeds may result in higher saturated fat content of meals. When creating menus, operators must be aware of the saturated fat content of meals if offering more nuts and seeds. Operators who serve combination entrees using nut butters (*e.g.,* peanut butter and jelly sandwich) will also need to consider requirements related to whole grains, although SY 2014–2015 data indicate that over 85 percent of peanut butter and jelly served were prepared using whole grain-rich bread.

Beans, Peas, and Lentils at Lunch

This final rule codifies the flexibility to allow school food authorities to count beans, peas, and lentils offered as a meat alternate at lunch toward the weekly beans, peas, and lentils vegetable subgroup requirement, included from the 2020 proposed rule *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs.* Under this option, as with the current requirement, schools would determine which overall meal component the beans, peas, and lentils would count toward: the vegetable meal component, or the meats/meat alternates meal component. This change aims to facilitate service of the legumes subgroup; compared to other vegetable subgroups, the legumes subgroup requirement has proven to be more difficult for some school food authorities to meet.

Legumes are often an ingredient in combination entrées. Such entrées are common in lunch menus, especially in high schools where about 25 percent of daily menus include burritos, tacos, nachos, quesadillas, fajitas, or enchiladas.[101] Children benefit from the array of essential nutrients legumes offer, including protein and fiber, regardless of whether legumes are labeled as a vegetable or meat alternate for menu planning purposes. The daily and weekly menus must still meet minimum quantity requirements for vegetables, which are unchanged. This flexibility will not result in a reduction in total calories or vegetables served, but rather allows school food authorities the ability to develop menus that better reflect student preferences. The daily and weekly meat/meat alternate quantities are also unchanged. There are negligible impacts to program costs associated with this flexibility.

[97] SNMCS Report Volume 2.

[98] Of these peanut butter and jelly sandwiches, over 85 percent were made with whole grain-rich bread.

[99] SNMCS Study Data, USDA internal analysis.

[100] SNMCS Study Data, USDA internal analysis.

[101] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals. Project Officer: John Endahl. Alexandria, VA: April 2019. Available at: *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.*

Competitive Foods—Bean Dip Exemption

In this final rule, USDA is revising the terminology for this provision based on public comment. Instead of referring to ''hummus'' in regulation, this final rule will refer to ''bean dip,'' which includes hummus. This change reflects input received through a public comment, which noted that the word ''hummus'' already has a culturally significant meaning and is traditionally made from chickpeas (rather than any variety of beans, peas, or lentils). This rule adds bean dip to the list of foods exempt from the total fat standard in the competitive food, or Smart Snack, regulations. Smart Snacks are foods that are sold to students outside of the school meal programs, such as foods sold a la carte, in school stores, in vending machines, or in any other venues where food is served to students during school hours. Bean dip is already permitted as a part of a reimbursable school meal but with this change could also be sold as a Smart Snack. A specific definition of bean dip is also given as part of this provision. Bean dip will still be subject to the saturated fat standard, which limits competitive foods to less than 10 percent of calories from saturated fat per item as packaged or served and the sodium standard in which snacks must be 200 mg of sodium or less and entrees must be 480 mg of sodium or less.[102]

USDA does not collect or track competitive food sales, so it is unclear the exact cost change to school food authorities that will result from this provision. A served portion of bean dip was comparable in price to a served portion of regular or reduced-fat peanut butter according to SNMCS data. Peanut butter and bean dip are comparable in that they are served as part of a snack alongside another food (*i.e.* pretzels, bread, vegetables, apple slices, etc.). As a result, USDA expects a minimal cost change for school food authorities that choose to sell bean dip as a competitive food due to this provision. Individual schools often sell competitive foods to complement reimbursable foods and maintain a revenue-neutral operation; therefore, USDA assumes that schools will opt to sell bean dip as a competitive food if they determine it is financially beneficial. When data were collected in SY 2014–2015, bean dip was served minimally in the NSLP, but it is likely the popularity of bean dip among students has increased since that time, so allowing an additional option for schools could be beneficial to schools.

Meal Modifications

This rule updates the regulatory text for meal modifications, removes the term ''medical or other special dietary needs'' from the regulations, authorizes State licensed healthcare professionals and dietitians to write a medical statement in support of a meal modification for a disability, and defines the term ''State licensed healthcare professional'' in regulation. These changes are not expected to impact program costs, but rather, clarify procedures for State agencies, schools, institutions, and facilities working to meet the needs of participants with disabilities that restrict their diets. This provision was included in the 2020 proposed rule *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs.*

Clarification of Requirements for Potable Water

This final rule maintains the requirement that schools make potable water available and accessible without restriction to children at no charge during the meal service, and clarifies in regulation that the potable water must be ''plain.'' This is a change from the 2020 proposed rule, where this provision was introduced, *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs,* which would have allowed schools to offer calorie-free, naturally flavored, noncarbonated water to meet the potable water requirement, without requiring that plain potable water be offered. This change from the proposed rule was made in response to public comments that emphasized the importance of ensuring children have access to plain potable water. This change is not expected to increase costs, as schools will be in compliance with the potable water requirement by continuing to offer plain potable water.

Synthetic Trans Fat

This final rule change eliminates the requirement for SBP, NSLP, and competitive foods to have zero synthetic trans fat.[103] FDA regulations removed synthetic trans fat from the United States food supply, with a final compliance date of January 1, 2020, and thus, the requirement to monitor synthetic trans fat in the school meal programs is unnecessary. This final rule eliminates regulations that are not necessary since synthetic trans fat is no longer in the food supply. This change will align Program regulations with the food supply standards. There are no impacts to program costs associated with this change. This provision was included in the 2020 proposed rule *Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs.*

Professional Standards: Hiring Exemption for Medium and Large Local Educational Agencies

USDA codifies allowing State agency discretion in the hiring of a school nutrition program director in a medium or large local educational agency for individuals who have 10 years or more of school nutrition program experience but who lack a bachelor's or associate's degree. In other words, this provision allows for a substitution of experience for education to widen the potential applicant pool for school nutrition program director positions. A high school diploma or GED is still required, but this shift may help with hiring challenges experienced in recent years. Instead of education being the only path to promotion, substantial experience can be an alternative path. Directors hired under this provision are encouraged to work toward a degree related to nutrition and/or business, but this is not required. This rule also clarifies in regulation that State agencies may determine what counts as ''additional educational experience'' for the hiring standards.

This provision is estimated to have no cost impact. Codifying this standard allows State agencies more discretion in hiring selection, but States are not required to change current practices. It is unclear exactly how many school food authorities this will affect and how many individuals have 10 years or more of experience and could be promoted to director positions. However, USDA has recently received requests from State agencies to substitute school nutrition program experience for a higher degree in order to fill existing vacancies. Also, in response to USDA's 2018 professional standards proposed rule,[104] USDA received 13 comments (out of 76 total comments) that mentioned alternatives to the education requirement. Of those, 9 specifically recommended experience as a substitute for a degree, with 10 years of experience being the most common suggestion. Data will be collected by USDA between SY 2024–2025 and SY 2029–2030 to support ongoing assessment of the effects of this rule change. In 2017, around 8.3 million U.S. workers (5.4 percent) were employed in food preparation and serving-related occupations.[105] Employment in this category is beginning to recover from COVID-era challenges that began in 2020. Of the food service managers across the U.S. in 2019 and 2021, 9.6 percent had less than a high school diploma, 28.6 percent had a high school diploma or equivalent, and 25.7 percent had some college but no degree.[106] Thirty-six percent of food service managers had an associate's degree or higher level of education. For school food authority directors specifically, a recent USDA study indicated that 12 percent of school food authority directors had advanced degrees, 29 percent had bachelor's degrees, 13 percent had associate's degrees, 20 percent had some college but no degree, and 26 percent had high school diplomas.[107] The study also found that directors at larger school food authorities had higher levels of educational attainment. Comparing school food authority directors to food service managers across the U.S., school food authority directors have a higher level of education on average than food service

[102] *https://fns-prod.azureedge.us/sites/default/files/resource-files/smartsnacks.pdf.*

[103] This restriction does not apply to naturally occurring trans fats, which are present in meat and dairy products.

[104] *https://www.federalregister.gov/documents/2018/03/06/2018-04233/hiring-flexibility-under-professional-standards.*

[105] *https://www.census.gov/library/stories/2022/07/how-food-service-transportation-workers-fared-before-pandemic.html.*

[106] *https://www.bls.gov/emp/tables/educational-attainment.htm.*

[107] Urban location and low poverty level of the SFA were also correlated with higher educational attainment among SFA directors. USDA, FNS, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 1: School Meal Program Operations and School Nutrition Environments, prepared by Mathematica Policy Research and Abt Associates, April 2019, pp. 34–35, *https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCSVolume1.pdf.*

managers, yet about 46 percent of school food authority directors have no degree. As a result, it is likely that a substantial percentage of operations could benefit from the ability to promote based on experience rather than education level.

Buy American

This final rule seeks to strengthen the Buy American requirement but also acknowledges that purchasing domestic food products is not always feasible for schools. USDA maintains the current two limited exceptions to the Buy American provision and will also phase in a new threshold limit for school food authorities using these exceptions. The two exceptions apply when: (1) the product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or (2) competitive bids reveal that the costs of a U.S. product are significantly higher than the non-domestic product. Consistent with current USDA guidance, this final rule clarifies in regulation that it is the responsibility of the school food authority to determine whether an exception applies.

With this final rule, USDA institutes a phased approach over seven school years to reach a 5 percent ceiling on the non-domestic commercial foods a school food authority may purchase per school year. The phased approach would be the following:

- Beginning in SY 2025–2026, the non-domestic food cost cap will be 10 percent.
- Beginning in SY 2028–2029, the non-domestic food cost cap will be 8 percent.
- Beginning in SY 2031–2032, the non-domestic food cost cap will be 5 percent.

School food authorities will be required to maintain documentation regarding use of an exception as well as to demonstrate that the percent non-domestic food costs of total commercial foods purchased per year are not more than the cap for that school year. Beginning in SY 2031–2032, the documentation must demonstrate that exceptions were used for no more than 5 percent of total commercial foods purchased per year. In addition, in response to public comment, USDA is including that when a school food authority purchases a food item found on the Federal Acquisition Regulations (FAR) 25.104 Nonavailable articles list, no further documentation is required, upon implementation of this final rule. There still may be individual school food authorities that cannot meet the threshold. USDA will work in concert with State agencies during implementation to provide needed technical assistance and guidance, and if, appropriate, an accommodation for temporary relief from the requirement as the State agency works with the school food authority on increasing their domestic purchases.

This rule will codify the requirement to maintain documentation for an exception, while decreasing the amount of required documentation compared to current practices. To supplement this documentation, USDA will continue to collect information and data on the Buy American provision and school food authority procurement. This final rule will require all school food authorities to include the Buy American provision in documented procurement procedures, solicitations, contracts for foods and food products procured using informal and formal procurement methods, and in awarded contracts. State agencies will verify the inclusion of this language when conducting reviews. Additionally, this final rule codifies a definition of ''substantially,'' as well as a clarification of requirements for harvested, farmed, and wild caught fish.

The Food and Nutrition Service Child Nutrition Program Operations Study [108] collected data on Buy American exceptions during SY 2017–2018. This study found that an average of 8.5 percent of total food expenditures were purchased under exceptions among school food authorities that used an exception to the Buy American provision. During SY 2017–2018, 25.7 percent of school food authorities used an exception to the Buy American provision. Based on this data, it is likely that the majority of school food authorities already meet the final rule ceiling on the non-domestic commercial foods a school food authority may purchase per school year. Around a quarter of school food authorities may need to decrease their purchase of non-domestic commercial foods to reach the 5 percent limit starting in SY 2031–2032. Among the school food authorities using an exception to the provision, the reasons cited included: limited supply of the commodity or product (88 percent), increased costs of domestic commodities or products (43 percent), and quality issues with available domestic commodities or products (21 percent). The exceptions to the Buy American provision will help school food authorities control costs of purchasing domestic food products despite the eventual 5 percent ceiling.

TABLE 18: USE OF EXCEPTIONS BY SCHOOL FOOD AUTHORITY CHARACTERISTICS

SCHOOL FOOD AUTHORITY CHARACTERISTIC	Foods purchased with Buy American exceptions (%)
SMALL (1-999 STUDENTS)	9.5
MEDIUM (1,000-4999 STUDENTS)	8.1
LARGE (5,000-24,999 STUDENTS)	7.5
VERY LARGE (>25,000 STUDENTS)	7.5
IN TOWNS	12.7
RURAL	8.0
URBAN AREA/CITY	7.9
IN SUBURBS	6.5
HIGH F/RP PARTICIPATION (0-29%)	10.9
LOW F/RP PARTICIPATION (≥60%)	10.4
MEDIUM F/RP PARTICIPATION (30-59%)	5.9

Some school food authorities will be more affected by the final rule Buy American provision than others (table 18). School food authorities that are small, located in towns, and that had either a low or high percentage of students approved for free and reduced-price meals used exceptions for more than the 8.5 percent average of food expenditures. School food authorities falling in these groups may have the most difficulty meeting the Buy American provision finalized in this final rule. Larger school food authorities

[108] Child Nutrition Program Operations Study (CN–OPS–II) Report: School Year 2017–2018. *https://fns-prod.azureedge.us/sites/default/files/resource-files/CNOPS-II-SY2017-18.pdf.*

(>999 students), those in suburban, city or rural environments, and those that have 30 to 59 percent of students approved for free and reduced-price meals are already closer to the final rule limit of 5 percent and may have less difficulty complying with the change.

For the 26 percent of school food authorities that used an exception to the Buy American provision during SY 2017–2018, USDA expects they will incur some costs associated with the need to update menus and/or update purchasing practices to meet the five percent ceiling. These costs are included in the regulatory familiarization cost totals that are detailed in the ''Administrative Costs'' section above. Using SY 2009–2010 total food expenditure data from the School Food Purchase Study, we estimated the difference in food costs needed to reach the 5 percent threshold for the 26 percent of school food authorities that used exceptions in SY 2017–2018. Of those school food authorities that used an exception, 43 percent sought exemptions based on cost. The majority of those school food authorities (70 percent) used a cost threshold of 30 percent or less when determining whether a cost is significantly higher for a domestic commodity or product, warranting a use of exception. Therefore, we assume that, on average, the cost of purchasing domestic products will be 15 percent higher for those affected purchases.

Based on the assumption that domestic products cost 15 percent more on average, food cost impacts vary by each phase over seven school years (table 19). Beginning in SY 2025–2026, school food authorities may use exceptions to purchase non-domestic foods for 10 percent of total food cost expenditures. This is estimated to have negligible annual cost impact due to a 10 percent ceiling being higher than the 8.5 percent average among school food authorities using exceptions. However, some school food authorities such as those in towns (table 18) may need to make an incremental shift in food purchasing to meet the 10 percent limit, or the State agency may seek an accommodation for temporary relief from the requirement if the school food authority needs additional support. In SY 2028–2029, the next phase of the Buy American provision is an 8 percent ceiling that is estimated to have a food cost impact of $0.40 million annually. We estimate a nearly $3 million annual total food cost increase once the phased in non-domestic foods ceiling reaches 5 percent in SY 2031–2032. Based on the data mentioned in the previous paragraph, the proposed rule estimated that 43 percent of the cost difference of using exemptions for 5 percent of food purchases instead of the 8.5 percent average is approximately $20 million. A 15 percent increase in that cost equals approximately $3 million. Proportionately, the cost of moving from the 8.5 percent average to 8 percent in SY 2028–2029 would have a food cost of approximately $0.40 million annually. In SY 2031–2032 and beyond when the ceiling reaches 5 percent we estimate a $3 million annual total food cost increase.

Additionally, USDA estimates that the final rule record keeping requirement to include that school food authorities maintain documentation when using an exception and that school food authorities include language requiring Buy American in all procurement procedures, solicitations, and contracts and maintain such documentation. While the PRA section of this rule includes burden estimates associated with including and maintaining language requiring Buy American in all contracting documents and procurement procedures, USDA has promoted this as a best practice for years. Based on this longstanding guidance and public comments to the proposed rule that this is already in practice to some extent, USDA estimates half of school food authorities will develop and maintain changes to contracting documentation record each year, and that it takes approximately 20 hours NSLP and 10 hours for SBP [109] to complete the record keeping requirement for each set of contracting and procurement documents. This results in a total of 270,535 burden hours. When using the latest hourly compensation of public administration in state and local government from 2022 of $54.05,[110] the cost of this requirement is $15 million in SY 2024–2025. For those school food authorities that are not already including this information in their procurement documents, we expect this is a one-time change that will be in place by SY 2025–2026 and annual maintenance will happen as part of their normal administrative processes.

For documenting exceptions to the non-domestic food purchase cap, USDA estimates all school food authorities (18,495 total) will develop and maintain 10 records each year per NSLP and SBP, and that it takes approximately 15 minutes [111] to complete the record keeping requirement for each record documenting an exception. This results in a total of 89,030 annual burden hours. The additional cost of this reporting requirement is nearly $5 million annually. In total, USDA estimates that the final rule Buy American provision will cost $15 million leading up to SY 2025–2026 and approximately $5 million to $8 million annually starting in SY 2025–2026 with both food costs and record keeping included (table 19). USDA acknowledges that the estimated cost of this provision will add to school food authority costs, potentially reducing funds for other areas of spending. However, it will be at school food authority discretion how funds are shifted to meet the threshold for non-domestic foods. USDA does not anticipate that this provision will have any effect on the ability of school food authorities to meet school meal nutrition requirements.

Table 19: Estimated Annual Cost (millions) of Buy American Provision Phases by Implementation Year, Adjusted for Estimated inflation to SY 2024-2025

% CAP	NA	10%	8%	5%
CATEGORY	**SY 2024-2025**	**SY 2025-2026**	**SY 2028-2029**	**SY 2031-2032**
Food Costs	$0	$0	$0.40	$2.8
Record keeping[112]	$15	$4.8	$4.8	$4.8
Total	**$15**	**$4.8**	**$5.2**	$7.6

Geographic Preference

In this rulemaking USDA is expanding geographic preference options by allowing locally grown, raised, or caught as procurement specifications (a written description of the product, or service that the vendor must meet to be considered responsive and responsible) for unprocessed or minimally processed food items in the child nutrition programs. This is intended to increase the procurement of local foods and ease procurement challenges for operators interested in sourcing food from local producers. USDA requested public input on whether respondents agree that this provision would ease procurement challenges for child nutrition program operators or if it would encourage smaller-scale producers to submit bids to sell foods to child nutrition programs. No specific cost impact is being estimated for this provision

[109] As explained in the PRA (Paperwork Reduction Act program).

[110] Using the U.S. Bureau of Labor Statistics series ID of CMU3019200000000D of total compensation cost per hour worked for state and local government workers in public administration industries (*https://data.bls.gov/cgi-bin/dsrv*).

[111] See final rule Paperwork Reduction Act (PRA) burden charts.

[112] Record keeping costs are total annual estimates for the final Buy American provision, not estimates per phase of implemented cap. No inflation adjustment was completed for record keeping costs since they are not food costs or based on a factor of food costs.

since USDA does not have any applicable data, but USDA assumes that this option will be used at school food authority discretion depending on individual school budgets, the availability of local products, and other school and region-specific factors. USDA research found that among school food authorities participating in Farm to School, 85 percent served at least some local foods, and about 20 percent of participating school food authorities' total food spending was on local foods in School Year 2018–2019. In this same period, one-fifth of participating school food authorities used geographic preference in its current form to prioritize local foods in the bid or proposal evaluation process.[113] Therefore, the expansion of geographic preference options may facilitate increased local food purchases by school food authorities at their discretion.

Miscellaneous Changes

This section establishes a variety of miscellaneous changes and updates to child nutrition program regulations, including terminology changes, from the 2023 proposed rule. For the ''legumes (beans and peas)'' vegetable subgroup, this rule changes the name to ''beans, peas, and lentils'' to reflect the *Dietary Guidelines, 2020–2025.* As noted in the rule preamble, the rule also finalizes a variety of technical corrections, including correcting cross-references, updating definitions, removing outdated requirements, and revisions to the meal pattern tables to make them more user-friendly.

Summary

As noted above, this rule was developed in order to align school nutrition requirements more closely with the goals of the *Dietary Guidelines for Americans, 2020–2025* and to support the continued transition to long-term requirements after the pandemic and implementation of the transitional standards rule. Most of the impacts associated with this rule are in the form of shifts in purchasing patterns and increased labor costs. Costs in this section are uncertain (and thus estimates should be considered as somewhat imprecise) but reflect the potential value of the changes in this rule that States and local entities may need to account for. There are no estimated changes in Federal costs due to the changes in this final rule.

TABLE 20: ESTIMATED ANNUAL COSTS IN MOVING FROM TRANSITIONAL STANDARDS RULE TO THIS RULE BEGINNING BY SCHOOL YEAR (MILLIONS), ADJUSTED FOR ANNUAL INFLATION[114,115]

YEAR OF IMPLEMENTATION	SY 2024-2025	SY 2025-2026	SY 2026-2027	SY 2027-2028	SY 2028-2029	SY 2029-2030	SY 2030-2031	SY 2031-2032	Total	Annual Average [116]
ADMINISTRATIVE COSTS[117]	$42	$43	$0	$44	$0	$0	$0	$0	$129	$16
ADDED SUGARS	$0	$112	$116	$121	$125	$131	$136	$141	$881	$110
MILK	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
SODIUM	$0	$0	$0	$128	$133	$138	$144	$149	$691	$86
AFTERSCHOOL SNACKS	$0	-$9	-$9	-$10	-$10	-$11	-$11	-$12	-$72	-$9
SUBSTITUTING VEGETABLES FOR FRUITS AT BREAKFAST	-$4	-$4	-$4	-$5	-$5	-$5	-$5	-$5	-$37	-$5
BUY AMERICAN[118]	$15	$5	$5	$5	$5	$5	$5	$8	$52	$7
TOTAL	$53	$146	$107	$283	$248	$258	$268	$281	**$1,645**	**$206**
TOTAL PER MEAL	**$0.008**	**$0.023**	**$0.017**	**$0.045**	**$0.040**	**$0.041**	**$0.043**	**$0.045**	NA	**$0.033**

The estimated cost to schools averages $206 million annually over eight school years, or $0.03 per lunch and breakfast in food and labor costs (table 20). The majority of costs associated with this rule are a result of purchasing different products with less sodium and the additional labor needed to increase scratch cooking, update menus, and introduce new recipes to reduce sodium. The estimated cost of shifting to the product specific added sugars limits and substituting vegetables for fruits is based on switching to products already available on the market; costs to schools may vary if manufacturers alter products or create new products to meet the added sugars regulations. However, we estimate cost savings to update the requirements for afterschool snacks related to food prices to meet the breakfast cereal and yogurt product-based added sugars limits. The costs associated with Buy American are due to additional food costs and additional burden hours for documentation. All estimates from this rule, intending to implement achievable requirements in alignment with the goals of the *Dietary Guidelines,* are supported by a variety of analyses of the most recently available data.

VI. Uncertainties/Limitations

Many assumptions were made in this analysis of this rule's impacts, and the resulting uncertainties and limitations must be acknowledged. Some general limitations are noted first, followed by limitations specific to sections and then a discussion of the uncertainty of school meal program participation levels going forward. Some of these uncertainties and limitations result from this rule being written directly after extended use of COVID–19 meal pattern waivers, in which assumptions must be made about future participation in school meal programs, and others result from unknown future food and labor price trajectories.

General

Due to the pandemic, the next edition of the School Nutrition Meal Cost Study (II) was delayed, thus leaving the SY 2014–2015 data from the first version of that study as the most recent data that could be used for this analysis. Product availability and costs have likely changed from SY 2014–2015 and will continue to change through the implementation date of this rule (SY 2024–2025, although required changes will be phased in over time). Because the transitional standards rule went into effect recently, it is unclear how well schools will adapt to the updated requirements in this rule. A lack of recent data on school staffing levels and impacts of the pandemic in all aspects of school foodservice make it challenging to estimate changes in staffing cost, especially as it affects changes in the need for scratch cooking and professional standards final regulations.

USDA acknowledges that the data used to evaluate cost, although the most recent available data, is relatively old. One remedy has been to adjust for inflation from SY 2014–2015 to the years of implementation prescribed in this rule. However, as noted throughout the analysis, it is possible that

[113] Bobronnikov, E. et al. (2021). Farm to School Grantee Report. Prepared by Abt Associates, Contract No. AG–3198–B–16–0015. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Ashley Chaifetz.

[114] Values reflect annual costs from sections above with added three percent annual inflation. Costs are also shown by school year in this table. This varies from table 1 which shows fiscal years and does not include expected annual inflation through the duration of the final rule.

[115] Due to rounding, numbers may not add up to rounded sum in 'total' column exactly.

[116] Annual average over 8 school years of rule implementation.

[117] Only local costs (not State costs) are adjusted for inflation because they are based on a factor of food-costs.

[118] Only food costs (not record keeping) are adjusted for inflation.

changes in product formulation, availability, and cost have occurred in the years since these data were collected. Among the more significant changes in this rule are the requirements to reduce levels of sodium and added sugars in school meals. USDA conducted additional analysis of these two changes in order to more fully account for possible cost impacts. A sensitivity analysis shows a range of possible cost impacts from half the estimated cost impact to double the cost impact of the added sugars and sodium provisions (table 21). It is possible that the impacts could be higher or lower in the future, but this sensitivity analysis shows a range in costs to illustrate the potential magnitude of change. If the costs of food with lower sodium and lower added sugars has doubled since SY 2014–2015, then the costs of implementing this rule would be considerably higher. However, if the market has changed already due to the CACFP total sugar limits, public desire for healthier packaged food options, and the FDA voluntary sodium reduction goals, then it is possible that the cost differential has already decreased.

TABLE 21: SENSITIVITY ANALYSIS - ESTIMATED 7-YEAR COST DIFFERENTIALS OF REDUCING SODIUM AND ADDED SUGARS IN SCHOOL MEALS (MILLIONS), ADJUSTED FOR ANNUAL INFLATION[119]

SODIUM LIMIT EFFECTIVE SCHOOL YEAR	SY 2025 - 2026	SY 2026-2027	SY 2027-2028	SY 2028-2029	SY 2029-2030	SY 2030-2031	SY 2031-2032	7-YEAR TOTAL	ANNUAL AVERAGE
ADDED SUGARS									
SY 2014-2015 ESTIMATES	$112	$116	$121	$125	$131	$136	$141	$881	$110
HALF COST DIFFERENTIAL	$56	$58	$60	$63	$65	$68	$71	$441	$63
DOUBLE COST DIFFERENTIAL	$223	$232	$241	$251	$261	$271	$282	$1,762	$252
SODIUM									
SY 2014-2015 ESTIMATES	$0	$0	$128	$133	$138	$144	$149	$691	$86
HALF COST DIFFERENTIAL	$0	$0	$64	$66	$69	$72	$75	$346	$69
DOUBLE COST DIFFERENTIAL	$0	$0	$255	$265	$276	$287	$299	$1,383	$277
TOTAL									
SY 2014-2015 ESTIMATES	$112	$116	$248	$258	$269	$279	$290	$1,573	$197
HALF COST DIFFERENTIAL	$56	$58	$124	$129	$134	$140	$145	$786	$132
DOUBLE COST DIFFERENTIAL	$223	$232	$497	$516	$537	$559	$581	$3,145	$528

Another area of uncertainty is about the types of products available from manufacturers, especially those products that are created for school foodservice. Certain products will be eliminated, others will be reformulated, and the dimensions of such product changes are difficult to predict. Product lines that have been created specifically for schools may become more common with this rulemaking. School food authorities have also faced supply chain delays in recent years that may continue. About 92 percent of school food authorities reported experiencing challenges due to supply chain disruptions in SY 2021–2022, including product availability, orders arriving with missing or substituted items, and labor shortages.[120] In addition, it may take longer to reformulate certain product lines than anticipated. Food manufacturers play an integral role in school food service operations and in the ability for school food authority menus to meet regulations, especially when it comes to added sugars, milk, whole grains, and sodium.

For this analysis, HEI scores were used to measure the alignment of school menus with recommendations from the *Dietary Guidelines.* The HEI measure has a few limitations as used for this analysis. HEI component scores for added sugars and sodium only reflect one aspect of the diet, not a complete diet. HEI scores were originally designed to measure a full day of intake, not necessarily to evaluate one or two meals a day. Another limitation regarding HEI scores is that the calculation does not exactly align with the recommendations in the *Dietary Guidelines* but is a tool to evaluate nutrient density of foods consumed throughout an entire day. For instance, a maximum score for the sodium component is achieved if sodium content is ≤1.1 grams of sodium per 1,000 kilocalories (HEI–2010 and HEI–2015) and a maximum score for the added sugars component is achieved if added sugars are at ≤6.5 percent of total energy (HEI–2015).[121] The *Dietary Guidelines for Americans, 2020–2025* sodium recommendations are based on the sodium DRIs and the added sugar recommendations are more liberal at 10 percent when considering the entire population, including adults. While these are limitations of using the HEI score and component scores, HEI is still a valuable tool to evaluate meals in a standardized way that allows for comparison and measuring improvement over time.

Decreasing sodium and added sugars menu content may inadvertently increase other nutrients such as fat and protein. It is uncertain what the effect of these changes across this final rule will have on average across school food authorities since there are so many combinations of food groups and permutations of menu changes. For example, a decrease in added sugars content alone could inadvertently increase sodium content through usage of more meat/meat alternate products on menus. School nutrition program directors will have to be aware of possible tradeoffs when making menu changes.

The adaptability of children's taste preferences is at the root of the way the final rule impacts for sodium have been measured. Typical benefit-cost analysis of a policy intervention of the type in this rulemaking often uses a willingness-to-pay (WTP) measure.[122] WTP reflects underlying preferences—in this case, preferences for

[119] Product-specific added sugars limits and weekly added sugars and sodium limits included in this final rule will not take effect until SY 2025–2026 and SY 2027–2028, respectively.

[120] Results of USDA's FNS-Administered SFA Survey II on Supply Chain Disruption and Student Participation | Food and Nutrition Service.

[121] *https://epi.grants.cancer.gov/hei/comparing.html.*

[122] Either a direct WTP estimate could be developed or a multistep estimation could quantify health and longevity effects with lost eating-experience utility subsequently being subtracted. For example, in the context of sugar-sweetened beverages (SSB), Kalamov and Runkel (2021), citing Allcott et al.'s (2019) estimates, suggest that internalities (representing the harm consumers of relatively unhealthy foods suboptimally impose on their future selves) could be 30- to 50-percent of gross health impacts; it is the 30- to 50-percent that would appropriately be retained in an analysis of the intrapersonal benefits of a policy that reduces consumption of SSB or foods with similar characteristics. Kalamov, Z. Y. and M. Runkel, *Taxation of unhealthy food consumption and the intensive versus extensive margin of obesity.* International Tax and Public Finance, 2021: p. 1–27. Allcott, H., B. B. Lockwood, and D. Taubinsky, *Regressive sin taxes, with an application to the optimal soda tax.* The Quarterly Journal of Economics, 2019. 134(3): p. 1557–1626.

food characteristics, including both health consequences and short-term eating experience—and if preferences are unstable, then key inputs to the analysis are not well-defined. Indeed, shifting taste preferences (when they are malleable during childhood) away from foods with high levels of sodium is a key expected outcome of this final rule.

Health Benefits

The financial impacts of changes that affect our health can be challenging to quantify, especially for a younger, student population. A 2023 study used NHANES data to evaluate the health and economic effects of school meal requirements consistent with the *Dietary Guidelines for Americans, 2020–2025*—namely added sugars, sodium, and whole grains. The study estimated that, if only 25 percent of school children's dietary changes were maintained into adulthood, that would prevent 7,760 adult deaths and save $14 billion in medical costs annually.[123] Such estimates are model projections and do not prove the extent of health-related benefits over time. While a variety of studies have shown that habits developed in childhood can track into adulthood,[124] [125] it is unclear what proportion of individuals hold to this trend and the related level of reduced chronic health conditions in adults consuming healthier meals during childhood and adolescence.

As detailed above in the 'Impacts' section, reducing intake of added sugars can result in reductions in T2D, CVD, and chronic kidney disease. Consumption of meals with low-fat dairy (including low-fat milk) and whole grains was associated with lower blood pressure and improved blood lipid levels. Throughout the lifespan, consumption of whole grains has been shown to reduce the risk of CVD, T2D, and some types of cancer. Reducing sodium intake has been shown to reduce blood pressure in children of all ages, and in turn to reduce CVD incidence.[126]

Despite the challenges of quantifying the costs or savings resulting from improved health outcomes in children, there are some available studies that quantify these findings in adults for major health outcomes. For instance, annual medical costs for individuals with high blood pressure are up to $2,500 higher than costs for people without high blood pressure,[127] [128] resulting in a $79 billion total annual medical cost associated with high blood pressure in the U.S.[129] From 1996 to 2016, there was an increase of over $100 billion in spending on adult CVD, to a total of $320 billion spent in 2016 in the U.S., reported in 2016 dollars.[130] This indicates that a reduction in CVD overall could result in significant savings. One model from 2017 showed ''clear and significant benefits for interventions that reduce consumption of added sugars.'' The study found that reducing added sugar consumption by 20 percent would mean lower annual direct medical costs for U.S. adults by more than $10 billion. While the study only modelled the population with an age over 20, it noted that including interventions for children, especially with T2D, would lead to additional benefits.[131] A scientific statement from the American Heart Association noted that CVD ''is the leading cause of death in North Americans and generates tremendous personal and economic burden globally.'' [132] The most expensive chronic condition in the U.S. is diabetes, with a $327 billion annual cost ($237 billion of which are medical costs).[133] The cost and benefit estimates from these studies may be subject to a variety of limitations depending on study design and available data; however, these estimates help to provide insight into potential savings associated with consuming a healthy diet over the lifespan. While there is some cost associated with improving the dietary intake of school-aged-children through school meals and other child nutrition programs, the potential savings in adulthood through reduced medical costs and increased productivity could be substantial, especially when considering blood pressure, CVD, and diabetes.

Added Sugars

For milk products, the market availability of flavored milks that meet the added sugars limit of ≤10 mg of added sugars per 8 fluid ounces is uncertain. While a limited search completed in 2022 by USDA showed that some manufacturers are already producing flavored milks that meet the added sugars limit, the full availability across the nation is unclear, as is whether it will be a slow transition for manufacturers.[134] It is possible that some school food authorities will need to serve unflavored milk varieties only, temporarily, if the availability of flavored milks with a lower level of added sugars is limited. However, a recent commitment from the milk industry states that, beginning in SY 2025–2026, 37 school milk processors representing more than 90 percent of the school milk volume in the United States commit to provide school milk options with no more than 10 grams of added sugar per 8 fluid ounce serving. This would improve the market availability of flavored milks that meet the added sugars limit finalized in this rule in time for implementation in SY 2025–2026.[135]

Milk

With regards to milk, there is some uncertainty about the differences in price by milk type. When comparing the average price per eight fluid ounces of milk in SY 2009–2010 data to the average price in SY 2014–2015 data, both show small differences in prices by milk type, although those differences are not consistent between the two time periods. For instance, in the SY 2009–2010 data, flavored, low-fat milk cost $0.02 more per carton than other milk types (flavored, fat-free milk, unflavored, low-fat milk, and unflavored, fat-free milk). In the SY 2014–2015 data, however, flavored, low-fat milk cost $0.01 more than flavored, fat-free milk, and flavored, fat-free milk cost $0.01 more than unflavored, fat-free milk. More data regarding these cost differences are in table 22.

USDA acknowledges the possibility that this rule and the transitional standards rule may cause, or have already caused, milk product prices to change and that school milk prices have been similar by fat content and flavor status in the past. A comparison of the potential impacts of the added sugars limits for milk using milk prices in the two different data collection time points (SY 2009–2010 and SY 2014–2015) is included below.

[123] Wang L, Cohen J, Maroney M, et al. Evaluation of health and economic effects of United States school meal standards consistent with the 2020–2025 dietary guidelines for Americans. The American Journal of Clinical Nutrition. 2023. DOI: *https://doi.org/10.1016/j.ajcnut.2023.05.031*.

[124] Lioret S, Campbell KJ, McNaughton SA, et al. Lifestyle Patterns Begin in Early Childhood, Persist and Are Socioeconomically Patterned, Confirming the Importance of Early Life Interventions. Nutrients. 2020;12(3):724. Published 2020 Mar 9. doi:10.3390/nu12030724.

[125] Movassagh EZ, Baxter-Jones ADG, Kontulainen S, Whiting SJ, Vatanparast H. Tracking Dietary Patterns over 20 Years from Childhood through Adolescence into Young Adulthood: The Saskatchewan Pediatric Bone Mineral Accrual Study. Nutrients. 2017;9(9):990. Published 2017 Sep 8. doi:10.3390/nu9090990.

[126] More detailed explanations of health effects of the most impactful provisions are in the 'Impacts' section above.

[127] Wang G, Zhou X, Zhuo X, Zhang P. Annual total medical expenditures associated with hypertension by diabetes status in US adults. Am J Prev Med. 2017;53(6 suppl 2):S182–S189.

[128] Kirkland EB, Heincelman M, Bishu KG, et al. Trends in healthcare expenditures among US adults with hypertension: national estimates, 2003–2014. J Am Heart Assoc. 2018;7(11).pii: e008731.

[129] Dieleman JL, Cao J, Chapin A, et al. US Health Care Spending by Payer and Health Condition, 1996–2016. 2020;323(9):863–884. doi:10.1001/jama.2020.0734.

[130] Birger M, Kaldjian AS, Roth GA, Moran AE, Dieleman JL, Bellows BK. Spending on Cardiovascular Disease and Cardiovascular Risk Factors in the United States: 1996 to 2016. Circulation. 2021;144(4):271–282. doi:10.1161/CIRCULATIONAHA.120.053216.

[131] Vreman RA, Goodell AJ, Rodriguez LA, et al. Health and economic benefits of reducing sugar intake in the USA, including effects via non-alcoholic fatty liver disease: a microsimulation model. BMJ Open. 2017 Aug 3;7(8):e013543. doi: 10.1136/bmjopen-2016–013543. PMID: 28775179; PMCID: PMC5577881.

[132] Vos MB, Kaar JL, Welsh JA, American Heart Association, et al. Added Sugars and Cardiovascular Disease Risk in Children: A Scientific Statement From the American Heart Association. Circulation. 2017 May 9;135(19):e1017-e1034. doi: 10.1161/CIR.0000000000000439. Epub 2016 Aug 22. PMID: 27550974; PMCID: PMC5365373.

[133] American Diabetes Association. Economic costs of diabetes in the US in 2017. Diabetes Care. 2018;41:917–928.

[134] The search was conducted in 2022, however some product catalogs were older. It was found that at least four manufacturers had at least one flavored milk product with under 10 grams of added sugars per serving and in fact, three of them had products with six grams of added sugars per serving. A total of 10 flavored milk products from four companies were below the 10-gram added sugars limit. The catalogs used for data collection generally showed that there were lower sugar and higher sugar versions of flavored milk available.

[135] The Healthy School Milk Commitment—IDFA.

TABLE 22. COMPARISON OF COST OF MILK PER EIGHT FLUID OUNCES BY MILK TYPE DURING TWO DATA COLLECTIONS

	SY 2009-2010 Data	SY 2014-2015 Data
LOW-FAT, FLAVORED	$0.21	$0.25
LOW-FAT, UNFLAVORED	$0.19	$0.24
FAT-FREE, FLAVORED	$0.19	$0.24
FAT FREE, UNFLAVORED	$0.19	$0.25

As noted above, on average, low-fat, flavored milk cost $0.01 more than low-fat, unflavored milk per carton (8 fluid ounces) in the SY 2014–2015 data, and fat-free, flavored milk cost $0.01 less than fat-free, unflavored milk per carton. If across all NSLP and SBP menus, all fat-free, flavored milk was replaced with low-fat, flavored milk, it would cost about $85 million more a year (using updated data from SY 2014–2015). Any change to low-fat, flavored milk from fat-free, flavored milk must be made within available resources and calorie and fat limits, and upon implementation, added sugars limits, so it is unlikely that all school food authorities will make this change for all flavored milk offerings. USDA estimates this to be about $9 million more a year in the value spent on milk (table 23). By using the updated milk cost data, the annual cost of purchasing low fat flavored milk is about 30 percent less than the cost using the SY 2009–2010 data, adjusted for inflation (table 23).

TABLE 23: ESTIMATED IMPACT OF PURCHASING LOW-FAT, FLAVORED MILK (MILLIONS) WITH UPDATED DATA

SUBSTITUTION LEVEL	Estimated Annual Cost with SY 2009-2010 Data	Estimated Annual Cost with SY 2014-2015 Data
MAXIMUM – REPLACE ALL FAT-FREE, FLAVORED WITH LOW FAT FLAVORED	$126	$85
MINIMUM - 9 PERCENT OF DAILY MENUS REPLACED FAT-FREE, FLAVORED WITH LOW-FAT, FLAVORED (BASED ON EXEMPTION DATA)[125]	$13	$9

Whole Grains

Due to the age of the available data, it is unknown if schools made substantial changes in the proportion of whole grain-rich items served during the time from SY 2014–2015 to SY 2019–2020. In order to update the RIA with SY 2014–2015 data, the analysis also incorporated whole grain-rich based combination entrées because they contribute importantly to daily intake in school meals, according to the SNMCS report.[136] However, the cost of combination entrees also includes the cost of other food groups, so the cost comparison was based on a cost per grain portion of the combination entrées. The values are still comparable because the same methodology was used for whole grain-rich items and the non-whole grain-rich items overall, but it is not possible to compare to the transitional standards rule RIA methodology which included bulk cost data from another source.[137]

Sodium

A limitation in the cost analysis of sodium is that the sodium limit is meant to be met by product reformulation, changing food menu items, and scratch cooking, so the assumptions about the cost distribution, 45 percent food, 45 percent labor, and 10 percent other, might not be accurate or complete. As a result, the costs of the sodium limits were not adjusted to account for additional costs of equipment as part of an estimate for this 'Uncertainties/Limitations' section. This is a limitation because the exact needs of each school food authority to equip kitchens for scratch cooking and menu changes are not known.

This additional analysis provides a high and low estimate of the costs to schools for equipment that would allow them to reach the sodium limits established in this rule. About half of schools make under 50 percent of their recipes from scratch according to the Farm to School Census data.[138] In the 2012 rule, estimates based on public comments regarding the sodium targets were included in the Uncertainties discussion to calculate potential equipment costs; around $5,000 per school for approximately half of schools.[139]

Adjusting for inflation, this would be equivalent to $7,700 beginning in SY 2025–2026 for about 50,000 schools, which was the basis of the equipment cost estimate used for the proposed sodium limits of several 10 percent reductions for breakfast and lunch. However, since the final sodium limit implements only one 10–15 percent sodium reduction, we assume fewer equipment costs than the proposed rule. On the low end, we estimate a quarter of all schools will spend an average of $3,850 on equipment costs, for a total of about $100 million. As an upper bound, we assume schools may need more equipment to adapt to the reduced sodium limits, spending an average of $7,700 spread over the two school years prior to the SY 2027–2028 implementation year. This would be equivalent to about $200 million across two school years (SY 2025–2026 and SY 2026–2027). These estimates, adjusted for inflation, are shown below in table 24 with the low end estimate accounting for $30 million in equipment grants that are available annually. The actual costs for equipment may be higher as the exact needs of schools for equipment and remodeling to increase scratch cooking are unknown. Examples of equipment needed by schools to improve the appearance, safety, and healthfulness of food include ovens, skillets, broilers, refrigerators or freezers, serving equipment, steam equipment, and food preparation equipment.[140] It is also possible that schools may sustain higher costs as a result of purchasing more pre-made meals and foods through food service companies if they do not have the necessary equipment to lower sodium content through scratch cooking or menu reformulation.

[136] *https://fns-prod.azureedge.us/sites/default/files/resource-files/SNMCS-Volume2.pdf.*

[137] School Food Purchase Study III.

[138] Bobronnikov, E. et al. (2021). Farm to School Grantee Report. Prepared by Abt Associates, Contract No. AG–3198–B–16–0015. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Ashley Chaifetz.

[139] **Federal Register**: Final Rule: Nutrition Standards in the National School Lunch and School Breakfast Programs.

[140] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Child Nutrition Program Operations Study (CN–OPS–II): SY 2015–16 by Jim Murdoch and Charlotte Cabili. Project Officer: Holly Figueroa. Alexandria, VA: December 2019.

TABLE 24: ESTIMATED COSTS OF EQUIPMENT FOR IMPLEMENTING NEW SODIUM REDUCTION PLAN (MILLIONS) [141]

SODIUM LIMIT EFFECTIVE SCHOOL YEAR	SY 2025 - 2026	SY 2026-2027	TOTAL
LOW END ESTIMATES[142]	$0	$70	$70
HIGH END ESTIMATES	$48	$152	$200

Participation Impacts

As noted earlier, in the Key Assumptions section, participation costs associated with this rule are based on a level of service in school lunch and breakfast programs that mirrors the 2023 level of service. There are multiple contributing factors that may lead to an increased or decreased level of school meal participation in these years after the pandemic. Due to the uncertainty of the direction of student participation, a variety of possibilities are detailed here and the change in cost is simulated below (table 25). Nearly three-quarters of school food service directors reported that gaining student acceptance of the meal pattern standards, particularly whole grains, was moderately to extremely challenging with respect to maintaining student participation.[143] If there is a similar downward trend in student participation as a result of sodium and added sugar standards, there would be a corresponding reduction in food costs and potentially a reduction in labor hours. USDA is not aware of any evidence to support that there is a correlation between updates to school meal patterns and student participation, however. If student participation increases, there would be an expected increase in food and labor costs, but potentially a reduction of cost due to economies of scale as the operation scale increases. Relatedly, more states and schools are offering Healthy School Meals for All due to the realized benefits of free school meals during the COVID pandemic. [This could be through State initiatives [144] or increased use of Community Eligibility Provision (CEP).] Research has shown that schools offering all meals at no charge through CEP experience higher student participation levels and increases in Federal revenues.[145] These revenue increases may offset (from the local perspective, though not from the nationwide perspective) some of the estimated costs associated with this rule.

TABLE 25: PROJECTED COSTS BY STUDENT PARTICIPATION CHANGE (MILLIONS)

	ONE-YEAR	8-YEAR TOTAL
FULL PARTICIPATION	$206	$1,645
ESTIMATED COSTS IF SCHOOL MEAL PARTICIPATION INCREASES		
2.5 PERCENT PARTICIPATION INCREASE	$211	$1,686
5 PERCENT PARTICIPATION INCREASE	$216	$1,727
10 PERCENT PARTICIPATION INCREASE	$226	$1,809
ESTIMATED COSTS IF SCHOOL MEAL PARTICIPATION DECREASES		
2.5 PERCENT PARTICIPATION DECREASE	$200	$1,604
5 PERCENT PARTICIPATION DECREASE	$195	$1,563
10 PERCENT PARTICIPATION DECREASE	$185	$1,480

Improving meal pattern requirements may have corresponding impacts on student participation. After publication of the updated meal patterns in the 2012 final rule, which were implemented in SY 2012–2013 and beyond, there were variable changes to school meal program participation. Total breakfasts served increased steadily between fiscal year 2012 and fiscal year 2016. School lunches served decreased by approximately three percent between fiscal year 2012 and fiscal year 2016. However, similar breakfast and lunch trends existed prior to fiscal year 2012 [146] and the exact relationship between the new meal patterns and participation changes is unclear based on these data.

Other factors unrelated to meal pattern requirements may also impact student participation. In 2014, a sample of principals and foodservice managers in elementary schools indicated that 70 percent of students ''generally seem to like the new school lunch'' and 78 percent said participation in school lunch was the same or more than the previous year.[147] However, about 25 percent of those surveyed still disagreed that students seemed to like lunches offered under the new requirements. CEP became available to all school districts nationwide in SY 2014–2015, and rates of SBP and NSLP participation increased in SY 2016–2017 in school districts that had implemented CEP.[148] As participation in CEP continues to expand it is possible there may be some offset of any downward trend in school lunch participation though USDA has no evidence to support that this is likely to occur. While student participation may be variable following implementation of this rule, it is known that students who participate in the school meal programs consume more whole grains, fruits, vegetables, and milk than non-participants, leading to a better quality of daily diet overall.[149]

It is assumed that levels of SBP and NSLP participation will continue to increase to pre-pandemic rates, but it is difficult to know how long the supply chain disruptions and

[141] Changes to sodium limits as a result of this final rule will not take effect until SY 2027–2028.

[142] Includes the $30 million offset of annually available equipment grants.

[143] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Child Nutrition Program Operations Study (CN–OPS–II): SY 2017–18. Beyler, Nick, Jim Murdoch, and Charlotte Cabili. Project Officer: Holly Figueroa. Alexandria, VA: November 2022. *https://fns-prod.azureedge.us/sites/default/files/resource-files/CNOPS-II-SY2017-18.pdf.*

[144] *https://www.cde.ca.gov/ls/nu/sn/cauniversalmeals.asp.*

[145] *https://fns-prod.azureedge.us/sites/default/files/resource-files/CEPSY2016-2017.pdf.*

[146] USDA—Food and Nutrition Service, National Data Bank—Publicly available data.

[147] Turner, Lindsey, and Frank Chaloupka (2014). ''Perceived Reactions of Elementary School Students to Changes in School Lunches after Implementation of the United States Department of Agriculture's New Meals Standards: Minimal Backlash, but Rural and Socioeconomic Disparities Exist,'' Childhood Obesity 10(4):1–8.

[148] *https://fns-prod.azureedge.us/sites/default/files/resource-files/CEPSY2016-2017.pdf.*

[149] ox MK, Gearan E, Cabili C, et al. School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes. U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support; 2019. *https://www.fns.usda.gov/school-nutrition-and-meal-cost-study.*

staffing challenges will continue. A variety of Executive orders and plans within the Federal Government have been employed to track and address supply chain disruptions, as well as a task force with a focus on supply chain issues.[150] The U.S. Department of Transportation reported improvements in supply chain disruption in early 2022, but there are still existing stressors in the U.S. supply chain.[151] [152] Unemployment levels have returned to pre-pandemic rates as of mid-2022, and gains are continuing in the hospitality sector, so it is likely staffing challenges in school food service will continue to improve.[153] These disruptions in service have created additional burden for school food authorities and it is possible this burden may hold on for a few years, potentially affecting student participation in school meal programs. USDA recognizes that schools may have been offering meals that were higher in sodium under the COVID–19 meal pattern waivers. The sodium limits finalized in this rule, which align with Sodium Target 2 from the 2012 final rule, will be gradually implemented. This gradual approach, which requires implementation in SY 2027–2028, is expected to ease implementation for schools as they adjust to the new limits. There is potential for a decrease in participation if students find meals less desirable because of lower added sugars and sodium levels, though USDA has no evidence to support that this has occurred during prior meal pattern updates. However, research indicates that a 10 percent sodium reduction in individual food products does not substantially impact consumer approval.[154] If there is a five percent decrease in participation of school meal programs, then the readily quantifiable annual cost of this rule would be $195 million, or $1.6 billion over the eight years (table 25).[155] Other possible levels of decrease in participation are also provided.

Many students who had never participated in the NSLP and SBP prior to the pandemic but who did participate under USDA's COVID–19 nationwide waivers may have found a level of convenience associated with participating in the school meals programs instead of eating breakfast at home or bringing a lunch from home. Parents and guardians may also find that school meals with reduced sodium and added sugars are a healthier option than meals that were available at school previously. If there is a five percent increase in participation of school meal programs, then the quantified annual cost of this rule would be $216 million, or $1.7 billion over the eight years (table 25).[156] Costs associated with other possible levels of potential increase in participation are provided. It is possible that an increase in revenue resulting from greater participation in school meal programs would offset some of the costs that occur from implementation of this rule.

VII. Benefits of the Rule and Other Discussion

Health Benefits

The goal of this rule is to more closely align school meals with the goals of the *Dietary Guidelines for Americans, 2020–2025*. The *Dietary Guidelines* are meant to promote health, prevent and reduce risk of chronic disease, and meet nutrient needs.[157] School meals are an important source of nutrition for school age children. Pandemic disruption to school operations demonstrated the continued importance of child nutrition programs including the NSLP and SBP.

Making the changes outlined in this rule can lead to improved health outcomes in the long-term. Lifestyle habits including dietary habits are established in childhood and research has shown that they may carry through into adulthood.[158] [159] The two most impactful changes in this rule are reductions in added sugars and sodium content of school meals. Reducing sodium and added sugars intake is associated with a variety of potential health benefits that are detailed above in the sodium and added sugars 'Impacts' sections. Reduction in sodium intake reduces blood pressure which in turn can reduce CVD risk and CVD events. Added sugars consumption is associated with a variety of potential chronic health conditions, including CVD and T2D, and risk factors for these chronic diseases. While this rule maintains the existing whole grain-rich requirements for school meals, it is of note that increased whole grain consumption is associated with an improved overall dietary pattern.[160] On average, in SY 2014–2015, 70 percent of the weekly menus offered at least 80 percent of the grain items as whole grain-rich for both breakfast and lunch.[161] Recent research evaluating the health benefits of aligning the school meal nutrition requirements with the *Dietary Guidelines for Americans, 2020–2025* found an association of 7,760 fewer annual deaths due to CVD and cancer and save $13.8 billion in healthcare-related costs annually if 25 percent of school children's dietary changes were sustained into adulthood.[162] Systematic review evidence also exists that shows intake in children of healthier dietary patterns including ''higher intakes of vegetables, fruits, whole grains, fish, low-fat dairy, legumes, and lower intake of sugar-sweetened beverages, other sweets, and processed meat,'' are associated with lower blood pressure and improved blood lipid levels later in life.[163] [164] These dietary patterns associated with improved health outcomes have higher intake of whole grains and lower intake of both foods high in sodium and high in added sugars. Improvements in school meals finalized in this rule, with a focus on sodium and added sugars reduction, will lead to healthier dietary intake and improved health outcomes over time.

This rule also includes sections on traditional Indigenous foods that may have

[150] *https://crsreports.congress.gov/product/pdf/IN/IN11927.*

[151] *https://www.transportation.gov/briefing-room/usdot-supply-chain-tracker-shows-progress-supply-chains-remain-stressed.*

[152] Results of USDA's Food and Nutrition Service-Administered School Food Authority Survey II on Supply Chain Disruption and Student Participation (*azureedge.us*).

[153] *https://www.bls.gov/news.release/pdf/empsit.pdf.*

[154] Cobb LK, Appel LJ, Anderson CA. Strategies to reduce dietary sodium intake. *Curr Treat Options Cardiovasc Med.* 2012;14(4):425–434. doi:10.1007/s11936–012–0182–9.

[155] If the decrease in participation is caused by provisions of this final rulemaking, then there would be other effects—for example, incremental health consequences of revised eating patterns, or the transition cost to parents and guardians as they make other eating arrangements for their children—that would also be attributable to the rule. By contrast, if participation decreases due to unrelated trends, then the quantified cost estimates would be as reported here but the (unquantified) accompanying effects would not be attributable to this final rule.

[156] If the increase in participation is caused by provisions of the final rule, then there would be other effects—for example, incremental health consequences of revised eating patterns—that would also be attributable to the provision. By contrast, if participation increases due to unrelated trends, then the quantified cost estimates would be as reported here but the unquantified accompanying effects would not be attributable to the final rule.

[157] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines* for Americans, 2020–2025. 9th Edition. December 2020. Available at *DietaryGuidelines.gov*.

[158] Grummer-Strawn LM, Li R, Perrine CG, Scanlon KS, Fein SB. Infant feeding and long-term outcomes: results from the year 6 follow-up of children in the Infant Feeding Practices Study II. *Pediatrics.* 2014;134 Suppl 1(Suppl 1):S1–S3. doi:10.1542/peds.2014–0646B.

[159] Lioret S, Campbell KJ, McNaughton SA, et al. Lifestyle Patterns Begin in Early Childhood, Persist and Are Socioeconomically Patterned, Confirming the Importance of Early Life Interventions. *Nutrients.* 2020;12(3):724. Published 2020 Mar 9. doi:10.3390/nu12030724.

[160] Albertson AM, Reicks M, Joshi N, Gugger CK. Whole grain consumption trends and associations with body weight measures in the United States: results from the cross sectional National Health and Nutrition Examination Survey 2001–2012. Nutr J. 2016;15:8. Published 2016 Jan 22. doi:10.1186/s12937–016–0126–4.

[161] Based on an internal USDA analysis using data from: U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et.al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[162] Wang L, Cohen J, Maroney M, et al. Evaluation of health and economic effects of United States school meal standards consistent with the 2020–2025 dietary guidelines for Americans. The American Journal of Clinical Nutrition. 2023. DOI: *https://doi.org/10.1016/j.ajcnut.2023.05.031.*

[163] 2020 *Dietary Guidelines* Advisory Committee and Nutrition Evidence Systematic Review Team. Dietary Patterns and Risk of Cardiovascular Disease: A Systematic Review. 2020 *Dietary Guidelines* Advisory Committee Project. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Center for Nutrition Policy and Promotion, July 2020. Available at: *https://nesr.usda.gov/2020-dietary-guidelines-advisory-committee-systematic-reviews.*

[164] 2020 *Dietary Guidelines* Advisory Committee and Nutrition Evidence Systematic Review Team. Dietary Patterns and Growth, Size, Body Composition, and/or Risk of Overweight or Obesity: A Systematic Review. 2020 *Dietary Guidelines* Advisory Committee Project. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Center for Nutrition Policy and Promotion, July 2020. Available at: *https://nesr.usda.gov/2020-dietary-guidelines-advisory-committee-systematic-reviews.*

some potential health benefits for American Indian and Alaska Native children. USDA acknowledges that for decades, the United States government actively sought to eliminate traditional American Indian and Alaska Native ways of life—for example, by forcing Indigenous families to send their children to boarding schools. This separated Indigenous children from their families and heritage, and disrupted access to traditional foods, altering Indigenous children's relationship to food. This disruption effected food access, food choice, and overall health. The Traditional Foods Project (TFP) and associated research have shown that there may be benefits to integrating culture and history through locally designed interventions framed by food sovereignty among American Indian and Alaska Native communities to help prevent chronic disease, especially type 2 diabetes.[165] [166]

Food and Nutrition Security

Prior to and during the pandemic, school meals played an important role in serving healthy meals to millions of children and increasing food security by serving free or reduced price meals to eligible students. Food and nutrition security is defined as ''consistent and equitable access to healthy, safe, affordable foods essential to optimal health and well-being'' by the USDA.[167] In 2020, about fifteen percent of households with children were food insecure compared to about fourteen percent in 2019.[168] This means that millions of children are affected by food insecurity in the U.S. Free and reduced-price meals in the SBP and NSLP are served to students from households with lower income levels. In 2023, about 80 percent of meals served in the SBP and about 71 percent of meals served in the NSLP were free or reduced-price meals.[169] This rule targets the diet quality of meals served through child nutrition programs, and we estimate this rule to benefit the health of program participants. Providing nutrient-dense meals and snacks is especially valuable for children that may not always have access to nutritious foods at home. In 2021, USDA found that around 55 percent of food-insecure households participated in one or more of three Federal food and nutrition assistance programs (SNAP, WIC, NSLP).[170] This same report indicated that in households with income below 185 percent of the poverty line, those that received free or reduced-price school lunch in the previous 30 days (in 2021) were less likely to be food insecure compared to those that did not receive free or reduced-price lunch, indicating that school meals are an important source of food for families facing hardships. Student participation in the NSLP has been found in other research to be associated with a reduction in food insecurity.[171] Households with incomes near or below the Federal poverty line, all households with children and particularly households with children headed by single women or single men, and Black- and Hispanic-headed households have higher rates of food insecurity than the national average.[159] Efforts to increase participation in child nutrition programs should focus on expanding and encouraging participation among children in households under these circumstances to promote equity in daily nutrient intake nationwide.[172] School meal programs reach children across the U.S. from households of all income levels and of various backgrounds and race/ethnicities with nutritious meals. As noted previously, the incremental effect of the rule on program participation is uncertain as regards both magnitude and direction; the impact on food security is likewise uncertain.

Achievable Limits

While some elements of the 2012 rule were challenging to meet over a long period of time, this rule prescribes smaller gradual shifts and targeted changes to improve the overall nutrient content of meals. This rule will require changes over time, at achievable levels for schools and manufacturers. For instance, reduction in sodium finalized in this rule is about 15 percent at lunch and about 10 percent at breakfast, which is more manageable than the previous final targets in the 2012 rule. The FDA's voluntary sodium reduction goals were introduced in October 2021, so manufacturers may already be making changes to their products. Additional reduction goals are expected in the coming years. School food authorities and manufacturers have indicated in the past that the sodium targets from the 2012 rule (especially Target 3) were challenging to achieve due to several contributing factors. These challenges included high labor and equipment costs needed to support food preparation, lack of lower sodium products associated with school food authority urbanicity and size, and low levels of student acceptance varying by cultural and regional taste preferences.[173] This rule addresses these concerns by implementing a single sodium reduction that is supported by FDA voluntary sodium goals for industry and the 2019 dietary reference intakes [174] that call for continued reduction in sodium intake to promote health.

USDA data collection in 2022 [175] showed that reductions in total and added sugars content of certain food types (yogurt, milk, cereal) have already been observed, on average, since the last data collection during SY 2014–2015. This indicates that manufacturers are willing to make shifts in their product formulations and that regulations for programs such as CACFP do help to jumpstart product shifts. Another aspect of this rule is that USDA finalizing added sugar limits, rather than total sugars limits. Limiting added sugars will not limit naturally occurring sugars from fruit or milk, which will allow many yogurt products containing fruit and cereals containing dried fruit to remain a part of school meals. This less restrictive group of limits for added sugars is more achievable for school food authorities compared to total sugar limits and reflects *Dietary Guidelines* recommendations.

The changes from this rule will occur gradually over time. The sodium reduction included in this final rule will not occur until SY 2027–2028—over three years after this rule is published. Schools will maintain current sodium limits prior to the SY 2027–2028 reduction. This gradual approach will provide adequate lead in time, allowing school food authorities and manufacturers time to make changes to menus and available food products. Reduction of added sugars in school meals will also occur gradually, beginning with product specific limits, followed by an overall weekly limit. This approach will also allow time for adjustment both by food service operators and food/beverage manufacturers. Gradual formulation changes are also recommended for consumer satisfaction and product desirability.[176] [177] Taste preference may be established early in life and early food preference can influence

[165] DeBruyn L, Fullerton L, Satterfield D, Frank M. Integrating Culture and History to Promote Health and Help Prevent Type 2 Diabetes in American Indian/Alaska Native Communities: Traditional Foods Have Become a Way to Talk About Health. Prev Chronic Dis 2020;17:190213. DOI: *http://dx.doi.org/10.5888/pcd17.190213external* icon.

[166] Satterfield D, DeBruyn L, Santos M, Alonso L, Frank M. Health promotion and diabetes prevention in American Indian and Alaska Native communities—Traditional Foods Project, 2008–2014. CDC Morbidity Mortality Weekly Report. 2016;65(S1):4–10. *https://www.cdc.gov/mmwr/volumes/65/su/su6501a3.htm.*

[167] *https://www.usda.gov/nutrition-security#:~:text=At%20a%20minimum%2C%20food%20security,%2C%20or%20other%20coping%20strategies*).

[168] *https://www.ers.usda.gov/amber-waves/2022/february/food-insecurity-for-households-with-children-rose-in-2020-disrupting-decade-long-decline/.*

[169] USDA—Food and Nutrition Service, National Data Bank—Publicly available data.

[170] Matthew P. Rabbitt, Laura J. Hales, Michael P. Burke, and Alisha Coleman-Jensen, October 2023. Household Food Security in the United States in 2022, ERR–325, U.S. Department of Agriculture, Economic Research Service.

[171] Ralston, K.; Treen, K.; Coleman-Jensen, A.; Guthrie, J. Children's Food Security and USDA Child Nutrition Programs; U.S. Department of Agriculture, Economic Research Service: Washington, DC, USA, 2017.

[172] Gearan EC, Monzella K, Jennings L, Fox MK. Differences in Diet Quality between School Lunch Participants and Nonparticipants in the United States by Income and Race. Nutrients. 2021;12(12):3891. *https://www.mdpi.com/2072-6643/12/12/3891.*

[173] Gordon, E.L., Morrissey, N., Adams, E., Wieczorek, A. Glenn, M.E., Burke, S & Connor, P. (2019). Successful Approaches to Reduce Sodium in School Meals Final Report. Prepared by 2M Research under Contract No. AG–3198–P–15–0040. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service.

[174] *https://nap.nationalacademies.org/catalog/25353/dietary-reference-intakes-for-sodium-and-potassium.*

[175] USDA Food and Nutrition Service, Office of Policy Support data collection of nutrition label information from major cereal and yogurt manufacturer K–12 and food service catalogs.

[176] Hoppu U, Hopia A, Pohjanheimo T, et al. Effect of Salt Reduction on Consumer Acceptance and Sensory Quality of Food. Foods. 2017;6(12):103. Published 2017 Nov 27. doi:10.3390/foods6120103.

[177] Institute of Medicine (US) Committee on Strategies to Reduce Sodium Intake; Henney JE, Taylor CL, Boon CS, editors. Strategies to Reduce Sodium Intake in the United States. Washington (DC): National Academies Press (US); 2010. Available from: *https://www.ncbi.nlm.nih.gov/books/NBK50956/* doi: 10.17226/12818.

later food choices, so a gradual change may influence school age children for years to come. Along with gradual change, the added sugars weekly limit and the sodium reduction will be introduced the same year, allowing for menus to be changed simultaneously, avoiding the inconvenience of making substantial changes multiple times. This rule ensures that there will be a high nutrition quality of school meals with continued improvements over time.

VIII. Alternative(s)

Sodium

As a result of comments and feedback from stakeholders on the proposed sodium limits, this final rule implements more gradual and attainable sodium reduction compared to the proposed rule. USDA proposed to phase in three 10 percent sodium reductions at lunch and two 10 percent sodium reductions at breakfast beginning in SY 2025–2026. The estimated annual costs of the proposed sodium limits assumed a higher increase in labor and scratch cooking compared to the final rule due to the proposed multiple reductions. The estimated annual food and labor costs of the proposed changes averaged $102 million annually, compared to $68 million annual average for the final rule sodium provisions. The equipment costs associated with an increase in scratch cooking assumed at least half, or 50,000, of schools would spend between $7,350 to $14,700 each leading up to the proposed implementation years. The range of equipment costs for the proposed rule was $324 million to $792 million total, compared to the final rule equipment costs of $70 million to $200 million total.

Added Sugars: Grain-Based Desserts

The final rule does not adopt the proposal to limit grain-based desserts to 2 ounce equivalents per week in school breakfasts. The change from the proposed rule is to avoid potential negative impacts on breakfast programs, especially grab-and-go breakfasts. The proposed grain-based dessert limit for school breakfast had an estimated cost savings of $23 million annually, because the average cost of grains other than grain-based desserts is estimated to be $0.22 less than the average cost of grain-based desserts. The final added sugar product limits annual cost is $107 million annually, an increase from $84 million, after removing cost estimates associated with the proposed limit for grain-based desserts at school breakfast.

Buy American

The final rule maintains reaching a 5 percent cap on total costs per school year on non-domestic food purchases, consistent with the proposed rule. However, the proposed rule would have implemented a 5 percent cap as soon as the provision was effective. The final rule takes an incremental approach and considers procurement for SBP in addition to NSLP. USDA made this change in the rule in response to public comments that suggested a 5 percent cap is too restrictive under current procurement conditions. The cost analysis assumptions were the same in the proposed rule, but the estimated costs were due to a shorter implementation period and the associated burden hours with meeting the cap in the next school year for NSLP. While the final rule incorporates a more gradual timeline, burden estimates were calculated for both SBP and NSLP ($7 million annually for both the proposed rule and the final rule).

Whole Grains

The final rule maintains the current whole grain-rich requirements, however, the proposed rule requested comments on an alternative proposal for the whole grain-rich requirement for final rule consideration. Under the proposed alternative, all grains offered in the school lunch and breakfast programs would be required to be whole grain-rich, except that one day each school week, schools may offer grains that are not whole grain-rich. On average, a similar number of servings of whole grains would be provided in the alternative proposal, just on different days than before, leading to no additional expected costs. In response to comments, the final rule maintains the existing whole grain-rich requirement.

Other Considered Alternatives

In the process of creating this rule, there were a few other potential alternatives considered for added sugars and whole grains. Initially, product-specific total sugar limits were considered to align with the current CACFP total sugar limits for breakfast cereals and yogurts. However, this meant restricting naturally occurring sugars and did not align with the *Dietary Guidelines for Americans* [178] which recommend limiting added sugars to 10 percent of calories per day. The product-specific added sugars limits for yogurt, breakfast cereal, and flavored milk are expected to help introduce the concept of limiting added sugars, specifically as part of the gradual goal of reaching the final 10 percent weekly limit. For whole grains, other percentages were considered for the proportions of grains to be served that must be whole grain-rich (*i.e.,* 50 or 100 percent). However, 80 percent was decided on as a measure that allows for flexibility, but also still requiring that the majority of grains offered in school meals are whole grain-rich.

IX. Appendix

TABLE A: ESTIMATED ANNUAL COSTS IN MOVING FROM TRANSITIONAL STANDARDS RULE TO THIS RULE BEGINNING BY SCHOOL YEAR (MILLIONS), IN 2023 DOLLARS[179, 180]

IMPLEMENTATION YEAR	SY 2024-2025	SY 2025-2026	SY 2026-2027	SY 2027-2028	SY 2028-2029	SY 2029-2030	SY 2030-2031	SY 2031-2032	Total	Annual Average [181]
ADMINISTRATIVE COSTS	$41	$41	$0	$41	$0	$0	$0	$0	$124	$16
ADDED SUGARS	$0	$103	$103	$103	$103	$103	$103	$103	$722	$90
MILK	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
SODIUM	$0	$0	$0	$91	$91	$91	$91	$91	$454	$57
AFTERSCHOOL SNACKS	$0	-$8	-$8	-$8	-$8	-$8	-$8	-$8	-$59	-$7
SUBSTITUTING VEGETABLES FOR FRUITS AT BREAKFAST	-$4	-$4	-$4	-$4	-$4	-$4	-$4	-$4	-$31	-$4
BUY AMERICAN	$15	$4	$4	$4	$4	$4	$4	$6	$45	$6
TOTAL	**$52**	**$137**	**$95**	**$227**	**$186**	**$186**	**$186**	**$187**	**$1,256**	**$157**
TOTAL PER MEAL	0.008	0.022	0.015	0.037	0.030	0.030	0.030	0.030	NA	0.025

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BILLING CODE 3410–30–P

[178] U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020–2025. 9th Edition. December 2020. Available at *DietaryGuidelines.gov.*

[179] Due to rounding, numbers may not add up to rounded sum in 'total' column exactly.

[180] This data is the same as in table 1, but broken down by school years instead of fiscal years.

[181] Annual average over 8 school years of rule implementation.