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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 226, and 235

[FNS-2019-0007]

RIN 0584-AE67

Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs

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

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes changes to simplify meal pattern and monitoring requirements in the National School Lunch and School Breakfast Programs. The proposed changes, including optional flexibilities, are customer-focused and intended to help State and local Program operators overcome operational challenges that limit their ability to manage these Programs efficiently. In the National School Lunch Program, the proposed rule would add flexibility to the existing vegetable subgroups requirement. In the School Breakfast Program, the proposed rule would make it easier for menu planners to offer meats/meat alternates and grains interchangeably (without offering a minimum grains requirement daily), and would allow schools to offer ½ cup of fruit in breakfasts served outside the cafeteria to reduce food waste. Other proposed changes would make it easier for local Program operators to plan menus for different age/grade groups, and expand the entrée exemption service timeframe for competitive foods. To improve efficiency in Program monitoring, the proposed rule also would ease several

administrative review requirements, including the review cycle. The monitoring changes aim to decrease the burden associated with administrative reviews while rewarding program integrity initiatives at the State and local levels. This rule also proposes to make updates, clarifications, and technical corrections throughout other parts of its regulations. Implementation of the wide range of proposed changes and flexibilities is expected to simplify operational requirements, increase efficiency, and make it easier for State and local Program operators to feed children.

DATES: *Comment date:* Online comments submitted through the Federal eRulemaking Portal on this proposed rule must be received on or before [insert date 60 days after date of publication in the Federal Register]. Mailed comments on this rule must be postmarked on or before [insert date 60 days after date of publication in the Federal Register].

Comments on Paperwork Reduction Act requirements: Comments on the information collection requirements associated with this rule must be received by [insert date 60 days after date of publication in the Federal Register].

ADDRESSES: The USDA, Food and Nutrition Service (FNS) invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Regular U.S. mail: School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, P.O. Box 2885, Fairfax, Virginia 22031.
- Overnight, courier, or hand delivery: School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, 1320 Braddock Place, 4th floor, Alexandria, Virginia 22314.

All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available via <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Tina Namian, Chief, School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, 703-305-2590.

SUPPLEMENTAL INFORMATION:

I. Background and Overview

The National School Lunch Program (NSLP) and School Breakfast Program (SBP) provide nutritious, well-balanced meals to millions of children each school day. Section 9(f)(1) of the Richard B. Russell National School Lunch Act (NSLA), as amended, 42 U.S.C. 1758(f)(1), requires that school meals are consistent with the goals of the latest Dietary Guidelines for Americans (Dietary Guidelines). USDA regulations at 7 CFR 210.10 and 220.8 detail the nutrition standards for the NSLP and SBP, respectively.

Section 201 of Public Law 111-296 (the Healthy, Hunger-Free Kids Act of 2010, HHFKA) amended Section 4(b) of the NSLA (42 U.S.C. 1753(b)), to require USDA to update the meal patterns and nutrition standards for school meals based on recommendations in a report issued by the Health and Medicine Division of the National Academies of Science, Engineering, and Medicine (formerly, the Institute of Medicine). In response, the final rule, Nutrition Standards in the National School Lunch and School Breakfast Programs (77 FR 4088, published January 26, 2012), updated the school meal requirements consistent with the 2010 Dietary Guidelines, as

recommended in the report School Meals: Building Blocks for Healthy Children.¹ In part, the 2012 final rule: (1) established weekly vegetable subgroup requirements in the NSLP; (2) codified NSLP and SBP meal patterns for three distinct age/grade groups (K-5, 6-8, and 9-12); (3) permitted meats/meat alternates to be offered in place of grains in the SBP, provided that minimum daily grain requirements were met; (4) increased the amount of fruit offered in the SBP to one cup for all age/grade groups; (5) allowed only flavored and unflavored fat-free and unflavored low-fat milk; (6) established calorie and sodium limits, and prohibited trans fats in the NSLP and the SBP; and (7) increased the frequency of State agency administrative reviews of school food authorities (SFAs) to once every 3 years (from 5 years).

In Section 4(b)(3)(B) of the NSLA (42 U.S.C. 1753(b)(3)(B)), schools were incentivized to adopt the new meal pattern requirements through a performance-based reimbursement. SFAs certified as compliant with the lunch meal pattern receive an additional reimbursement of seven cents per lunch (increased by inflation from six cents on July 1, 2019) (7 CFR 210.7(d)).² To facilitate the transition to the 2012 meal pattern, per Section 22(a) of the NSLA, USDA also established a 3-year administrative review cycle, combining the nutritional assessment of school meals with the operations review for stronger Program accountability (7 CFR 210.18).

As part of a holistic effort to improve school nutrition environments, Section 208 of HHFKA amended Section 10 of the Child Nutrition Act of 1966 (42. U.S.C. 1779) to require that USDA establish standards for foods sold to students on campus during the school day outside of the

¹ Institute of Medicine. 2010. School Meals: Building Blocks for Healthy Children. Washington, DC: The National Academies Press. Available at: <https://www.fns.usda.gov/sites/default/files/SchoolMealsIOM.pdf>.

² Notice. National School Lunch, Special Milk, and School Breakfast Programs, National Average Payments/Maximum Reimbursement Rates (84 FR 38590, published August 7, 2019). Available at: <https://www.govinfo.gov/content/pkg/FR-2019-08-07/pdf/2019-16903.pdf>.

school meal programs. These nutrition standards are commonly referred to as the Smart Snacks in School (SSIS) standards. These requirements, codified in 7 CFR 210.11, established minimum nutrition standards for foods and beverages sold to students on campus during the school day and permit the sale of calorie-free, flavored water to grades 9-12 only (□ 210.11(m)). To help manage leftovers and prevent food waste, the rule also exempted entrées offered in the SBP and NSLP from the SSIS nutrition standards on the day offered in the SBP or NSLP menu and the day after (7 CFR 210.11(c)).

Since implementation of these regulatory actions, some Program operators have experienced challenges, such as lower student participation and increased food waste. To assist operators, in May 2017, the Secretary committed to giving schools more control over food service decisions, and greater ability to offer wholesome, nutritious, and appealing meals to students. This commitment resulted in this proposed rule, and two previous rulemaking actions intended to increase operational flexibilities in the NSLP and SBP³, as described in the following section.

Ensuring that the school meal programs are carried out as prescribed in statute and regulations is a key administrative responsibility at every level. Federal, State, and local Program staff share the responsibility to ensure that all aspects of the Child Nutrition Programs are conducted with integrity and that taxpayer dollars are used as intended. Prior to School Year (SY) 2013-2014, two separate processes were used to assess compliance with Program regulations; the Coordinated Review Effort was conducted on a 5-year cycle and the School Meals Initiative, a

³ The final rule, Hiring Flexibility Under Professional Standards (84 FR 6953, published March 1, 2019) provides flexibilities to professional standards requirements. The final rule, Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements (83 FR 63775, published December 12, 2018), provides flexibilities related to sodium, whole grains, and flavored milk.

nutritional assessment of meals, was done separately on a 3-year cycle. Section 207 of HHFKA amended section 22(a) of the NSLA (42 U.S.C. 1769c), and directed USDA to create a unified accountability system under which States would “conduct audits and reviews during a 3-year cycle or other period prescribed by the Secretary.” USDA developed a simplified, unified monitoring process intended to strengthen Program integrity through more robust, effective, and frequent monitoring using a 3-year cycle. In 2016, USDA published a final rule establishing the current administrative review process at 7 CFR 210.18.⁴ The process is a comprehensive review of Program requirements, such as eligibility and operational processes (previously covered in the Coordinated Review Effort) and the nutritional assessment of school meals (previously covered in the School Meals Initiative). The administrative review also provides opportunities for States and SFAs to collaborate to ensure that students are offered wholesome, nutritious, and appealing meals and Programs are successfully operated.

Some State agencies and SFAs have experienced challenges with parts of the new administrative review requirements, particularly the requirement to review SFAs more frequently, on a 3-year review cycle. In response, USDA allowed States experiencing significant challenges meeting the 3-year review cycle requirement to submit waiver requests to extend their administrative review cycle.⁵ In the first two months after issuing this flexibility, USDA received waiver requests from more than 30 State agencies. State agencies that received review cycle waivers often faced staffing and operational challenges that negatively impacted their ability to fulfill Program administration and oversight responsibilities. The waivers give State agencies additional time to

⁴ Final rule. Administrative Reviews in the School Nutrition Programs (81 FR 50170, published July 29, 2016).

⁵ Policy memo SP 12-2019. Flexibility for the Administrative Review Cycle Requirement, published February 22, 2019. Available at: <https://fns-prod.azureedge.net/sites/default/files/cn/SP12-2019os.pdf>

complete oversight activities and, in some cases, provide technical assistance to SFAs to enhance Program operations.

The transition to the 3-year administrative review cycle coincided with a more robust review of the school meal programs, which included a review of an SFA's financial practices through the Resource Management Module. The Resource Management Module includes an overall assessment of risk and comprehensive review of SFAs that are at risk for noncompliance in the resource management areas. The transition also took place as States put a renewed emphasis on improving State oversight of procurement practices. USDA sought extensive input from State agencies on how to streamline the review process while maintaining effective oversight. Through this engagement, USDA has learned more about the unique circumstances and challenges faced by States, as well as best practices and potential flexibilities to help State agencies fulfill oversight responsibilities.

This proposed rule builds on operational flexibilities recently provided to NSLP and SBP operators, including the administrative review waivers. It proposes targeted flexibilities and regulatory changes to simplify Program oversight and operations. Most of the operational flexibilities proposed in this rule would be optional and primarily intended for States or local operators experiencing challenges with specific requirements. The intent of this proposed rule is to give the public an opportunity to provide comments that will inform USDA's development of a final rule on operational flexibilities for meal pattern and monitoring requirements.

II. Need for Action

In the seven years following the 2012 rulemaking, some Program operators have experienced challenges with specific requirements. In May 2017, Secretary of Agriculture Sonny Perdue issued a proclamation emphasizing USDA's commitment to provide operational flexibilities to help schools offer wholesome and appealing meals that students want to eat.

The proclamation precipitated an interim final rule that provided short-term operational flexibilities for flavored low-fat milk, sodium, and whole grains for School Year (SY) 2018-2019. These flexibilities were codified in the final rule Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements (published December 12, 2018, 83 FR 63775), and adopted permanently for SY 2019-2020 and beyond. The 2018 revisions affirm USDA's commitment to giving schools more control over food service decisions and greater ability to offer wholesome, nutritious, and appealing meals to children that reflect local preferences and reduce food waste.

Some Program operators have successfully implemented the 2012 meal pattern requirements in a way that encourages student participation and healthy eating; other Program operators require additional flexibility. As part of ongoing efforts to support State and local Program operators, USDA held seven listening sessions and roundtable discussions with school food service staff and school district administrators, industry representatives, and State agency staff in 2018 (on July 11, September 20, October 2, October 23, and December 6) and 2019 (on February 25 and July 15) to solicit additional information about Program challenges and suggestions for improvement. This feedback was consistent with feedback that senior Child Nutrition Program policy officials receive from stakeholders during in-person meetings and conferences. Some

Program operators describe persistent challenges with complex requirements that limit their ability to feed children. Administrative challenges identified by State and local Program operators include:

- Completing more comprehensive administrative reviews in a shorter, 3-year cycle;
- Submitting reports required by FNS;
- Preventing food waste;
- Meeting the weekly vegetable requirements; and
- Serving meals that meet the requirements for various age/grade groups.

Program operators also suggested improvements to competitive food and beverage requirements that would permit schools to reduce food waste and offer more appealing foods and beverages to students.

Additionally, language included in House Report No. 114-531 (2016) led USDA to examine administrative and reporting challenges faced by State agencies and SFAs. Through discussions and representative surveys, USDA identified requirements that are most burdensome for Program operators.⁶ The Child Nutrition Reporting Burden Study resulted in a set of considerations for reducing burden at the State and local levels.⁷

One recommendation from the Child Nutrition Reporting Burden Study is for USDA to implement a risk-based administrative review cycle. About two-thirds of State agency participants identified the 3-year cycle as a major burden. State agency and SFA participants

⁶ House Report No. 114-531 (2016) available at: <https://www.congress.gov/114/crpt/hrpt531/CRPT-114hrpt531.pdf>.

⁷ U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Child Nutrition Reporting Burden Analysis Study by Steven Garasky, Linda Piccinino, Kevin Conway, Allison Magness, and Elizabeth Gearan. Project Officer: Jinee Burdg. Alexandria, VA: July 2019.

suggested that a risk-based approach could balance the need to maintain Program integrity and the amount of staff time and resources required to complete administrative reviews. Study participants suggested that lower-risk SFAs could be reviewed less frequently to alleviate burden, which would free up more resources for State agencies to provide technical assistance to SFAs. High-risk SFAs could be reviewed more frequently, focusing limited State agency resources more effectively.

FNS is committed to listening to our stakeholders and maximizing Program efficiency, local control, and customer service in the Child Nutrition Programs. To that end, this rule proposes additional flexibilities that support State, Tribal, and local Program operators. The proposed flexibilities aim to: (1) facilitate the service of wholesome meals within the operational constraints of schools across the Nation, (2) support foodservice efficiency, and (3) ease monitoring burden for SFAs and States. USDA strives to decrease administrative burden so Program operators have more time to focus on the core mission of Child Nutrition Programs: feeding children.

III. Discussion of Proposed Changes & Optional Flexibilities

This preamble groups the proposed changes and flexibilities into three broad categories: (1) Proposals to Simplify Monitoring, (2) Proposals to Simplify Meal Service, and (3) Proposals to Simplify Competitive Foods (i.e., foods sold à la carte). USDA is also seeking public input on multiple items, for which no changes are proposed in this rule.

Proposals to Simplify Monitoring

Establish 5-year Administrative Review Cycle & Targeted, Follow-up Reviews of High-Risk SFAs

Current Requirements

Section 22 of the NSLA (42 U.S.C. 1769c(b)(1)(C)(i)), requires that State agencies “conduct audits and reviews during a 3-year cycle or other period prescribed by the Secretary.” Current regulatory provisions at 7 CFR 210.18(c) require State agencies to conduct an administrative review of each SFA participating in the NSLP and SBP at least once during a 3-year review cycle. This comprehensive administrative review, outlined at 7 CFR 210.18, monitors compliance with eligibility, meal counting and claiming, and meal pattern requirements.

The transition to the new, more comprehensive administrative review process and shorter 3-year review cycle occurred at the same time as States and SFAs were implementing several other Program changes required by HHFKA, including implementing new meal pattern requirements, paid lunch equity, local wellness policies, direct certification improvements, and a new performance-based reimbursement. Concurrently, State agencies were devoting significant resources to additional oversight responsibilities, such as the review of procurement practices and procedures, to better ensure compliance with Federal regulations.

Since the transition to a 3-year review cycle and the introduction of the unified administrative review in SY 2013-2014, some State agencies and SFAs have struggled to complete reviews and corresponding oversight activities. USDA received feedback about difficulties associated with administrative reviews—both from State agencies conducting reviews and from SFAs preparing

for, and responding to, reviews. States and SFAs have noted that, in some instances, the shorter review cycle reduced time available for technical assistance and training, and unduly emphasized compliance over Program improvement.

Proposed Changes to the Administrative Review Cycle

Pursuant to the authority of section 22 of the NSLA, this rule proposes changes to the administrative review cycle to ease administrative burden for State agencies and SFAs, while continuing to promote Program integrity. This rule proposes to allow State agencies the option to transition from the current 3-year review cycle back to a 5-year review cycle. State agencies opting for a 5-year review cycle would conduct a comprehensive administrative review of each SFA participating in NSLP and SBP at least once during a 5-year cycle and identify high-risk SFAs for additional oversight. High-risk SFAs would receive a targeted follow-up review within two years of being designated high-risk. State agencies would continue to have the option to review SFAs more frequently.

Upon implementation, State agencies would be required to review SFAs with significant noncompliance in the areas of meal pattern/nutrition requirements, certification determinations, and claims earlier in the review cycle. In the initial 5-year review cycle, State agencies would be required to review SFAs known to be noncompliant in the first three years, and rely heavily on the most recent administrative review to identify these SFAs. This would ensure that SFAs known to be noncompliant are appropriately monitored earlier in the review cycle and minimize the time between reviews for these SFAs.

Targeted follow-up reviews would be less comprehensive than a full administrative review and at this time USDA anticipates the scope will include areas identified as high-risk for the SFA, along with other critical Program areas that include Performance Standard 1 and 2 violations and Resource Management findings. Performance Standard 1 includes eligibility, certification, and meal counting/claiming requirements. Performance Standard 2 includes meal pattern and nutrition requirements. Resource Management areas include the areas outlined in 7 C.F.R 210.14. Prior to July 1, 2012, USDA required follow-up reviews of SFAs found to have critical area violations in excess of certain review thresholds. Since July 1, 2012, follow-up reviews have been conducted at State agency discretion, per 7 CFR 210.18(c)(2). This rule proposes to reinstate required, targeted follow-up reviews; however, based on public input, requirements for follow-up reviews implemented in a final rule may be different than follow-up review requirements prior to July 1, 2012.

USDA intends to provide both the high-risk criteria and the scope of the targeted follow-up review in regulation. USDA proposes to use findings from previous administrative reviews and findings regarding any known noncompliance with Federal procurement regulations to determine high-risk. USDA seeks comment on which particular administrative review findings should be included in the high-risk criteria. USDA is also considering using additional risk factors (e.g., staff experience and/or staff turnover) and SFA characteristics (e.g., enrollment size, funding level, type of meal counting and/or claiming system, and/or point-of-service system) to determine high-risk. USDA seeks public comment on additional characteristics to be included in defining high-risk and the scope of targeted follow-up reviews. USDA would allow State

agencies to add other risk criteria as they see fit, and to designate an SFA as high-risk based on other information on a case-by-case basis.

In developing this proposal, USDA considered two other options, as described below. USDA welcomes public comments on these options, even though a different approach is proposed in this rulemaking.

(1) USDA considered establishing two review cycles: a 5-year cycle for low-risk SFAs and a 3-year cycle for high-risk SFAs, as some stakeholders suggested, but concluded that multiple cycles could create additional administrative burden and confusion. USDA believes that transitioning to a 5-year cycle, with the requirement to conduct targeted, follow-up reviews of high-risk SFAs more often, would achieve the same outcome and provide States with flexibility on the timing of such reviews.

(2) USDA also considered a different approach that would return all SFAs to a 5-year review cycle. Under that approach, State agencies would be required to randomly select a portion of SFAs, using a statistically valid sample, which would receive comprehensive reviews using all administrative review modules. In addition, for each cycle USDA would identify the Program areas of highest risk and impact to the Programs, and only those modules would be reviewed for the remaining SFAs. USDA explored this option to allow State agencies to review all SFAs thoroughly in the areas of highest risk or impact to the Programs, while also alleviating burden by not requiring all review modules for some SFAs. USDA concluded that this approach could present significant risks to Program

integrity since not all areas would be reviewed. In addition, USDA would likely need to require additional administrative reviews of SFAs deemed high-risk for administrative error to fulfill statutory requirements, which would negate the burden reduction.

Therefore, the proposal to return to a 5-year administrative review cycle, with targeted, follow-up reviews of high-risk SFAs, responds to feedback from some stakeholders who report that the 3-year review cycle is too burdensome for both State agencies and SFAs, and limits a State's ability to conduct other valuable oversight activities, such as providing technical assistance. Giving State agencies discretion to add other risk criteria to the risk assessment would allow States to tailor monitoring activities to their unique needs, and move away from a "one size fits all" approach. Allowing State agencies the option to return to a 5-year administrative review cycle aims to alleviate burden on State agencies by providing more time to complete required reviews and devote more resources to technical assistance. Focusing additional resources on high-risk SFAs would allow State agencies to target limited resources to those SFAs most in need of monitoring and technical assistance.

Based on public input and at the Secretary's discretion, USDA may implement and/or modify the proposed operational flexibility in a final rule.

What would stay the same?

State agency reviewers would continue to follow procedures outlined in the FNS Administrative Review Manual, as required, to monitor general and critical areas of review.

Specific Public Input Requested

USDA is seeking public comment on:

- The 5-year review cycle models (the model proposed, and the two models considered, but not proposed);
- How to determine an SFA's risk of noncompliance, including the risk factors to consider;
- The scope of the targeted follow-up review; and
- How risk factors should apply if a State agency opts to review SFAs more frequently than on a 5-year cycle.

The proposed changes to the administrative review cycle are in 7 CFR 210.18(c) of the regulatory text.

Align Administrative Review and Food Service Management Company Review Cycles

Current Requirements

Regulations at 7 CFR 210.19(a)(5) require that “each State agency shall perform a review of each SFA contracting with a food service management company, at least once during each 3-year period.” The 3-year review cycle for food service management companies aligns with the current 3-year administrative review cycle. This allows States to coordinate and streamline review and oversight activities.

Allowing a 5-year review cycle for administrative reviews while maintaining a 3-year review cycle for food service management company reviews could present challenges to State agencies' oversight activities.

Proposed Changes to the Food Service Management Companies Review Cycle

This rule proposes to change the food service management company review cycle to at least once during a 5-year period, so State agencies can align oversight activities. State agencies may opt to review SFAs with food service management companies more frequently. This proposal would allow State agencies to align and streamline administrative reviews and food service management company reviews. This proposal is consistent with USDA's focus on Program efficiency.

What would stay the same?

This proposed rule only changes the minimum time-frame of the review cycle and does not make any other changes to the oversight of food service management companies, including the requirement for State agencies to review each contract between an SFA and food service management company annually.

The proposed changes to the food service management review cycle are in 7 CFR 210.19(a)(5) of the regulatory text.

Address Significant Performance Standard 1 Noncompliance Early in Review Cycle

Current Requirements

If the State agency determines that an SFA demonstrates significant noncompliance with the meal pattern and nutrition requirements set forth in 7 CFR 210.10 and 220.8, the State agency must select the SFA for an administrative review earlier in the review cycle (7 CFR

210.18(e)(5)). If significant noncompliance is found in other areas, including Performance Standard 1, the State agency is not required to select the SFA for an administrative review earlier in the review cycle.

Performance Standard 1 includes important eligibility, certification, and meal counting/claiming requirements. These include the requirements that all free, reduced price, and paid meals claimed for reimbursement are served only to children eligible for free, reduced price, and paid meals, respectively; and that the meals are counted, recorded, consolidated, and reported through a system which consistently yields correct claims (7 CFR 210.18(g)). Compliance with Performance Standard 1 areas is critical to ensure Program integrity. It is inconsistent to require State agencies to review SFAs early in the review cycle only when there is significant noncompliance with the Performance Standard 2 meal pattern and nutrition requirements, and not for Performance Standard 1 requirements.

Proposed Changes to the Early Review of School Food Authorities

This rule proposes requiring that State agencies also select SFAs with significant noncompliance in Performance Standard 1 areas for an administrative review earlier in the review cycle. While “significant noncompliance” has not been formally defined, USDA interprets it to mean findings from previous reviews that warrant fiscal action and any knowledge that a State agency may have regarding an SFA’s noncompliance. These areas, including certification determinations, are set forth in 7 CFR 210.8 and 245.6.

It is important for State agencies to prioritize reviewing SFAs with significant noncompliance not only in meal pattern and nutrition requirements, but also in certification determinations and claims. Reviewing these SFAs early allows State agencies to provide prompt technical assistance to bring SFAs into compliance with Program requirements, rather than allowing noncompliance to continue. Addressing these issues early could also limit the fiscal implications that SFAs face for errors.

What would stay the same?

A State agency that determines that an SFA has significant noncompliance with meal pattern and nutritional requirements set forth in 7 CFR 210.10 and 220.8 must still be reviewed earlier in the review cycle. SFAs that are not determined to have significant noncompliance would be reviewed in line with State agency procedures and regulations outlined in 7 CFR 210.18.

The proposed changes to require SFAs with significant noncompliance in Performance Standard 1 areas to be reviewed earlier in the administrative review cycle are in 7 CFR 210.18(e)(5) of the regulatory text.

Specific Public Input Requested

“Significant noncompliance” is a term used in Federal regulations that USDA has not defined previously. USDA proposes to define this term and seeks public input on the definition of “significant noncompliance.”

Allow Expanded Use of Third-Party Audits

Current Requirements

To prevent duplication of effort, regulations allow State agencies to use recent and applicable findings from Federal- or State-required audits in lieu of reviewing the same information in an administrative review (7 CFR 210.18(f)(3)). When Federal or State audit results are used for the administrative review, the State agency must document the source and date of the audit. Some State agencies are using this option to substitute for parts of the administrative review that require or would benefit from specialized financial or accounting expertise. USDA encourages States to consider this practice to prevent duplicative efforts and minimize burden on review staff.

Proposed Change

Maintaining State agency staff with the specialized training and experience needed can be challenging in some States. This proposed rule would allow State agencies to use recent and applicable findings from supplementary audit activities, requirements added to Federal or State audits by local operators, or other third-party audits initiated by SFAs or other local entities. In all cases, the audit activity would have to comply with the same standards and principals that govern the Federal single audit. These are in addition to the audit information that is already allowed to substitute for parts of the administrative review.

This change would provide an additional opportunity for State agencies and SFAs to substitute third-party audits for comparable sections of the administrative review. The intent is to offer options to reduce burden and/or the cost of maintaining qualified State agency staff to conduct

specialized sections of the administrative review. This proposal stems from USDA's focus on increasing operational efficiency and is in line with the current provision on audit information.

What would stay the same?

The flexibility that State and local Program operators currently have to use results from Federal- or State-required audits in lieu of completing parts of the administrative review would continue to be available. State agency reviewers would also continue to follow administrative review procedures to monitor all other general and critical areas of review.

The proposed changes to expand the use of third-party audits are in 7 CFR 210.18(f)(3) of the regulatory text.

Allow Completion of Review Requirements Outside of the Administrative Review

Current Requirements

In addition to Federal- or State-required audits, State agencies conduct additional monitoring and oversight activities outside of the formal administrative review process. Existing administrative review requirements do not allow for State agencies that conduct these additional oversight or monitoring processes to use that information in the formal review process.

Some State agencies have developed monitoring practices that review information identical or similar to certain aspects of the administrative review in order to proactively review all SFAs in areas that are critical to successful Program operations and may identify issues of noncompliance annually, rather than waiting for an administrative review. States currently are not able to use

some of this information from activities outside of the formal administrative review, requiring them to duplicate work for no additional gain.

Proposed Change

This proposed rule would allow State agencies to satisfy sections of the administrative review through equivalent State monitoring or oversight activities outside of the formal administrative review process. For example, State agencies may already annually review SFAs' financial documentation, such as reviewing a "Statement of Revenues and Expenses" or similar documentation, in order to monitor impacted Program areas, such as allowable costs, throughout the year. These documents may then also be reviewed on the administrative review, for example, as part of the Resource Management Module. This proposal would allow State agencies to omit specific redundant areas of the review if States conduct sufficient oversight elsewhere. USDA would continue to monitor States' oversight practices through the Management Evaluation process to ensure that State agencies are fulfilling their oversight responsibilities.

This proposed change acknowledges that State agencies may be conducting activity identical to certain sections of the administrative review in monitoring visits or other oversight activities outside of the formal administrative review process. Eliminating redundancies would allow State agencies to redirect limited resources to technical assistance or training.

What Would Stay the Same?

State agencies that do not conduct additional oversight activities as described in this provision would continue to complete all sections of the formal administrative review process.

Specific Public Input Requested

The Department seeks public comment on this proposal and any specific oversight activities that States or SFAs are already conducting, or are considering, outside of and redundant to the formal administrative review, to inform the final rule.

The proposed changes to allow completion of review requirements outside of the administrative review are in 7 CFR 210.18(f), (g), and (h) of the regulatory text.

Provide Incentives to Invest in Integrity-Focused Process Improvements

Current Requirements

The administrative review is an evaluation of SFA compliance with procedures meant to ensure proper administration of the school meal programs, including the provision of nutritious meals. In many cases, the procedures reviewed provide direct and definitive checks on Program performance. These include, for example, State agency validation of SFA meal counts to ensure that USDA reimbursements match the number of meals served.

In some cases, however, the administrative review monitors SFA compliance with procedures that are indirect or incomplete measures of compliance with fundamental Program requirements. An example of this is SFA management of the application approval and verification processes. The administrative review ensures that SFAs process applications and verification documents correctly, but it cannot confirm the underlying accuracy or completeness of applicant reporting. The administrative review process is not designed to validate that all applicants are income eligible for Program benefits.

In other cases, the State agency reviewer is in a position to identify errors and provide immediate technical assistance. But neither the review, nor the technical assistance, may adequately address an underlying challenge that can continue to generate errors after the review ends. An example of this is the misidentification of meals as reimbursable or non-reimbursable at the point of sale. While the underlying challenge may be inadequate training, in which case technical assistance and corrective action may be an ideal remedy, the challenge may instead be an antiquated point of sale process that demands too much from the cashier.

Reducing improper Program payments in the school meal programs is an Agency priority. USDA, along with its State agency and SFA partners, have invested in process reforms, technology improvements, and training over the past several years to address improper payments. Some of these efforts seek to strengthen the administrative review process and the training of State agency reviewers, which is critical for effective Program management. Others have led to the development of process reforms such as real-time direct certification that can improve outcomes and reduce error in ways that monitoring cannot. To address the improper payment challenges facing the school meal programs, where much of the underlying Program error cannot be identified or addressed through monitoring reviews alone, additional effort must be directed to this kind of process reform.

Proposed Change

This rule proposes a framework for waiving or bypassing certain review requirements for State agencies or SFAs as an incentive to invest in one or more USDA-designated systems or process

improvements that can reduce or eliminate Program errors. The administrative review is a resource-intensive process that generates real costs for State agencies and SFAs. The goal is to redirect some of those resources into process reforms to reduce overall error without increasing overall cost.

USDA will develop a series of optional process reforms that respond to the latest findings from USDA research, independent audits, and Agency analysis of administrative data. USDA will test potential reforms, in cooperation with State and local program administrators, to assess their feasibility and effectiveness. States or SFAs may then adopt these, at their option, in exchange for elimination, modification, or reduction of existing administrative review requirements.

USDA anticipates that this package of optional reforms will grow over time in response to new research and changes in the nature of the integrity challenges facing the Programs.

These process reforms seek to reduce Program error, rather than simply maintain the current level of error with a less comprehensive review. For that reason, the ideal reforms are unlikely to be direct substitutes for the review requirements that they replace. As an example, State agencies may be approved to bypass their review of applications, or they may be able to select a smaller application sample, if the SFA adopts a broad package of certification and verification reforms that target both administrative processing error and underlying applicant error. Subject to an assessment of feasibility and effectiveness, this package could include SFA adoption of an online application system that meets USDA-specified integrity standards, high uptake of that online application by households, SFA adoption of specified direct certification best practices, and for-cause verification of applications that exhibit specified error-prone characteristics.

This proposed change seeks to encourage State and local investment in integrity-promoting initiatives in exchange for streamlined oversight activities. It is consistent with USDA's focus on more local control and operational efficiency.

Specific Public Input Requested

USDA seeks public comments on what specific process reforms might be considered for this incentive-based provision, and how the overall integrity of the school meal programs may be enhanced if States and SFAs were to implement such reforms.

The proposed changes to provide incentives to invest in integrity-focused process improvements are in paragraphs 7 C.F.R 210.18(f), (g), and (h) of the regulatory text.

Omit the On-site Breakfast Review in Extenuating Circumstances

Current Requirements

Section 22(a) of the NSLA (42 U.S.C. 1769c(a)), directs USDA to create a unified accountability system that requires review of the SBP to ensure conformity with Federal requirements.

Reviewing the SBP on-site during an administrative review allows State agencies to provide technical assistance and training when an SFA faces challenges administering the Program. The review also may result in corrective action, which can help improve operations by amending Program errors.

Program regulations at 7 CFR 210.18(g)(1)(ii) and (g)(2)(i)(B) require State agencies to review

elements of Program requirements on-site. To limit the burden on State agencies, the current administrative review requires an on-site review of only half of the sites selected for review that operate the SBP as outlined in 7 CFR 210.18(e)(2)(iii)(B). Prior to 2012, SBP on-site reviews were not required. While most State agencies are successfully conducting on-site breakfast reviews, the Department recognizes that State agencies may face unique challenges in conducting SBP on-site reviews at some SFAs, especially those in remote locations with limited lodging options. The early morning start time of SBP on-site reviews adds to this difficulty, particularly when transportation is a barrier. USDA has already approved waivers of the on-site breakfast review requirement in cases where State agencies have faced extenuating circumstances, such as no available lodging within hours of a school or major travel challenges (e.g., a helicopter is the only transportation available and the flight schedule does not allow reviewers to arrive in time for breakfast).

Proposed Changes to SBP On-site Reviews

USDA proposes to allow State agencies facing extenuating travel circumstances the ability to omit the on-site SBP review and assess an SFA's breakfast operations using other existing measures. In addition, it may be possible for State agency staff to review some aspects of SBP when on-site for the NSLP review. USDA proposes that extenuating travel circumstances would be absence of lodging facilities within 50 miles of a reviewed school. State agencies in such circumstances would be required to notify FNS when omitting the on-site review of SBP due to the absence of lodging facilities.

Including the SBP in the administrative review is required by Section 22(a)(1)(B) of the NSLA to develop a unified accountability system. This proposed change addresses State agency feedback regarding challenges conducting an on-site SBP review. When necessary and warranted, this proposal would allow States to use methods other than the on-site breakfast review to ensure that SBP requirements are met. This proposal retains the State agency requirement to conduct an on-site review for lunch.

What would stay the same?

State agencies without extenuating circumstances would still be required to conduct on-site SBP reviews, as specified in Program regulations.

Specific Public Input Requested

USDA specifically seeks comments on:

- What extenuating travel or safety circumstances, in addition to absence of lodging within 50 miles of a reviewed school, could be included in the regulation;
- What parts of the on-site SBP review cannot be satisfied during an on-site review of the NSLP;
- Any potential risk to Program integrity posed by omitting an on-site SBP review;
- What challenges State agencies and SFAs encounter related to the on-site breakfast review, and whether any of those challenges would be prevented by conducting the SBP review during the on-site review of the NSLP; and
- What off-site processes and tools are, or could be, available to States to ensure SFAs are successfully operating the SBP.

Comments will inform USDA regulations on when and how to apply this flexibility and how to mitigate any risks to Program integrity.

The proposed changes to allow State agencies to omit the requirement to conduct an on-site SBP review in extenuating circumstances are in 7 CFR 210.18(g)(1)(ii) and (g)(2)(i)(B) of the regulatory text.

Add Flexibility to Completion of the Resource Management Module

Current Requirements

Regulations require State agencies conducting an administrative review to do an off-site assessment of an SFA's nonprofit school food service account to evaluate the risk of noncompliance with resource management requirements (7 CFR 210.18(h)(1)). This requirement helps State agencies identify which and how many SFAs need a comprehensive review, and helps State agencies acquire information that is vital to assess the SFA's financial management before a review begins. If this information is not received before the completion of the Resource Management Module review during an administrative review, a comprehensive review is required.

USDA received feedback from State agencies after implementation of the unified administrative review process. States indicated that assessing risk for noncompliance in resource management areas off-site can be challenging, depending on when and how the State reviews these areas.

USDA allows States agencies to conduct comprehensive resource management reviews off-site,

and separate from the on-site administrative review, so there is even more discretion available to States in adopting processes. Requiring an off-site assessment prior to further review may hinder the State's review process.

Proposed Changes to the Administrative Review Resource Management Process

Instead of requiring that any part of the Resource Management module review take place off-site, this proposed rule would allow State agencies to conduct the assessment of an SFA's nonprofit school food service account at any point in the review process that makes the most operational sense to the State agency. Similar to the on-site portion of the review, USDA intends this assessment to take place in the school year that the review began, but will no longer require this assessment to take place off-site. Completion of the Resource Management Module may occur before, during, or after the on-site portion of the administrative review.

Since the inclusion of resource management areas in the administrative review, State agencies have developed their own processes and procedures to review SFAs' financial management practices in preparation for an administrative review. This proposed change would provide State agencies the discretion and flexibility to set up a review process and staff work units in the manner that they see fit.

What would stay the same?

State agencies will still be required to conduct an assessment of the SFA's nonprofit school food service account to evaluate the risk of noncompliance with resource management requirements, following procedures specified in regulations. If risk indicators show that an SFA is at high-risk

for noncompliance with resource management requirements, the State agency must conduct a comprehensive review.

The proposed changes to allow State agencies to complete the Resource Management Module of the administrative review at any point in the review process are in 7 CFR 210.18(h)(1) of the regulatory text.

Set Consistent Fiscal Action for Repeated Meal Pattern Violations

Current Requirements

Fiscal action is the recovery of Federal funds provided for reimbursable meals when there is an overpayment due to noncompliance or ineligible meals served. Fiscal action plays a key role in maintaining the integrity of the NSLP and SBP. Reimbursement claims made by SFAs must accurately reflect the number of reimbursable meals served to eligible children, by type, for each day meals are served. When conducting an administrative review, State agencies must identify the SFA's correct Federal reimbursement and take fiscal action when an SFA claims or receives more Federal funds than warranted. Pursuant to 42 U.S.C. 1769c(b)(4), the Secretary may require the State agency to retain funds that would otherwise be paid to the local educational agency, under procedures prescribed by the Secretary, if the local educational agency fails to meet administrative performance criteria established by the Secretary. Currently, as specified in 7 CFR 210.18(l)(2), State agencies must take fiscal action for missing food components, and for repeated violations of milk type and vegetable subgroup requirements. State agencies *may* take fiscal action for repeated violations concerning food quantities, whole grain-rich foods, and dietary specifications.

State agencies and Program operators have expressed to USDA that inconsistency in fiscal action procedures for findings related to meal pattern noncompliance can be confusing during the fiscal action process. USDA initially directed the inconsistent treatment of repeat meal pattern violations during a time when State agencies were adapting to the meal pattern changes. Now that State agencies better understand meal pattern violations, USDA believes that State agencies are better equipped to make determinations on whether only technical assistance and training is needed, or if fiscal action is warranted.

Proposed Changes to Administrative Review Fiscal Action for Meal Pattern Noncompliance

This proposed rule would no longer require fiscal action for repeated violations of milk type and vegetable subgroup requirements. Instead, State agencies *would have discretion* to take fiscal action for repeated violations of milk type and vegetable subgroup requirements. This change would align with the existing State agency discretion to take fiscal action for repeated violations for food quantities, whole grain-rich foods, and dietary specifications.

Students would still receive vegetables and milk when there are administrative review findings related to milk type and vegetable subgroup requirements, just not the correct type specified in meal pattern requirements. Many SFAs are making a good faith effort to offer children a healthy meal, but may make a mistake or need additional assistance to fully understand the meal pattern requirements. In these instances, rather than requiring States to fiscally penalize SFAs, this rule would allow State agencies to determine the appropriate response: whether only technical assistance and training is needed, or if fiscal action is the best course of action. USDA believes

State agencies are best positioned to determine the appropriate response. This proposed change would make fiscal action consistent across all repeated meal pattern violations.

What would stay the same?

State agencies would still be required to take fiscal action for missing food components. The only fiscal action required by USDA for meal pattern noncompliance would be disallowing meals when a meal component is missing. Fiscal action for any other meal pattern violations would not be required by USDA.

The proposed changes to make fiscal action consistent across all repeated meal pattern violations are in 7 CFR 210.18(1)(2) of the regulatory text.

Add Buy American to the General Areas of the Administrative Review

Current Requirements

As part of the administrative review, State agencies conduct an on-site review of food components to determine compliance with the Buy American provision in 7 CFR 210.21(d). The on-site review of food components is specified in the FNS Administrative Review Manual, but it is not included in the regulations that list the general areas of review to be conducted.

USDA included the on-site monitoring for compliance with Buy American requirements as part of the administrative review, which is conducted on-site at an SFA. A State agency's responsibility to monitor Buy American also includes reviewing procurement documentation, such as contracts, that may be completed separate from the administrative review.

Proposed Changes to Include Buy American in the Administrative Review Requirements

This rule proposes to add the existing Buy American monitoring requirement to the general areas of review listed at 7 CFR 210.18(h)(2), under the administrative review regulations. This proposed change is consistent with guidance in the FNS Administrative Review Manual and clarifies existing monitoring requirements for State agencies.

What would stay the same?

State agencies would still be required to review SFA compliance with Buy American requirements through the administrative review and the State's procurement oversight process, in line with USDA guidance.

The proposed changes to add the existing Buy American monitoring requirement to the general areas of review are in 7 CFR 210.18(h)(2) of the regulatory text.

Proposals to Simplify Meal Service

Facilitate the Service of Vegetable Subgroups in the NSLP

Current Requirements

Vegetables are good sources of nutrients associated with reduced risk for chronic disease.⁸ The Dietary Guidelines for Americans, 2015-2020 (hereafter referred to as the Dietary Guidelines) recommend eating a variety of vegetables and categorize vegetables into five subgroups based on similar nutrient content: (1) dark green, (2) red/orange, (3) beans/peas (hereafter referred to as

⁸ Health-promoting components of fruits and vegetables in the diet. Liu RH. Adv Nutr. 2013 May 1; 4(3):384S-92S.

legumes, as specified in 7 CFR 210.10(c)(2)(iii)), (4) starchy, and (5) other.⁹ Bioactive compounds in vegetables vary across subgroups, and recommended amounts in the Dietary Guidelines aim to optimize health benefits.¹⁰ A healthy eating pattern includes a variety of vegetables from all five subgroups.

In the NSLP, current regulatory provisions at 7 CFR 210.10 (c)(2)(iii) require Program operators to offer all five vegetable subgroups to children over a school week; minimum amounts vary by age/grade group. These standards specify what must be offered to students, not what students must select for a reimbursable meal. Students must be offered – and, therefore, have an opportunity to select – all five types of vegetables during a school week.¹¹

Since implementation of the vegetable subgroups requirement in 2012, some Program operators have experienced challenges, especially with the requirement to offer ½ cup of legumes per week. About 80 percent of lunch menus nationwide offer ½ cup legumes per week; this is significantly lower than other vegetable subgroups, which are offered on more than 90 percent of lunch menus weekly.¹² Program operators say the NSLP vegetable subgroup requirements are complex and confusing, especially the requirement to offer varying amounts of vegetables from

⁹ Dietary Guidelines for Americans, 2015-2020. Key Recommendations: Components of Healthy Eating Patterns <https://health.gov/dietaryguidelines/2015/guidelines/chapter-1/key-recommendations/>

¹⁰ US Department of Health and Human Services and US Department of Agriculture. Dietary Guidelines for Americans, 2015–2020, Appendix 3. 8th ed. U.S. Government Printing Office, Washington, DC. Available at: <http://health.gov/dietaryguidelines/>.

¹¹ The NSLP meal patterns require a variety of vegetables over a typical, 5-day school week. FNS guidance also specifies vegetable subgroup requirements for shorter (e.g., 3-or 4-day) and longer (e.g., 6- or 7-day) school weeks for institutions that operate on different schedules.

¹² U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, 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 2018.

different subgroups. USDA is sensitive to these ongoing challenges faced by Program operators. USDA aims to ensure that vegetable requirements are easy to understand and implement in the NSLP while still aligning with key subgroups recommended by the Dietary Guidelines.

Some Program operators also report challenges with food waste and report that children are throwing required vegetables in the trash. USDA's School Nutrition and Meal Cost Study found that approximately 31 percent of vegetables served in schools are wasted, which mirrors food waste in America at large: approximately 31 percent of retail and consumer food is wasted.^{13,14}

This amount of waste has far-reaching impacts:

- Wholesome food that could feed children in need is sent to landfills.
- Land, water, labor, energy, and other inputs are wasted in producing, processing, transporting, preparing, storing, and disposing of discarded food.

USDA is committed to reducing food waste, improving Program efficiency, and ensuring responsible stewardship of taxpayer dollars.

Proposed Flexibilities for Required Vegetable Subgroups

This rule proposes the following practical flexibilities to facilitate the service of the required vegetable subgroups at lunch. The proposed flexibilities would maintain the existing daily and

¹³ Buzby, Jean C., Hodan F. Wells, and Jeffrey Hyman. The Estimated Amount, Value, and Calories of Postharvest Food Losses at the Retail and Consumer Levels in the United States, EIB-121. U.S. Department of Agriculture, Economic Research Service, February 2014. Available at: https://www.ers.usda.gov/webdocs/publications/43833/43680_eib121.pdf.

¹⁴ U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 1: School Meal Program Operations and School Nutrition Environments* by Sarah Forrestal, Charlotte Cabili, Dallas Dotter, Christopher W. Logan, Patricia Connor, Maria Boyle, Ayseha Enver, and Hiren Nissar. Project Officer: John Endahl. Alexandria, VA: April 2019.

weekly total vegetable quantities in the NSLP to help schools continue to offer wholesome, balanced meals that support children’s growth, development, and academic achievement.

- **Allow all five subgroups in the same minimum weekly amount for all age/grade groups.**

This rule would maintain the five vegetable subgroups recommended by the Dietary Guidelines to ensure children are offered a variety of vegetables in school lunches. The proposal would also facilitate the service of vegetables and minimize food waste by allowing schools to offer the same weekly minimum amount from each subgroup: ½ cup weekly from each subgroup for all grades. Currently, menu planners are required to offer ½ cup of most vegetable subgroups over a school week, but must offer larger quantities of red/orange vegetables (for all age/grade groups) and “other” vegetables (for grades 9-12). USDA is committed to implementing measures that reduce food waste in schools and promote efficient school food service operations.¹⁵ Reducing operational complexity by requiring the same quantities of all vegetable subgroups would simplify menu planning and meal service. The proposed change would continue to make the key vegetable subgroups recommended by the Dietary Guidelines available to schoolchildren while reducing operational complexity and the potential for food waste in school food service operations.

- **Allow legumes offered as a meat alternate to count toward weekly legume vegetable requirement.**

¹⁵ Buzby, Jean C., Hodan F. Wells, and Jeffrey Hyman. The Estimated Amount, Value, and Calories of Postharvest Food Losses at the Retail and Consumer Levels in the United States, EIB-121. U.S. Department of Agriculture, Economic Research Service, February 2014. Available at: https://www.ers.usda.gov/webdocs/publications/43833/43680_eib121.pdf.

This rule would also allow more flexible crediting for legumes, a consistently under-served and under-consumed vegetable subgroup. Legumes are unique vegetables because of their protein content. Under current regulations, local menu planners can offer legumes and count them as either a vegetable or as a meat alternate. Despite this flexibility, some schools are struggling to meet the weekly legumes subgroup requirement. As noted above, about 80 percent of menus met the weekly requirement to offer ½ cup of legumes. This suggests that menu planners who are struggling with the weekly vegetable requirements are struggling most with the legumes requirement.

This proposal would allow menu planners who offer at least ½ cup of legumes as a meat alternate to also count the same ½ cup legumes toward the weekly legumes requirement. Even though the legumes would be included on the menu as a meat alternate, children would still be exposed to legumes and the nutrients they provide. Therefore, this flexibility would not deprive children of access to legumes, it would simply offer flexibility in how legumes are credited toward meal pattern requirements. Under this proposal, offering ½ cup of legumes as a meat alternate would not count toward the daily or weekly vegetable minimums because “double-counting” components could reduce the overall food quantity and calories in school meals. Therefore, menu planners would still have to offer vegetables in addition to the legumes (offered as a meat alternate) to meet the established daily and weekly minimum required quantities of vegetables. This flexibility seeks to provide additional options for local Program operators to offer legumes to children.

These proposed flexibilities are expected to make it easier for local Program operators to offer legumes, consistent with the Dietary Guidelines’ emphasis on legumes. The Dietary Guidelines

recommend (1) increasing legume consumption (legumes are underconsumed for all school-aged children) and (2) increasing the consumption of lean protein foods, including legumes.¹⁶ The proposed changes aim to support operational efficiency and facilitate compliance with NSLP nutrition requirements. Schools using these flexibilities would be able to continue offering wholesome and balanced lunches that support children’s growth, development, and academic achievement, as the existing vegetable variety and daily and weekly total vegetable requirements would remain in place.

The flexibilities would be available to all age/grade groups. As an example, the chart below shows differences between the current meal pattern and the proposed flexibilities for grades 9-12.

Grades 9-12	Current Meal Pattern: Require 5 groups/week	Proposed Alternative for Program Operators Facing Operational Challenges: Require 5 groups/week (same minimum amounts) + legumes flexibility
Vegetable Requirements	5 cups/week 1 cup/day	5 cups/week 1 cup/day
Dark green	0.5	0.5
Red/orange	1.25	0.5
Beans and peas (Legumes)	0.5	0.5*
Starchy	0.5	0.5

¹⁶ U.S. Department of Health and Human Services and U.S. Department of Agriculture. Dietary Guidelines for Americans, 2015-2020. 8th Edition. December 2015. Available at: <http://health.gov/dietaryguidelines/2015/guidelines/>.

Other	0.75	0.5
+ cups to reach weekly 5 cup minimum	1.5 Local menu planners decide which vegetables to offer	2.5-3 Local menu planners decide which vegetables to offer

*Legumes offered as a meat alternate could meet the weekly legumes subgroup requirement. However, legumes offered as a meat alternate would not count toward the daily and weekly vegetable minimums (1 cup and 5 cups, respectively, in the grades 9-12 example above) because doing so could significantly reduce calories.

In addition to the changes proposed in this rulemaking, FNS recently made several updates to crediting and meal pattern guidance that seek to ease vegetable subgroup requirements:

- (1) Pasta made of vegetable flour(s) may credit as a vegetable, even if the pasta is not served with another recognizable vegetable.¹⁷
- (2) Menu planners may estimate the amounts of specific subgroups in vegetable mixtures and credit them accordingly (assuming the minimum creditable amount of 1/8 cup is present).¹⁸
- (3) Salad bars may be located after the point-of-service/point-of-sale if students have access to instructions and serving utensils needed to select required amounts, and provided that the salad bar meets State and local health department requirements.¹⁹

These recent updates and the proposed flexibilities in this rule respond to input from State and local Program operators who, at listening sessions and roundtable discussions, shared their

¹⁷ Policy memo. Crediting Pasta Products Made of Vegetable Flour in the Child Nutrition Programs. (SP 26-2019, CACFP 13-2019, SFSP 12-2019, published April 19, 2019). Available at: <https://www.fns.usda.gov/school-meals/crediting-pasta-products-made-vegetable-flour-child-nutrition-programs>.

¹⁸ Policy memo. Meal Requirements under the National School Lunch Program and School Breakfast Program: Questions and Answers for Program Operators. (SP 38-2019, published September 23, 2019). Available at: <https://www.fns.usda.gov/school-meals/meal-requirements-under-national-school-lunch-program-and-school-breakfast-program>.

¹⁹ Policy memo. Salad Bars in the National School Lunch Program and School Breakfast Program. (SP 41-2019, published September 23, 2019). Available at: <https://www.fns.usda.gov/school-meals/salad-bars-national-school-lunch-program-and-school-breakfast-program>.

challenges of offering students a wide variety of healthy vegetables while still meeting the requirement to offer different quantities of vegetable subgroups over the course of a school week. USDA is committed to promulgating common-sense flexibilities that help local Program operators offer wholesome foods that are appealing to children, while maintaining student participation, encouraging meal consumption, and minimizing food waste. The proposed alternatives are consistent with the Administration's regulatory reform, allows more discretion and efficiency in local school food service operations, and maintains children's access to key vegetable subgroups recommended for increased consumption by the Dietary Guidelines.

What Would Stay the Same?

Program operators who wish to offer all five vegetable subgroups in the amounts specified in the existing lunch meal pattern may continue to do so. The proposed flexibility to offer the same weekly amount of each subgroup is optional and primarily intended for Program operators experiencing challenges with specific vegetable subgroups. Under this proposal, schools would continue to offer children at least the same minimum amounts of vegetables daily and weekly (varied by age/grade group) as established in the existing meal patterns. Under Offer versus Serve, at least ½ cup of fruits and/or vegetables would still be required for a reimbursable meal.

Specific Public Input Requested

USDA seeks public comments on the minimum weekly amount(s) that SFAs should be required to offer from each vegetable subgroup. The proposed changes would retain the daily and weekly total vegetable minimums, which ensure that school meals offer children 33-50 percent of total vegetables (by volume) that the Dietary Guidelines recommend children consume in a typical 5-

day school week.²⁰ This is consistent with the goal of school lunches to provide approximately 32 percent of nutrients that children need for optimum growth and development. This proposal would lower the required amount of red/orange vegetables offered to all age/grade groups, and the required amount of other vegetables offered to grades 9-12. Therefore, local Program operators would have more flexibility to choose which vegetables are offered to meet minimum daily and weekly vegetable requirements. USDA seeks public input on how this proposal could be implemented in a way that supports menu planners in offering a variety of healthy vegetables to children.

The proposed flexibility to offer the same weekly amount from all vegetable subgroups is in 7 CFR 210.10(m)(4)(ii) of the regulatory text. The proposed flexibility to offer legumes as a meat alternate and simultaneously meet the weekly legume vegetable requirement is in 7 CFR 210.10(c)(2)(iii) of the regulatory text.

Add Flexibility to Established Age/Grade Groups

Current Requirements

Childhood overweight and obesity are critical public health concerns. To avoid excessive calorie intake and provide age-appropriate school meals, USDA regulations at 7 CFR 210.10(c)(1) and 220.8(c)(1) establish NSLP and SBP meal patterns for three age/grade groups: K-5, 6-8, and 9-12. These age/grade groups reflect widely used school grade configurations and are consistent with the National Academies of Sciences, Engineering, and Medicine's Dietary Reference Intake

²⁰ The Dietary Guidelines recommended amounts vary by calorie levels. School-aged children typically require between 1,200 calories (sedentary, 5-year-old) and 3,200 calories (active, 18-year-old) per day. Additional information is available at: <https://health.gov/dietaryguidelines/2015/guidelines/>.

(DRI) groupings.²¹ The meal patterns specify amounts of food and dietary specifications (calories, saturated fat, trans fat, and sodium) for each age/grade group to support healthy weight and minimize chronic disease risk in the student population. Use of these age/grade groups enables schools to provide meals that meet the nutrition needs of most school children.

Through the SBP and NSLP, USDA aims to offer age-appropriate meals to provide school children the energy needed for learning and development. USDA's School Nutrition and Meal Cost Study found that, overall, 41 percent of average weekly lunch menus fell within the specified calorie range (that is, they met both the minimum and maximum calorie levels). It was more common for average weekly lunch menus in elementary and middle schools to exceed the maximum calorie level (40 percent and 34 percent, respectively) than to fall below the minimum calorie level (13 percent and 24 percent, respectively). However, the findings were reversed for high schools: approximately 66 percent of average weekly lunch menus for high schools fell below the minimum calorie level.

Existing flexibility permits a school to use one lunch meal pattern for students in grades K through 8 as food quantity requirements overlap for groups K-5 and 6-8 (7 CFR 210.10(c)(1)). In such a case, the school continues to be responsible for meeting the calorie, saturated fat, and sodium standards, as well as the meat/meat alternate minimums, for each of the age/grade groups receiving the school meals. However, due to several non-overlapping requirements for groups 6-

²¹ Developed by the National Academy of Medicine, the Dietary Reference Intakes (DRIs) are nutrient reference values that support many program, policy, and regulatory initiatives. The DRIs serve as a guide for good nutrition and provide the scientific basis for the development of food guidelines in the United States and Canada. More information is available at <http://nationalacademies.org/hmd/about-hmd/leadership-staff/hmd-staff-leadership-boards/food-and-nutrition-board.aspx>.

8 and 9-12, USDA does not currently permit flexibility to use one lunch meal pattern for these age/grade groups. USDA recognizes that the existing flexibility does not meet the needs of some schools, especially small schools in rural areas, with unique grade configurations and logistical challenges that may interfere with the reasonable use of the established age/grade groups and flexibility.

Proposed Flexibility in Age/Grade Groups

This rule proposes two common-sense flexibilities to help schools with unique grade configurations that differ from the age/grade groups established in Program regulations (K-5, 6-8, 9-12). In the proposed rule, Nutrition Standards in the National School Lunch and School Breakfast Programs (76 FR 2494, published January 13, 2011), USDA proposed the age/grade groups recommended by the Health and Medicine Division of the National Academies of Science, Engineering, and Medicine (formerly, the Institute of Medicine (IOM)). In response to the proposed rule, a few commenters requested flexibility in use of the age/grade groups (e.g., one grade level leeway); however, the 2012 final rule implemented the IOM recommended age/grade groups to ensure that children are offered age-appropriate meals. Experience since implementation suggests that some flexibility in age/grade groups would ease requirements for local Program operators, and help them offer wholesome meals in different types of schools in a more efficient manner. The proposed flexibilities are as follows:

- **Allow schools with unique grade configurations to use the same meal pattern for a broader group of students by adding or subtracting one grade on either or both ends of an established age/grade group.**

This proposed flexibility would enable schools with unique grade configurations to be more efficient in menu planning and service, and make better use of limited resources. Schools using this proposed flexibility would follow the meal pattern and dietary specifications corresponding to the majority of grades served. For example, a school with students in grades 7-9 could offer the meal pattern for grades 6-8 to all students (by adding one grade to the 6-8 meal pattern to serve students in grade 9). In this example, because the 6-8 age/grade group meal pattern may not meet the calorie needs of students in grade 9, the school would have the option of offering additional food (e.g., larger portions, additional choices) to the older students to ensure they receive age-appropriate meals. This flexibility would be available to all schools. Any SFA would be able to elect this flexibility by notifying their State agency; State agency approval would not be required.

- **Allow schools with unique grade configurations in small SFAs (i.e., SFAs serving fewer than 2,500 students) to use one or two meal patterns to plan meals for students in all grades.**

This proposed flexibility would permit schools with unique grade configurations in small SFAs to follow one or two NSLP and/or SBP meal pattern(s) to plan meals more efficiently. The Dietary Guidelines would continue to be the foundation for meal pattern requirements. This flexibility would help local Program operators maintain efficient food service operations while offering meals to schoolchildren in multiple age/grade groups.

For example, in a K-12 school in a small SFA, it may be operationally efficient for a menu planner to use the grades 6-8 meal pattern to plan meals for all students. Using a single meal

pattern may overfeed younger students and underfeed older students, therefore, schools would have the option of offering additional food (e.g., larger portions, additional choices) to older students to ensure they receive age-appropriate meals. This flexibility would only be available to schools with unique grade configurations in SFAs serving fewer than 2,500 students. SFAs that choose to exercise this flexibility would work with their State agency to identify which meal pattern(s) best balance operational ease and offering children age-appropriate meals.

The proposed age/grade group flexibilities respond to input from State and local Program operators, who shared that the current regulatory requirements do not work for the unique and varied age/grade group structure of schools across the country, especially small, often rural SFAs that adopt unique grade configurations to best serve their communities. USDA is committed to easing regulatory requirements so that local Program operators, who understand their communities' unique situations and needs, have discretion to administer the SBP and NSLP most efficiently. Any small SFA would be able to elect this flexibility by notifying their State agency; State agency approval would not be required.

What Would Stay the Same?

This proposed rule would maintain the established age/grade groups for menu planning for Program operators offering meals to students in schools with grade configurations that align with the age/grade groups established in 7 CFR 210.10(c)(1). Schools with unique grade configurations may benefit from the flexibilities described above.

Schools adopting one of the proposed flexibilities would be encouraged to offer additional foods to older children who receive meals based on meal patterns intended for younger children. For example, such schools may offer older students larger portions or additional choices to ensure their calorie and nutrient needs are met.

Specific Public Input Requested

USDA seeks public comments on:

- The benefits of each proposed age/grade group flexibility, including how the proposals may ease requirements for local Program operators;
- The drawbacks of each proposed age/grade group flexibility, including the potential of overfeeding or underfeeding children by offering meals not designed for their age/grade group; and
- The feasibility of offering additional foods or larger portions to older children when schools plan meals based on the meal pattern for younger children.

The proposed flexibilities to the established age/grade groups are in 7 CFR 210.10(c)(1) and (m)(4) and 220.8(c)(1) and (m)(2) of the regulatory text.

Increase Flexibility to Offer Meats/Meat Alternates at Breakfast

Current Requirements

Prior to the 2012 meal pattern updates, SBP operators could offer meats/meat alternates, grains, or a combination of meats/meat alternates and grains at breakfast. Regulations specified that Program operators could offer meats/meat alternates only, grains only, or a combination of the

two. Currently, meats/meat alternates are not required in the SBP meal pattern; only fruits, grains, and fluid milk are required (7 CFR 220.8(c)(2)). In the proposed rule, Nutrition Standards in the National School Lunch and School Breakfast Programs (76 FR 2494, published January 13, 2011), USDA proposed a daily meat/meat alternate requirement in the SBP. However, many school districts expressed concerns about offering a daily meat/meat alternate at breakfast due to cost, logistical and food safety challenges, and availability of meat/meat alternate products that would meet the dietary specifications for sodium and saturated fat. Prior to 2012, schools had the flexibility to offer one serving each of grains and meat/meat alternate, or two servings of either one at breakfast. Therefore, some of the longstanding SBP flexibility to offer grains and/or meats/meat alternates was retained in the final rule for operational efficiency and cost effectiveness: menu planners that offer a minimum amount of grains may offer meats/meat alternates to credit toward the grains requirements. Meats/meat alternates may also be offered in the SBP as “extra” food items that do not count toward meal pattern requirements, but are subject to dietary specifications (calories, saturated fat, trans fat, and sodium).

USDA recognizes that Program operators want to offer meals that appeal to students and encourage participation in the school meal programs. In listening sessions and roundtable discussions, Program operators expressed confusion about the requirement to offer a minimum amount of grains in order to offer meats/meat alternates.

Proposed Changes to SBP Grains Component

This rule proposes to allow schools to offer meats/meat alternates and/or grains interchangeably in the SBP, with no minimum grain requirement. It would remove the requirement to offer a

minimum amount of grains before meats/meat alternates can be offered. Instead, Program operators would be permitted to offer 1-2 ounce equivalents of grains or meats/meat alternates, or a combination of the two, daily to total a minimum of 7-9 ounce equivalents over a school week (amounts vary depending on the age/grade group).

The proposed flexibility responds to input from State and local Program operators who want to offer meats/meat alternates at breakfast without the requirement to offer a grain first. In December 2017, USDA solicited comments on the Child Nutrition Programs crediting system through a Request for Information (RFI).²² USDA sought public input about specific foods of interest to stakeholders and asked for recommendations to make crediting more simple, fair, and transparent. FNS received a total of 437 comments. Several commenters from State agencies and the food industry, asked USDA to make it easier for local Program operators to offer meats/meat alternates in the SBP. This proposal responds to those comments, and would allow menu planners to offer grains and/or meats/meat alternates in the SBP.

USDA is conscious of how complexities in meal pattern requirements are challenging for some local school food service staff, and strives to simplify Program requirements so local food service staff can focus on feeding children.

What Would Stay the Same?

²² *Food Crediting in the Child Nutrition Programs: Request for Information*. 82 FR 58792, published December 14, 2017.

Program operators would not be required to change menu planning practices. Menu planners could continue to offer grains only in the SBP, consistent with current requirements. Remaining elements of the SBP meal pattern (i.e., fruit and fluid milk requirements) would not change.

The proposed change to the SBP grains component is in 7 CFR 220.8(c) of the regulatory text.

Flexibility in SBP Fruit Component

Current Requirements

Fruit is one of three required components in the SBP meal pattern (7 CFR 220.8(c)(2)). Schools are required to offer students in all grades at least one cup of fruit per day at breakfast. Although offer versus serve (OVS) is optional in the SBP, many schools use OVS and allow students to take only ½ cup fruit at breakfast if they do not want the whole cup.²³

In addition to the traditional, cafeteria-based breakfast model, schools may operate an alternative breakfast model. For example, “Breakfast in the Classroom” involves serving the breakfast meal to children during a morning class, often while the teacher is taking attendance or giving classroom announcements. Schools operating “Grab & Go Breakfast” serve children a breakfast “to go,” often in a bag, before school or during a morning break. Alternative breakfast models give more children an opportunity to eat breakfast, ensuring they have the nutrition necessary to optimize learning and development.

²³ Offer versus serve is a provision in the NSLP and SBP that allows students to decline some of the food offered. The goals of OVS are to reduce food waste in the school meals programs while permitting students to decline foods they do not intend to eat.

SBP meals served outside the cafeteria are often pre-packaged for convenience and operational ease. Students generally have fewer choices when SBP is offered in a non-cafeteria setting and have limited opportunities to decline food items, and Program operators are required to offer students a full cup of fruit.

Proposed Flexibility in SBP Fruit Component

To help reduce food waste and encourage breakfast service outside the cafeteria, this rule proposes to allow SBP operators to offer ½ cup of fruit in reimbursable breakfasts served outside the cafeteria, with State agency approval. Consistent with the Dietary Guidelines' emphasis on fruit intake, this proposal continues to provide children with access to fruit in the SBP, while promoting operational efficiency and reducing food waste. This flexibility would make the fruit requirement for breakfasts served outside the cafeteria consistent with the minimum amount of fruit required for a reimbursable meal in schools using OVS in cafeteria settings.

When breakfast is served outside the cafeteria, food waste is a concern. Classrooms, buses, hallways, and other areas where breakfast might be offered do not have a cafeteria-like capacity to collect food waste. Pre-packaged meals often contain the required one cup of fruit. Some Program operators are concerned that one cup is too much fruit for younger students who eat less, and assert that excess fruit is ending up in the trash. Under OVS, in a cafeteria setting, students are offered one cup of fruit, but only required to take ½ cup for a federally reimbursable meal (provided that the other required meal components are included). Currently, if a school does not use OVS, students offered SBP in non-cafeteria settings must take one full cup of fruit; food that is not eaten in the time allotted is often thrown away. This may contribute to food

waste in non-cafeteria settings. In recent listening sessions and roundtable discussions about food waste, some Program operators suggested this strategy to reduce food waste: allow school breakfasts served outside the cafeteria to be reimbursed with only ½ cup of fruit offered. Wasting food is bad business for school food service operations; this proposal aims to support financial stability and help school food service operations minimize food waste.

USDA understands this change could result in a concurrent reduction in calories in the SBP meal pattern. However, USDA does not propose any changes to the average weekly minimum calorie requirements in the SBP. Schools that choose to exercise this flexibility would be encouraged to offer additional fruit to students who would like a full cup (e.g., have a basket of whole fruits available on the breakfast cart for students to take more fruit).

In addition, this flexibility may entice more schools to offer school breakfast in non-cafeteria settings. The potential increase in alternative SBP service models could result in increased participation (i.e., more students eating school breakfast and starting the school day well-nourished and ready to learn).

What Would Stay the Same?

SBP operators that offer breakfast to students in the cafeteria must continue to offer one cup of fruit to students in all age/grade groups. Schools offering the SBP outside the cafeteria may also continue to offer one cup of fruit to all age/grade groups. In all settings where breakfast is offered, students would still be required to select at least ½ cup of fruit for a reimbursable

breakfast. No additional changes to the weekly average calorie minimums are being proposed, and OVS remains an option for the SBP at all grade levels.

Specific Public Input Requested

USDA's School Nutrition and Meal Cost Study found that, overall, more than half (56 percent) of average weekly breakfast menus fell within the specified calorie range (that is, they met both the minimum and maximum calorie levels). While it was more common for average weekly breakfast menus across all school types to exceed the maximum calorie level (36 percent overall), approximately 18 percent of average weekly menus for high schools offer too few calories. USDA seeks public comments on:

- Expected benefits of permitting schools to offer ½ cup of fruit in non-cafeteria breakfasts;
- The potential of underfeeding children by offering less fruit; and
- The feasibility of offering additional foods or larger portions to older children and children who would like a full cup of fruit.

The proposed change to permit schools to serve ½ cup of fruit in breakfasts served in non-cafeteria settings is in 7 CFR 220.8(c)(2) and (m)(1) of the regulatory text.

Remove Synthetic Trans Fat Limit as a Dietary Specification

Current Requirements

Synthetic trans fats are currently prohibited in the NSLP and SBP, and in all foods sold to students on campus during the school day (7 CFR 210.10(f)(4), 220.8(f)(4), and 210.11(g),

respectively).²⁴ Since these USDA regulations were implemented, the Department of Health and Human Services' Food and Drug Administration (FDA) determined that partially hydrogenated oils -- the leading dietary source of synthetic trans fats -- are not "Generally Recognized as Safe" (or GRAS) because trans fats are associated with negative health consequences (e.g., heart disease, high cholesterol). After reviewing extensive clinical data and public comments, the FDA enacted regulations to eliminate partially hydrogenated oils from the food supply.²⁵ The FDA originally established the compliance deadline as June 18, 2018, for all products, but has extended the deadline due to the shelf life of some food products. The FDA prohibited the addition of partially hydrogenated oils to foods effective June 18, 2018; however, petitioned uses of partially hydrogenated oils were allowed to continue through June 18, 2019. Old inventory may exist in the food supply until January 1, 2021, after which synthetic trans fats will be effectively eliminated from the food supply.

Flexibilities Proposed by this Rule

Under this proposal, the current synthetic trans fats limit for SBP, NSLP, and competitive foods would be removed effective July 1, 2021. Beginning SY 2021-2022, State and local Program operators would not have to comply with, or monitor, synthetic trans fats in school meals or competitive foods.

FDA's regulations are removing synthetic trans fats from the United States food supply.

Therefore, it is unnecessary for USDA to maintain additional regulations to prohibit synthetic trans fats in school meals.

²⁴ This restriction does not apply to naturally occurring trans fats present in meat and dairy products.

²⁵ <https://www.fda.gov/food/ingredientpackaginglabeling/foodadditivesingredients/ucm449162.htm>

The proposed changes to remove the synthetic trans fat limit are in 7 CFR 210.10, 210.11, and 220.8 of the regulatory text.

Change the Performance-based Reimbursement (7 cents) Quarterly Report to an Annual Report

Current Requirement

States are currently required to submit a quarterly report to USDA detailing SFAs certified to receive the performance-based reimbursement (7 CFR 210.5(d)(2)(ii)). Currently, more than 99 percent of SFAs are certified to receive the performance-based reimbursement.²⁶ The report is no longer needed quarterly because nearly all SFAs are certified to receive the performance-based reimbursement.

As part of the recent Child Nutrition Programs Reducing Burden Study, FNS sought feedback from State and local Program operators about administrative burden. The study aimed to identify the best means of efficiently consolidating Child Nutrition Program administrative and reporting requirements, to simplify regulations, and to improve efficiencies. Reviewing and reconciling information to submit reports, and the amount/type of information required, were noted as frequent contributors to State and local reporting burden.

Flexibilities Proposed by this Rule

This rule proposes that the performance-based reimbursement quarterly reporting requirement specified in 7 CFR 210.5(d)(2)(ii) be changed to an annual reporting requirement.

²⁶ FNS administrative data, February 2019.

USDA is proposing to reduce the frequency of this reporting requirement in response to Program operator feedback. USDA seeks to ease Program requirements so State and local Program operators have more time to focus on feeding children.

The proposed change to make the performance-based reimbursement (7 cents) quarterly report an annual report is in 7 CFR 210.5(d)(2)(ii) of the regulatory text.

Update Meal Modifications for Disability and Non-Disability Reasons

Current Requirements

Schools participating in the NSLP and SBP are required to ensure that children with disabilities have an equal opportunity to participate in, and benefit from, the NSLP and SBP. Likewise, institutions, child care facilities, and adult day care facilities (“institutions and facilities”) participating in the Child and Adult Care Food Program (CACFP) must ensure equal access to Program benefits regardless of disability status. This includes providing special meals, at no extra charge, to Program participants with a disability that restricts their diet. FNS proposes several changes to regulations at 7 CFR 210.10(m) and 226.20(g) to align Program regulations with statutory requirements established in the Americans with Disabilities Act (ADA) Amendments Act of 2008, Pub. L. 110-325 (42 U.S.C. 12101).²⁷

Current regulations at 7 CFR 210.10(m) and 226.20(g) describe exceptions and variations in reimbursable meals, including exceptions due to a disability that restricts a participant’s diet. Schools, institutions, and facilities are required to make substitutions to ensure Program

²⁷ <https://www.congress.gov/110/plaws/publ325/PLAW-110publ325.pdf>

participants with disabilities have an equal opportunity to participate in, and benefit from, the Federal meal programs (7 CFR 210.10(m)(1) and 226.20(g)(1)). Current regulations require substitutions to be made only when the need for the substitution is supported by a written statement signed by a licensed physician.

Current regulations also describe “medical or other special dietary needs” that are not considered disabilities, but prevent a Program participant from consuming the regular meal. Schools, institutions, and facilities are currently allowed, but not required, to make substitutions for “medical or other special dietary needs” (7 CFR 210.10(m)(2) and 226.20(g)(2)). Current regulations require schools, institutions, and facilities to obtain a written statement signed by a recognized medical authority in order to make a substitution due to a participant’s “medical or other special dietary need,” except for fluid milk substitutions. Consistent with statute, schools, institutions, and facilities have discretion to provide fluid milk substitutions with a note from a medical authority, a note from the child’s parent or guardian, or a note by, or on behalf of, an adult participant (7 CFR 210.10(m)(2)(ii)(B) and 226.20(g)(3)). In the 2004 Child Nutrition and WIC Reauthorization Act, Congress directed FNS to establish nutrition standards for fluid milk substitutions, and required FNS to include standards for calcium, protein, vitamin A, and vitamin D. Therefore, fluid milk substitutions for “medical or other special dietary needs” must meet the nutrition standards included in FNS regulations at 7 CFR 210.10(d)(3) and 226.20(g)(3).

Additionally, current regulations encourage schools to consider “ethnic, religious, or economic” factors when planning or preparing meals, provided the variations are within the meal pattern requirements (7 CFR 210.10(m)(3)). Current regulations allow institutions and facilities, with

FNS approval, to vary meal components on an experimental or continuing basis if the variation is nutritionally sound and necessary to meet ethnic, religious, economic, or physical needs (7 CFR 226.20(h)).

According to the U.S. Census Bureau, approximately 56.7 million people in the United States had a disability in 2010.²⁸ Further, 2.8 million school-age children (ages 5 to 17) were reported to have a disability in 2010.²⁹ It is important that FNS provide up-to-date guidance so that schools, institutions, and facilities participating in the Federal meal programs understand their legal obligation to ensure Program participants with disabilities have an equal opportunity to participate in and benefit from the Federal meal programs.

To that end, FNS has developed policy guidance, consistent with applicable Federal law. On September 27, 2016, FNS issued SP 59-2016: Policy Memorandum on Modifications to Accommodate Disabilities in the School Meal Programs. In 2017, FNS issued SP 26-2017: Accommodating Disabilities in the School Meal Programs: Guidance and Questions and Answers, SP 40-2017: Accommodating Children with Disabilities in the School Meal Programs, and CACFP 14-2017: Modifications to Accommodate Disabilities in the Child and Adult Care Food Program and Summer Food Service Program. These policy resources provide detailed guidance on how the broader vision of the ADA can be implemented in Federal meal programs nationwide.

²⁸ <https://www2.census.gov/library/publications/2012/demo/p70-131.pdf>

²⁹ <https://www.census.gov/library/publications/2011/acs/acsbr10-12.html>

However, current Program regulations are not consistent with statute, as described below. FNS aims to correct this inconsistency with this proposed regulation.

Proposed Update to Disability Modifications Requirements

The basis for these changes is statutory. The ADA Amendments Act of 2008 made important changes to the meaning and interpretation of the term “disability.”

According to the ADA, the term “disability” means:

- A physical or mental impairment that substantially limits one or more major life activities;
- A record of such an impairment; and
- Being regarded as having such an impairment.

In the ADA, Congress provided a non-exhaustive list of “major life activities,” including eating and breathing. Additionally, Congress clarified that the operation of a “major bodily function” is considered a major life activity. Examples of major bodily functions include (but are not limited to) digestive, bowel, bladder, and respiratory functions.

The Department of Justice implemented the ADA Amendments Act in 2016 with the final rule, Amendment of Americans with Disabilities Act Title II and Title III Regulations to Implement ADA Amendments Act of 2008.³⁰ The final rule clarified that the terms “disability” and “substantially limits” must be construed broadly and in favor of expansive coverage. For

³⁰ https://www.ada.gov/regs2016/final_rule_adaaa.html

instance, a food allergy does not need to cause anaphylaxis to be considered a disability. A non-life threatening allergy may be considered a disability and require a meal modification, if it impacts a major bodily function or other major life activity. After the passage of the ADA Amendments Act, most physical and mental impairments are considered disabilities.

Based on this expanded definition of “disability,” this rule proposes removing the term “medical or other special dietary needs” from the regulations. “Medical or other special dietary needs” that prevent a Program participant from consuming a meal or meal component are considered a disability under this expanded definition. This rule proposes breaking the regulatory language into the following two paragraphs — “Reasonable modifications for disability requests” and “Variations for non-disability requests” — to more clearly distinguish between these two situations. The proposed “Variations for non-disability requests” paragraph includes variations for cultural, ethical, Tribal, and religious preferences.

Additionally, the Department of Justice’s final rule clarified that determining whether an individual’s impairment is a disability under the ADA should not demand extensive analysis. To that end, through policy guidance, FNS has broadened the scope of who is permitted to write a medical statement, to include State licensed healthcare professionals. In guidance, FNS has defined a State licensed healthcare professional as an individual authorized to write medical prescriptions under State law. For example, in many States, this will include licensed nurse practitioners and licensed physicians. This proposal incorporates this change into regulation, and adds a definition for “State licensed healthcare professional” at 7 CFR 210.2 and 226.2. FNS also considered accepting medical statements from other licensed professionals who are not

authorized to write medical prescriptions under State law, such as dietitians, nutritionists, psychologists, and clinical social workers. FNS aims to ensure that meal pattern exceptions are based on bona fide medical reasons. Therefore, FNS requests public comment on the proposed definition of “State licensed healthcare professional,” including if the definition should be broadened.

Through policy guidance, FNS has also clarified that a written medical statement is only required when a disability modification results in a meal that does not meet the meal pattern requirements, reducing burden on schools, institutions, facilities, and families. FNS proposes to add this clarification to the regulations.

Finally, when a disability modification is no longer needed, FNS has recommended in policy guidance that schools, institutions, and facilities obtain written documentation rescinding the original medical statement. This could include, for example, a written statement from the child’s parent or guardian indicating that the disability modification is no longer needed. To better align the non-disability fluid milk substitution regulations with disability modification regulations and current policy guidance, FNS proposes to remove language at 7 CFR 210.10(m)(2)(iii) describing the process to revoke a non-disability fluid milk substitution request. FNS expects this change will allow more flexibility for local Program operators to manage fluid milk substitution requests in a way that meets their communities’ needs and reduces burden for households.

This proposal would align USDA regulations with current law and guidance.

What Would Stay the Same?

The proposed revisions would not change the overarching requirement that schools, institutions, and facilities make reasonable modifications for Program participants with disabilities that restrict their diet. Rather, the proposed changes align FNS regulations with current statutory requirements and make a clearer distinction between disability and non-disability situations.

Schools, institutions, and facilities would still be encouraged to meet participants' dietary requests and preferences that are not considered disabilities, including those related to cultural, ethical, Tribal, or religious preferences and principles, provided the variations are within the meal pattern requirements. Because menus are planned locally, schools, institutions, and facilities have flexibility to determine which foods to serve, the number of choices (if any), and how foods are prepared. FNS strives to provide schools, institutions, and facilities the resources they need to serve culturally appropriate meals to participants. For example, FNS issued guidance in 2015 to clarify that traditional foods may be served in the Child Nutrition Programs, and provided examples of how several traditional foods (such as buffalo, blue cornmeal, and wild rice) may credit towards a reimbursable meal.³¹ FNS has also published guidance on procuring local meat, including traditional foods like bison and venison, for use in the Child Nutrition Programs.³² The proposed changes to the terminology in this section seeks to align with reasons that variations may be requested for participant meals (e.g., an ethical preference for vegetarian meals).

³¹ Policy memo TA 01-2015. Child Nutrition Programs and Traditional Foods, published July 15, 2015. Available at: https://fns.usda.gov/sites/default/files/TA01-2015_Child_Nutrition_Programs_and_Traditional_Foods.pdf

³² Policy memo SP 01-2016. Procuring Local Meat, Poultry, Game, and Eggs for Child Nutrition Programs, published October 22, 2015. Available at: https://fns.usda.gov/sites/default/files/cn/SP01_CACFP%2001_SFSP01-2016os.pdf.

Finally, the proposed regulations maintain several requirements regarding fluid milk substitutions for non-disability reasons. This is due to specific statutory requirements included in the NSLA. The proposed regulation maintains the option for schools, institutions, and facilities to provide fluid milk substitutions for non-disability reasons, and continues to allow SFAs, institutions, and facilities to select nondairy beverage(s) that meet FNS nutrition standards. For schools that opt to provide fluid milk substitutions, the proposed regulation maintains the requirement that they obtain a written request from a parent or guardian, or by, or on behalf of, an adult participant to support a request for a fluid milk substitution in a non-disability situation. Also, as required by statute, the proposed regulations maintain the requirement that SFAs notify the State agency if any of their schools choose to offer fluid milk substitutions for non-disability reasons. Finally, the proposed regulation maintains the nutrition standards for fluid milk substitutions.

Specific Public Input Requested

USDA is seeking public comment on the following questions:

- Is it too burdensome to require a note from a State licensed healthcare professional for meal modifications that do not meet the meal pattern requirements?
- Would a different definition for State licensed healthcare professional better facilitate reasonable meal modifications for individuals with disabilities?
 - If so, which additional healthcare professionals (e.g., licensed dietitians, nutritionists, psychologists, and clinical social workers) should be allowed to write a note to support meal modifications that do not meet the meal pattern requirements?

The proposed updates to regulatory language for meal modifications for disability and non-disability requests are in 7 CFR 210.2, 210.10(d)(3) and (m), 226.2, and 226.20(g) of the regulatory text.

Expand Potable Water Requirement to Include Calorie-Free, Noncarbonated, Naturally Flavored Water

Current Requirements

Section 201 of HHFKA amended section 9(a) of the NSLA (42 U.S.C. 1758(a)), to require that schools participating in the SBP and NSLP make potable water available and accessible without restriction to children at no charge in the place(s) where meals are served during the meal service. FNS originally required unflavored water.³³ However, since implementation, the availability of calorie-free, noncarbonated, naturally flavored water has grown in response to consumer interest in healthy beverage options. Local Program operators requested flexibility to offer naturally flavored water (e.g., water infused with fruit) to meet the potable water requirement. Offering naturally flavored water is expected to make water more appealing to children, thereby increasing water consumption.

Proposed Update to Potable Water Requirements

This rule proposes to expand the potable water requirement to permit schools to offer calorie-free, naturally flavored, noncarbonated water. Flavoring added to water would be required to

³³ Policy memo SP 28-2011. Child Nutrition Reauthorization 2010: Water Availability During National School Lunch Program Meal Service, published July 15, 2015. Available at: <https://www.fns.usda.gov/water-availability-during-nslp-meal-service>.

meet the FDA’s definition of “natural flavor or natural flavoring” described at 21 CFR 501.22(a)(3).

What Would Stay the Same?

Schools may continue to meet the potable water requirement by making unflavored, potable water available and accessible without restriction to children at no charge in the place(s) where meals are served during the meal service.

Proposals to Simplify Competitive Foods

Extend the Entrée Exemption Timeframe

Current Requirements

In an effort to create healthy school nutrition environments, regulations at 7 CFR 210.11(c)(3) established nutrition standards for foods sold to students outside of school meals, on the school campus during the school day. Such foods, commonly referred to as competitive foods, may be available to students in the cafeteria, vending machines, school stores, or other campus locations. The competitive food standards establish nutrition requirements that each individual food item sold on the school campus during the school day must meet. The competitive food standards also include nutrition requirements for entrées sold à la carte.

For a unitized reimbursable Program meal, USDA meal patterns establish daily and weekly nutrition standards that provide age-appropriate, nutritionally balanced portions to children.

Entrées offered as part of a reimbursable meal also may be sold à la carte as a competitive food to students. While an entrée item could fit into the weekly Program meal pattern standards as part of a unitized, reimbursable meal, that same entrée item may not comply with the competitive food standards, which are designed to apply to individual food items.

Recognizing that foods in school meals are typically healthier due to the meal pattern standards, USDA provided schools with the flexibility to sell SBP and NSLP entrée items as à la carte foods exempt from the competitive food standards on the day the entrée is offered on the SBP or NSLP menu, and on the next school day (e.g., students can buy a piece of pizza separately on the day the pizza is also served as part of the unitized school lunch, and the day after). This flexibility was particularly designed to account for leftovers and reduce food waste (7 CFR 210.11(c)(3)(i)).

Program operators are responsible for procuring foods to offer in the Child Nutrition Programs. When standards differ – as in the case of school meals and competitive foods – Program operators may have to procure multiple types of food. For example, one pizza may meet the unitized school meal standards, while a different pizza meets competitive food standards and can be sold à la carte.

Program operators are also concerned about food waste. Local Program operators appreciated the current flexibility, and suggested that exempting SBP and NSLP entrées from competitive food standards for an additional school day would further reduce waste by allowing additional time to sell leftovers.

Therefore, in response to Program operator concerns, this rule proposes to ease requirements and exempt SBP and NSLP entrées from the competitive food nutrition standards for one additional school day. It is proposed that SBP and NSLP entrées be exempt from the competitive food standards on the day the entrée is offered on the SBP and NSLP menu, and for two school days after.

The proposed change to extend the entrée exemption is in 7 CFR 210.11(c)(3) of the regulatory text.

Specific Public Input Requested

As previously discussed, only entrées are exempt from the competitive food standards on the day such an entrée is offered in the school meal programs and the day after. This rule proposes to add an extra day to the entrée sale exemption. Side dishes offered as part of the SBP and NSLP reimbursable meal are not exempt from the competitive food nutrition standards. Further, USDA is taking this opportunity to solicit public input as to whether or not to extend the competitive food entrée exemption to all food items offered in SBP and NSLP reimbursable meals.

As background information, the proposed rule, 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 (78 FR 9530, February 8, 2013) provided two alternatives by which any menu item (both entrées and side dishes) provided as part of the NSLP

and/or SBP school meal would be exempt from all or some of the competitive food nutrition standards.

In an attempt to balance the majority of commenters' opposition to allowing exemptions for any SBP/NSLP menu items, the interim final rule (78 FR 39068, June 28, 2013), established that, to ensure that improvements from the updated school meal standards were not undermined and for ease of implementation, entrée items were provided an exemption, but side dishes were not. This was implemented to ensure the nutritional integrity of the meal programs as well as the competitive food standards. The approach adopted in the interim final rule and the subsequent final rule (81 FR 50151, July 29, 2016) was intended to ensure that students are provided healthful school meals, while allowing Program operators flexibility in planning à la carte sales and handling leftovers. However, given the fact that implementation of the competitive food nutrition standards has been in place for a period of time, the Department is interested in receiving feedback as to whether or not exemptions to the competitive food standards should be extended to all menu items offered in the SBP and NSLP.

Additionally, USDA is seeking specific public input on grain products and the definition of entrée. Current Program requirements specify that entrées that include grains and are sold à la carte must be whole grain-rich or have a whole grain as the first ingredient. This requirement is inconsistent with the updated whole grain-rich requirements in the SBP and the NSLP.

Therefore, USDA is seeking public comment to determine if the whole grain-rich/whole grain as a first ingredient requirement should be removed from the definition of "Entrée" included in 7 CFR 210.11(a)(3)(i). This change would make the grain requirement for entrées consistent

between school meals and entrées sold à la carte as competitive foods. USDA seeks comments on whether or not this definition change is necessary, particularly in light of the proposed extension of the competitive food exemption for Program entrées. Based on public input and at the Secretary's discretion, USDA may implement and/or modify the proposed operational flexibility in a final rule.

Expand Flexibility for the Sale of Calorie-Free, Naturally Flavored Waters during the School Day to all Age/Grade Groups

Current Requirement

Calorie-free, naturally flavored waters (with or without carbonation) may be sold to students in grades 9-12 only (7 CFR 210.11(m)). Calorie-free/low calorie, non-naturally flavored, carbonated beverages (i.e., diet soft drinks) may be sold only to high school students.

Program stakeholders expressed interest in having calorie-free, naturally flavored water — a healthy beverage choice — available to middle and elementary school students.

Flexibilities Proposed by this Rule

This rule proposes to allow local Program operators to sell calorie-free, naturally flavored waters (with or without carbonation), in portions up to 20 ounces, to students in all age/grade groups.

This proposal would expand the current policy for grades 9-12 to all grades.

Local Program operators seek healthy foods and beverages that appeal to students who want to purchase only certain items, and not an entire school lunch. Sales from à la carte foods and

beverages help support the financial viability of non-profit SFAs. Expanding the sale of calorie-free, naturally flavored waters to all students increases healthy choices available to students without compromising nutritional integrity. Increased water consumption may also offset the consumption of other, higher-calorie beverages. This proposal seeks to ease Program requirements, permitting local Program operators to decide if (and to whom) they would like to sell naturally flavored, carbonated or noncarbonated water.

What Would Stay the Same?

This beverage flexibility does not expand requirements for no/low calorie, non-naturally flavored, carbonated beverages (i.e., diet soft drinks). The existing policy related to diet soft drinks would stay the same: diet soft drinks may be sold only to high school students.

The proposed change to expand the sale of calorie-free, naturally flavored waters to all age/grade groups is in 7 CFR 210.11(l) of the regulatory text.

Clarifications, Updates, and Technical Corrections

Add Flexibility to State Administrative Expense (SAE) Funds

This rule proposes to update language at 7 CFR 235.5(e)(2) to change the word “unexpended” to “unobligated.” States are currently required to return to USDA any unexpended SAE funds at the end of the fiscal year following the fiscal year for which the funds are awarded. This proposal would give States more flexibility to spend SAE funds.

Correct NSLP Afterschool Snack Eligibility Erroneous Citations & Definition

This rule proposes to correct erroneous citations and a definition related to the NSLP Afterschool Snack Service. Regulations at 7 CFR 210.4(b)(3), 210.7(e), and 210.9(c) refer to 7 CFR 210.10(n)(1) in error when referring to NSLP Afterschool Snacks site eligibility. The citation would be corrected to refer to 7 CFR 210.10(o)(1). This rule would provide a technical correction to those three incorrect citation references, remove old citations, and redesignate certain paragraphs.

There is also an error in the definition of “child” in 7 CFR 210.2 that this rule proposes to correct. The NSLA permits children through age 18 to receive reimbursable snacks via the NSLP Afterschool Snack Service. The current regulatory definition of “child” in 7 CFR 210.2 restricts snacks to children 12 years of age or under, or in the case of children of migrant workers and children with disabilities, not more than 15 years of age. This rule proposes to modify the definition of “child” to be consistent with the NSLA and clarify that children, through age 18, are eligible to receive snacks via the NSLP Afterschool Snack Service.

Expand List of Outlying Areas

Regulations at 7 CFR 210.10(c)(3) and 220.8(c)(3) permit 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. These vegetables are traditional foods and, in outlying areas, may be easier to procure than grains. Based on their use of traditional foods, this rule proposes adding Guam and Hawaii to the list of outlying areas permitted to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains component.

Change Vitamin A and Vitamin D Units for Fluid Milk Substitutions

Nutrition requirements for fluid milk substitutes are detailed in 7 CFR 210.10(d)(3), 215.7a(b), and 226.20(g)(3). The vitamin A and vitamin D requirements are specified in International Units (IUs). The FDA published a final rule that changed the labeling requirements for vitamins A and D to micrograms (mcg) rather than IUs.³⁴ As a conforming amendment, this rule proposes to change the units for vitamin A and vitamin D requirements for fluid milk substitutes. The units for the vitamin A requirement would change from 500 IUs to 150 mcg per 8 fluid ounces. The units for the vitamin D requirement would change from 100 IUs to 2.5 mcg per 8 fluid ounces. The amounts of required vitamins A and D in fluid milk substitutes would not change; only the unit of measurement would change to conform to FDA labeling requirements.

Seeking Public Input on Specific Items

This rule does not propose changes to the following items, but USDA is seeking public input to inform future policymaking. Based on public input and at the Secretary's discretion, USDA may incorporate these items, as described or modified based on public comment, in the final rule.

Substituting Vegetables for Fruits in the SBP

SFAs participating in the SBP are required to offer one cup of fruit daily to children in all age/grade groups (7 CFR 220.8(c)). To meet this requirement, SFAs may offer a vegetable in place of a fruit. Under current regulations, SFAs choosing to offer a vegetable in place of a fruit at breakfast must ensure that at least two cups per week are from the dark green, red/orange,

³⁴ Final rule. Food Labeling: Revision of the Nutrition and Supplement Facts Labels (81 FR 33742, published May 27, 2016). Available at: <https://www.govinfo.gov/content/pkg/FR-2016-05-27/pdf/2016-11867.pdf>

legumes, or “other” vegetables subgroups (7 CFR 220.8(c), footnote (c)). This substitution requirement increases children’s access to key food groups recommended by the Dietary Guidelines.

Section 768 of the Consolidated Appropriations Act, 2019 (Pub. L. 116-6), enacted on February 15, 2019, and effective through September 30, 2019, provided additional flexibility in planning breakfast menus but did not require SFAs to make any menu changes. Through September 30, 2019, SFAs participating in the SBP could credit any vegetable offered, including potatoes and other starchy vegetables, in place of fruit without including vegetables from the designated subgroups in the weekly menus. Section 749 of H.R. 1865, The Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94), enacted December 20, 2019, extends this flexibility through June 30, 2021. USDA seeks public comments on making this flexibility permanent.

Competitive Foods: Definition of Entrée and Expanding Entrée Exemption to All SBP/NSLP Foods

As described earlier, USDA is soliciting public input on whether the whole grain-rich/whole grain as a first ingredient requirement should be removed from the definition of “Entrée” included in 7 CFR 210.11(a)(3)(i), and whether or not to extend the competitive food entrée exemption to all food items offered in SBP and NSLP reimbursable meals.

Transparency for Administrative Review Results

Section 22(b)(1)(C)(iii) of the NSLA directs USDA to ensure that State agencies report the final results of administrative reviews to the public in an accessible, easily understood manner. To

satisfy this statutory requirement, State agencies must post a summary of the most recent administrative review results for each SFA on the State agency's public web site, and make a copy of the final administrative review report available to the public upon request. The summary must be posted no later than 30 days after the State agency provides the results of the administrative review to the SFA (7 CFR 210.18(m)). While SFAs may have outstanding findings, the intent of the law is to provide information on the SFA's review to the public, including parents and community members, regardless of whether there are areas of noncompliance or needed improvements still pending.

USDA has received feedback from State agencies that the required summary content and the 30-day posting requirement are challenging. USDA has specified minimum reporting requirements (the summary must cover meal access and reimbursement, meal patterns and nutritional quality of school meals, and the school nutrition environment), which limit the reporting burden on State agencies but still provide robust information to the public in areas of common interest. State agencies have discretion to provide additional summary information, including commendations for work well done in any area of the review. Some States have found posting the review summary to be too burdensome and noted that 30 days is not enough time. While USDA considered other timeframes, 30 days seemed to be a reasonable amount of time to post a summary of an already completed review.

The Department is seeking comments to simplify the transparency requirement, including the process of posting a summary of the Administrative Review report, the content of that summary, and the 30-day timeline. USDA is seeking comments to consider how to address any challenges

or unintended burden in this requirement. In addition, the Department would like to know what resources or updated guidance would be helpful, if any, to help State agencies satisfy this important requirement that helps the public engage with Programs supported by Federal tax payer dollars.

Grain-based Desserts in the Child and Adult Care Food Program

Under current regulations, grain-based desserts do not count toward the grains requirement in the Child and Adult Care Food Program (CACFP) (7 CFR 226.20(a)(4)(iii)). In 2015, USDA issued a proposed rule to update the CACFP meal patterns that excluded grain-based desserts from crediting toward the grains requirement (80 FR 2037, published January 15, 2015). A majority of commenters supported the exclusion, and the final rule adopted the proposal (81 FR 24348, published April 25, 2016). Since implementation of the final rule, USDA issued two requests for information soliciting ideas from the public on (1) how to make Child Nutrition Program food crediting more simple, fair, and transparent;³⁵ and (2) how USDA can provide better customer service and remove unintended barriers to Program participation.³⁶ In response, commenters expressed a need for increased flexibility for local Program operators to plan wholesome menus that entice children to participate and also stated a desire for more consistency across Child Nutrition Program requirements. Commenters also mentioned the importance of balancing nutrition standards and children's taste preferences. Some commenters expressed a desire to serve grain-based desserts in the CACFP, which would offer menu planners an additional opportunity to incorporate whole grains into foods that children like to eat. Based on this

³⁵ Food Crediting in the Child Nutrition Programs: Request for Information. 82 FR 58792, published December 14, 2017.

³⁶ Identifying Regulatory Reform Initiatives: Request for Information. 82 FR 32649, published July 17, 2017.

stakeholder feedback and in its continued commitment to customer service, USDA seeks comments on:

- Allowing up to 2 ounce equivalents (oz. eq.) of grain-based desserts per week in the CACFP (consistent with requirements in SBP and NSLP); and/or
- Other approaches that would permit grain-based desserts to credit toward the grains requirement in CACFP and support healthy nutrition standards.

Summary of Flexibilities and Changes Proposed by this Rule

In summary, the changes and flexibilities proposed in this rule are the following:

Area	Program	Current Requirement	Proposed Rule	Regulations Impacted
Proposals to Simplify Monitoring				
Establish 5-year Administrative Review Cycle & Targeted, Follow-up Reviews of High-Risk SFAs	SBP, NSLP	All SFAs are reviewed on a 3-year cycle.	State agencies would be required to review SFAs once every 5 years, with high-risk SFAs receiving additional oversight.	7 CFR 210.18(c)
Align Administrative Review and Food Service Management Company Review Cycles	SBP, NSLP	SFAs operating with a food service management company must be reviewed once every 3 years.	State agencies would be required to review SFAs operating with a food service management company once every 5 years.	7 CFR 210.19(a)(5)
Address Significant Performance Standard 1 Noncompliance Early in Review Cycle	SBP, NSLP	SFAs with significant performance standard 2 noncompliance must be reviewed earlier	SFAs with significant performance standard 1 and/or performance standard 2 noncompliance	7 CFR 210.18(e)(5)

		in the administrative review cycle.	would be reviewed earlier in the administrative review cycle.	
Allow Expanded Use of Third-Party Audits	SBP, NSLP	State agencies may use recent and currently applicable findings from federally required audit activity or from any State-imposed audit requirements.	State agencies also would be allowed to use recent and applicable findings from supplementary audit activities, requirements added to Federal or State audits by local operators, or other third-party audits initiated by SFAs or other local entities.	7 CFR 210.18(f)(3)
Allow Completion of Review Requirements Outside of the Administrative Review	SBP, NSLP, SMP, FFVP ³⁷	State agencies cannot satisfy administrative review requirements by conducting monitoring and oversight activities outside of the formal administrative review process.	State agencies would be allowed to satisfy sections of the administrative review through equivalent State monitoring or oversight activities conducted outside of the established administrative review process.	7 CFR 210.18(f), (g), and (h)
Provide Incentives to Invest in Integrity-Focused Process Improvements	SBP, NSLP	State agencies conduct administrative reviews to monitor compliance with Program requirements.	Proposes a framework for waiving or bypassing certain administrative review requirements for State and/or local agencies that	7 CFR 210.18(f), (g), and (h)

³⁷ SMP = Special Milk Program, FFVP = Fresh Fruit and Vegetable Program

			implement FNS-specified process improvements.	
Omit the On-Site Breakfast Review in Extenuating Circumstances	SBP	State agencies must conduct on-site SBP reviews of half of review sites that operate SBP.	State agencies would be allowed to omit the on-site SBP review in extenuating circumstances.	7 CFR 210.18(g)(1)(ii) 7 CFR 210.18(g)(2)(i)(B)
Add Flexibility to Completion of the Resource Management Module	SBP, NSLP	State agencies must conduct an off-site assessment of an SFA's financial practices before the review of Resource Management requirements.	State agencies would be allowed to assess an SFA's risk for noncompliance in Resource Management areas at any point in the review process.	7 CFR 210.18(h)(1)
Set Consistent Fiscal Action for Repeated Meal Pattern Violations	SBP, NSLP	State agencies <u>must</u> take fiscal action for repeated violations for milk type and vegetable subgroups.	Proposal would allow State agencies <u>discretion</u> to take fiscal action for repeated violations for milk type and vegetable subgroups.	7 CFR 210.18(l)(2)
Add Buy American to the General Areas of the Administrative Review	SBP, NSLP	State agencies conduct an on-site review of food components to check compliance with Buy American provision, as specified in guidance, but not in regulations.	Proposal would add Buy American on-site compliance check to the regulations under general areas of the administrative review.	7 CFR 210.18(h)(2)

Proposals to Simplify Meal Service				
Facilitate the Service of Vegetable Subgroups in the NSLP	NSLP	SFAs must offer different amounts of five vegetable subgroups identified in the Dietary Guidelines over the school week (Dark Green, Red/Orange, Legumes, Starchy, and Other).	Proposal would allow SFAs to offer the same amount of vegetables from all five subgroups to all age/grade groups. It would also allow legumes offered as a meat alternate to count toward the weekly legumes vegetable requirement.	7 CFR 210.10(c)(2)(iii) 7 CFR 210.10(m)(4)(ii)
Add Flexibility to Established Age/Grade Groups	SBP, NSLP	Schools are required to offer meals that meet requirements established for three established age/grade groups (K-5, 6-8, 9-12).	Proposal would allow schools with unique grade configurations to add or subtract a grade on either or both ends of an established age/grade group. Also, schools with unique grade configurations in SFAs with fewer than 2,500 students would have the option to use one (or two) meal patterns for established age/grade groups for all students.	7 CFR 210.10(c)(1) 7 CFR 210.10(m)(4) 7 CFR 220.8(c)(1) 7 CFR 220.8(m)(2)
Increase Flexibility to Offer Meats/Meat Alternates at Breakfast	SBP	Schools may offer meats/meat alternates at breakfast after the minimum daily grains requirement is	Proposal would allow schools to offer a meat/meat alternate or a grain at breakfast (or a combination of the two) with no daily	7 CFR 220.8(c)(2)

		offered.	minimum grain requirement.	
Flexibility in SBP Fruit Component	SBP	Schools must offer 1 cup of fruit per day and 5 cups of fruit per week. Students may select ½ cup of fruit for a reimbursable meal under Offer versus Serve (OVS).	With State agency approval, schools serving SBP in a non-cafeteria setting would be allowed to offer ½ cup fruit per day (2½ cups per week) as part of reimbursable breakfasts.	7 CFR 220.8(c)(2) 7 CFR 220.8(m)(1)
Remove <u>Trans</u> Fat Limit as a Dietary Specification	SBP, NSLP, Competitive Foods	<i>Trans</i> fats are prohibited in NSLP, SBP, and competitive foods.	Proposal would remove USDA’s <i>trans</i> fat prohibition effective July 1, 2021. The Food & Drug Administration is removing <i>trans</i> fats from the food supply.	7 CFR 210.10(f)(4) 7 CFR 210.11(g) 7 CFR 220.8(f)(4)
Change Performance-based Reimbursement (7 cents) Quarterly Report to an Annual Report	NSLP	States are required to submit a quarterly report detailing the SFAs to receive the performance-based 7 cents reimbursement.	Proposal would reduce the frequency of the performance-based report from quarterly to annually.	7 CFR 210.5(d)(2)(ii)
Update Meal Modifications for Disability and Non-Disability Reasons	SBP, NSLP, CACFP	Schools, institutions, and facilities are required to obtain a written statement from a licensed physician to make meal substitutions for a child’s	Proposal would: Remove the term “special dietary needs,” which is encompassed in the expanded definition of “disability.” Add a definition	7 CFR 210.2 7 CFR 210.10(d)(3) 7 CFR 210.10(m) 7 CFR 226.2 7 CFR 226.20(g)

		disability.	for “State licensed healthcare professional.” Clarify that a medical statement is only required for accommodations that fall outside the meal patterns.	
Expand Potable Water Requirement to Include Calorie-free, Noncarbonated, Naturally Flavored Water	SBP, NSLP	Schools are required to make unflavored, potable water available and accessible without restriction to children at no charge in the place(s) where lunches are served during the meal service.	Proposal would permit schools to offer naturally flavored water to meet the potable water requirement.	7 CFR 210.10(a)(1)(i) 7 CFR 220.8(a)(1)
Proposals to Simplify Competitive Foods				
Extend the Entrée Exemption Timeframe	Competitive Foods	Currently, an entrée is exempt from competitive food standards the day offered on the NSLP and SBP menu and the day after.	Would exempt entrées from standards the day offered on the SBP and NSLP menu and for two days after.	7 CFR 210.11(c)(3)
Expand Flexibility for the Sale of Calorie-Free, Naturally Flavored Waters During the School Day to	Competitive Foods	Calorie-free, flavored waters, with or without carbonation may be sold to students in grades 9-12.	Proposal would allow the sale of calorie-free, flavored waters, with or without carbonation to students in all	7 CFR 210.11(l)

All Age/Grade Groups			grades.	
Clarifications, Updates, & Technical Corrections				
Add Flexibility to State Administrative Expense (SAE) Funds	SBP, NSLP, SMP, CACFP, SFSP ³⁸	States are required to return any unexpended SAE funds at the end of the fiscal year following the fiscal year for which the funds are awarded.	Changes “unexpended” to “unobligated” to allow States more flexibility to spend SAE funds.	7 CFR 235.5(e)(2)
Correct NSLP Afterschool Snack Eligibility Erroneous Citations & Definition of “child”	NSLP	7 CFR 210 contains erroneous citations related to NSLP Afterschool Snack site eligibility. Definition of “child” is outdated.	Corrects erroneous citations and definition.	7 CFR 210.2 7 CFR 210.4(b)(3) 7 CFR 210.7(e) 7 CFR 210.9(c)
Expand List of Outlying Areas	SBP, NSLP	Certain outlying areas are permitted to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains component.	Adds Guam and Hawaii to the list of outlying areas permitted to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains component.	7 CFR 210.10(c)(3) 7 CFR 220.8(c)(3)
Change Vitamin A and Vitamin D Units for Fluid Milk Substitutions	SBP, NSLP, SMP, CACFP	Fluid milk substitutes must contain at least 500 International Units (IUs) of vitamin A and 100 IUs of vitamin D per 8	The required levels of vitamin A and D are unchanged. Consistent with FDA labeling changes for vitamins A and D, the proposal	7 CFR 210.10(d)(3) 7 CFR 215.7a(b) 7 CFR 226.20(g)(3)

³⁸ SMP = Special Milk Program; CACFP = Child and Adult Care Food Program; SFSP = Summer Food Service Program

		fluid ounces.	would change the units of the vitamin A and vitamin D requirements for fluid milk substitutes to 150 mcg and 2.5 mcg, respectively, per 8 fluid ounces.	
Seeking Public Input on Specific Items (no changes proposed)				
Substituting Vegetables for Fruits at Breakfast	SBP	SFAs choosing to offer a vegetable in place of a fruit must ensure that at least two cups per week are from the dark green, red/orange, legumes, or “other vegetables” subgroups. ³⁹	Proposal requests public comments on whether or not to permanently allow SFAs to credit any vegetable offered, including potatoes and other starchy vegetables, in place of fruit without including vegetables from the designated subgroups in the weekly menus.	7 CFR 220.8(c)
Definition of Entrée and Expanding Entrée Exemption to All SBP/NSLP Foods	Competitive Foods	Entrees are required to be whole grain-rich. Entrees are exempt from competitive foods standards on the day offered on the SBP/NSLP menu and one day after.	Proposal requests public comments on whether the whole grain-rich/whole grain as a first ingredient requirement should be removed from the definition of “Entrée” included in 7 CFR 210.11(a)(3)(i),	7 CFR 210.11(a)(3) 7 CFR 210.11(c)(3)

³⁹ Through September 30, 2019, the Consolidated Appropriations Act, 2019 (Pub. L. 116-6) permitted any vegetable offered, including potatoes and other starchy vegetables, to credit in place of fruit without including vegetables from the designated subgroups in the weekly menus. The Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94), enacted December 20, 2019, extends this flexibility through June 30, 2021.

			and whether or not to extend the competitive food entrée exemption to all food items offered in SBP and NSLP reimbursable meals.	
Transparency for Administrative Review Results	SBP, NSLP	State agencies must report the final results of an administrative review to the public (in an accessible, easily understood manner) no later than 30 days after the State agency provides the results to the SFA.	Proposal requests public comments on how to simplify this transparency requirement, including the process of posting results, the summary content, and the 30 day timeframe.	7 CFR 210.18(m)
Grain-based Desserts in the Child and Adult Care Food Program	CACFP	Grain-based desserts do not count toward the Grains requirement.	Proposal requests comments on permitting grain-based desserts: up to 2 oz. eq. per week (same as SBP and NSLP) or other approaches.	7 CFR 226.20

IV. Timeline and Instructions to Commenters

Comments from State agencies, local Program operators, food industry, nutrition advocates, parents, and other stakeholders on the day-to-day impact of these proposals will be extremely

helpful in the development of a final rule. USDA will carefully consider all relevant comments submitted during the 60-day comment period for this rule, and intends to issue a final rule promptly.

Procedural Matters

Economic Summary

Executive Order 12866 and 13563

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, reducing costs, harmonizing rules, and promoting flexibility.

This proposed rule is significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866. This rule proposes a number of changes to simplify the monitoring and meal service requirements for the National School Lunch Program, School Breakfast Program, and Child and Adult Care Food Program. The proposed changes are a direct result of operator feedback, and intend to provide State and local Program operators necessary flexibilities to ensure they can operate the programs effectively and efficiently.

While there are a number of proposed changes in this rule, the increase in administrative review cycle length from reviewing all SFAs once every 3 years to once every 5 years and a reduction in

the frequency of the reporting performance-based certification requirement impact burden hours and result in minimal administrative savings. Existing NSLP requirements for recordkeeping and reporting do not reflect the current 3-year administrative cycle or the reporting requirement for the performance-based reporting. These errors will be corrected during the scheduled renewal process in fall 2019. The reduction in burden hours in this rule are based on the estimated corrected hours. This rule is estimated to reduce school meal administrative burden by 171,372 hours, which is \$11.4 million in annualized savings at a 7 percent discount rate, discounted to a 2016 equivalent, over a perpetual time horizon.

The proposed rule includes a detailed table that lists each change. This economic summary follows the order of this table to discuss each proposed change.

Proposals to Simplify Monitoring Requirements

USDA published a final rule in 2012 to establish a 3-year monitoring cycle for SFAs. This rule merged the prior requirements to conduct a Coordinated Review Effort on a 5-year cycle and the School Meals Initiative, a nutritional assessment of meals, on a separate 3-year cycle. USDA published regulations in 2016 that created the administrative review, which is a unified review process that includes both the operational and nutritional assessment in one process that follows a 3-year review cycle. Increasing the review frequency -- from once every 5 years to once every 3 years -- along with the introduction of a more comprehensive and unified review resulted in a number of challenges. Some State agencies had difficulty completing the new administrative review process within the 3-year cycle, while also providing technical assistance and maintaining effective and efficient program operations. Some State agencies needed to hire additional staff to

complete reviews more frequently; however, not all State agencies could do this due to financial constraints.

These challenges and resource constraints resulted in USDA allowing State agencies to submit waiver requests to extend the administrative review cycle to 4 or 5 years instead of 3 years. The changes proposed in this rule are to alleviate monitoring burden to State and local Program operators. The changes are intended to streamline the review process and target limited resources toward SFAs most at-risk for noncompliance. This proposed rule responds to on-going concerns from Program operators who are challenged to fulfill oversight responsibilities. Some of these changes are estimated to have minimal impact on burden and the associated administrative costs for completing program monitoring requirements.

5-year Administrative Review Cycle and Targeted, Follow-up Reviews for High-Risk SFAs

The transition from a 5-year cycle to a 3-year cycle for the administrative review process resulted in some State agencies and SFAs struggling to complete reviews and oversight activities. USDA has received feedback through a number of avenues regarding the difficulties faced by State agencies. The Child Nutrition Burden Study was conducted in SY 2017-2018 in response to a Congressional mandate in House Report 114-531 to identify areas to reduce burden in the Child Nutrition Programs. This study collected data through workgroups with State and local Program operators, as well as a survey from a census of all State agencies and a nationally representative sample of SFAs. One reoccurring theme in this study, from both the State agency and SFA perspectives, was the burden associated with the 3-year administrative review cycle. To comply with the 3-year administrative review requirements, some State agencies and SFAs were

sacrificing staff resources needed for program administration, including providing technical assistance. State agencies face a number of time and resource constraints, and Program operators struggled to adopt the new procedures and timeframes.

According to the Child Nutrition Burden Study results, both State agencies and SFAs reported administrative reviews to be time-consuming and resource intensive. The top factors cited by State agency respondents as contributing to administrative review efforts were the amount of information required (77 percent) and preparation time (73 percent). About two-thirds of State agency respondents identified the frequency of administrative reviews and staff availability as key contributors to the effort needed to conduct administrative reviews. Time and resource constraints disproportionately affected smaller State agencies as they were nearly twice as likely to cite staff availability to participate in administrative reviews as a burden factor, compared to the very large States. Both State respondents and SFA workgroup participants noted that they had to hire extra staff to prepare for and conduct administrative reviews. One of 10 key considerations in the report is to implement a risk-based administrative review process where low-risk SFAs are reviewed less frequently than high-risk SFAs.⁴⁰

This proposed rule would provide State agencies with the ability to conduct a comprehensive NSLP and SBP review of each SFA at least once during a 5-year cycle, instead of once during a 3-year cycle. State agencies would be required to identify high-risk SFAs for additional oversight. SFAs designated as high-risk must receive a follow-up review within two years of being identified as high-risk. State agencies may still opt to review SFAs more frequently.

⁴⁰ <https://fns-prod.azureedge.net/sites/default/files/resource-files/CN-Reducing%20Burden.pdf>

Determining the high-risk designation is still under consideration but USDA anticipates factoring in prior administrative review findings, operational history of SFA (to include staff experience), and SFA characteristics such as funding level, type of meal counting and claiming system, and point-of-service system.

The follow-up review process proposed in this rule is not new to Child Nutrition Program monitoring. Prior to the implementation of the current administrative review process, the Coordinated Review Effort included follow-up reviews. The Coordinated Review Effort procedures required States to conduct follow-up reviews of all large, and at least 25 percent of all small, SFAs when certain review thresholds were exceeded. State agencies were encouraged to conduct the follow-up review in the same school year as the coordinated review.

While similar in structure, the proposed addition of follow-up reviews in high-risk SFAs would likely be different from follow-up reviews in the prior Coordinate Review Effort. The administrative review process is now a more comprehensive review, and the high-risk criteria and follow-up reviews will likely differ in selection and scope from the Coordinated Review Effort.

It is important to assess the impact of returning to a 5-year cycle. Fewer SFAs would be reviewed each year, resulting in the potential for program error to continue for longer. Table 1 shows the projected number of annual reviews that would be conducted using a 5-year cycle and the number of annual reviews that would be conducted using a 3-year cycle. It also provides the number of actual reviews conducted in SY 2016-2017⁴¹ when 48 States were on a 3-year cycle.

⁴¹ This is the first complete year of administrative data USDA collected on the administrative review process. States' report data lagged one year, meaning review results for SY 2016-2017 were reported in SY 2017-2018.

Six States were on either a 4 or 5-year cycle (due to receiving a waiver to extend the review cycle) in SY 2016-2017.

Table 1: Number of Annual Reviews Conducted			
Total Number of SFAs in SY 2016-2017	Number of SFAs Reviewed During 5-Year Cycle	Number of SFAs Reviewed During 3-Year Cycle	Number of SFAs Reviewed SY 2016-2017
19,240	3,848	6,413	5,537

If all State agencies use a 5-year cycle, and conduct an equal number of reviews each year, approximately 40 percent (or 2,565) fewer SFAs would be reviewed each year (compared to a 3-year cycle). In SY 2016-2017 due to the review cycle flexibilities (that currently remain in effect), 5,537 SFAs were actually reviewed. This is 876 fewer reviewed SFAs than the expected 6,413 SFAs receiving annual reviews on a 3-year cycle. These figures do not take into account follow-up reviews proposed in this rule.

To better understand the impact of the proposed follow-up review, the data from the SY 2016-2017 review year was analyzed to estimate the potential number of follow-up reviews that may have been conducted, if the proposed follow-up reviews were implemented. The criteria used in this simulation only focuses on the results of the administrative reviews, and does not account for other important criteria that the State agency may identify or items that may be identified through public comments on this proposed rule.

To estimate the potential number of follow-up reviews, reviewed SFAs were grouped by the number of error flags triggered during administrative reviews in SY 2016-2017. SFAs with any application errors (for example missing child or household name or income information) were

assigned an error flag for applications, the same process was done for SFAs with certification benefit issuance errors (for example, during a review, a sampled student was approved for free meals but was not eligible). SFAs with a fiscal action amount that was not disregarded were assigned a fiscal action error flag. SFAs were also assigned an error flag if they triggered the risk flag for the resource management errors (nonprofit school food service account, Paid Lunch Equity, revenue from nonprogram foods, and indirect costs) or served meals missing components.

The number of SFAs by type of error flag is presented in Table 2. Similarly, the number of SFAs reviewed by total number of error flags is in Table 3. It is important to note this analysis does not consider the magnitude of a particular error, just the presence of an error found during an administrative review.

Table 2: Number of SFAs by Error Flag - SY 2016-2017 Reviews						
Total SFAs Reviewed with Data*	No Error Flags	Application Error Flag	Certification Benefit Error Flag	Fiscal Action Taken Flag	Resource Management Flag	Incomplete Meal Error Flag
4,224	103	1,070	661	347	3,668	3,162
*The total number of SFAs reviewed in SY 2016-2017 is less than the total in Table 1 above, due to USDA providing 13 State agencies the flexibility to only report data for a percentage of total SFAs reviewed (due to resource constraints on State agencies).						

Table 3: Number of Reviewed SFAs by Count of Error Flags		
Number of Error Flags	Count of SFAs	Percent of SFAs reviewed by number of flags
0	103	2.4%
1	874	20.7%
2	2,173	51.4%
3	678	16.1%

4	326	7.7%
5	70	1.7%

The top two most common flags assigned were (1) SFAs flagged for triggering resource management risk criteria (and, thereby, triggering a comprehensive resource management review), followed by (2) meals served missing one or more components. The resource management error flag does not necessarily mean there is noncompliance; it only means that the SFA was triggered to require a comprehensive review based on an off-site risk assessment. The SFA may not actually be in error. Table 3 shows the total number of SFAs by total count of flags. About 9.4 percent of SFAs were flagged for four or more flags and 2.4 percent had zero flags assigned. The vast majority of SFAs received two or fewer flags. The group of SFAs with zero flags may be over-representing one State that has about 40 percent of the SFAs with no flags. For the groups of SFAs with one or more flags there were no discernable patterns with respect to State and SFA size.

To estimate the number of potential follow-up reviews that would be required as proposed in this rule, the total number of SFAs with at least three flags could be assumed to be SFAs with errors across almost all, if not all, major review categories and, therefore, in need of a follow-up review. This would mean about 25 percent of the reviewed SFAs would be triggered for a targeted follow-up review in a given year, which would add about 962 total follow-up reviews in a year across the nation.

It is likely that, for some SFAs, it may take more than one follow-up review to remedy major or systemic issues. Assuming that about 15 percent of SFAs with follow-up reviews would require

additional technical assistance through a site visit or validation measure, this would add about 144 more review activities in select SFAs.⁴²

The total number of estimated SFAs receiving annual reviews under this proposal including the targeted follow-up reviews and other review activities would be about 4,954 SFAs, which is about 26 percent of all SFAs in the nation. This would mean around 1,459 (22 percent) fewer SFAs would be reviewed each year across the nation, than if all State agencies were using a 3-year cycle (where State agencies review about 33 percent of SFAs each year). This estimated number of follow-up review is on average, across the nation, in a given year. The actual number of follow-up reviews will vary by individual State agencies. As systemic and significant issues are identified and resolved through the administrative review process, the number of follow-up reviews may decrease over time.

Regarding the number of SFAs reviewed with little to no error; there were 23 percent with zero or one flag. Among SFAs with two flags, almost all were errors requiring corrective action only, with no fiscal action taken. This means there is likely little risk in allowing more time between reviews for these SFAs. However, moving to a 5-year cycle would delay the identification of any potential new errors in low-risk SFAs for two additional years.

There would be about 1,459 fewer annual reviews conducted under this proposed change, leaving the potential for issues to continue for additional years. However, the targeted nature of the follow-up review, in both selection and scope, would aim to redirect resources to fixing

⁴² This is assuming the 70 SFAs with five error flags plus 85 of the SFAs with four error flags including the fiscal action taken error flag.

program issues and providing the necessary technical assistance that is currently difficult to do for some resource-strapped States under the current 3-year cycle.

An overall decrease in burden hours (-171,330 hours⁴³) is expected for moving from a 3-year to a 5-year review cycle. The targeted nature of the follow-up reviews are intended to be more directly focused on noncompliance and high-risk areas, therefore less burdensome than the initial review. This aids in streamlining the review procedures while balancing the need to quickly resolve program errors and the importance of addressing noncompliance in high-risk SFAs. This is intended to help State and local operators focus resources toward technical assistance and technology to improve Program operations. These changes are anticipated to save \$60 million over 5 years.

Table 3: Annual and 5-year Savings – Optional 5-year Administrative review Cycle & Targeted, Follow-up Reviews for High-Risk SFAs (millions)					
FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	5-Year
\$ (11.16)	\$ (11.56)	\$ (11.98)	\$ (12.41)	\$ (12.86)	\$ (59.97)

Align Administrative Review and Food Service Management Company Review Cycles

This rule proposes to change review of SFAs that contract with a Food Service Management Company to a 5-year review cycle. Currently SFAs with Food Service Management Companies receive a review once every 3 years. This rule proposes giving State agencies the ability to align Food Service Management Company reviews with the administrative review cycle and streamline oversight activities. About 20 percent of SFAs utilize a Food Service Management

⁴³ This total only includes the reduction due to the change in the administrative review and does not include the reduction of 42 reporting hours associated with decreasing the frequency of the performance based reporting requirement.

Company for some or all of their meal service.⁴⁴ This proposal will likely alleviate burden in State agencies with SFAs using Food Service Management Companies due to the alignment in review cycles.

Address Significant Performance Standard 1 Noncompliance Early in Review Cycle

This proposed change places the same emphasis on noncompliance with meal pattern requirements and other review areas. SFAs with significant noncompliance issues in Performance Standard 1, which includes certification determinations, may also be reviewed early. Currently, SFAs with meal pattern issues were to be prioritized in the review cycle. This change would require State agencies to review SFAs with significant noncompliance issues across all program areas early in the cycle. This change seeks to increase overall program integrity by allowing State agencies to apply local knowledge to prioritize the SFA review order. There are minimal impacts to program costs with this change. However, prioritizing SFAs with significant noncompliance issues of all types may result in earlier identification of program errors, which may offset some of the delay in identifying program error due to changing to a 5-year administrative review cycle.

Allow Expanded Use of Third-Party Audits

This change would provide States the flexibility to use State/local or third-party audits to count for comparable sections of the administrative review. This proposal intends to take advantage of

⁴⁴ U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 1: School Meal Program Operations and School Nutrition Environments by Sarah Forrestal, Charlotte Cabili, Dallas Dotter, Christopher W. Logan, Patricia Connor, Maria Boyle, Ayseha Enver, and Hiren Nissar. Project Officer: John Endahl. Alexandria, VA: April 2019.

other relevant audit activities, some of which require specialized experience to complete, to streamline program operations and minimize monitoring burden. This change may result in minimal administrative savings for State agencies that are able to utilize audits for comparable sections of the administrative review. Due to the variation in how State agencies may apply this proposed change, these savings cannot be quantified.

Allow Completion of Review Requirements Outside of the Administrative Review

This proposal would allow State agencies to use review activities conducted outside the administrative review to fulfill the relevant areas of the administrative reviews. Some State agencies proactively conduct technical assistance and review activities throughout the year to ensure compliance across SFAs. This change would allow these activities, if determined to be sufficient by USDA, to count toward the applicable areas of the administrative review. This is intended to reduce duplicative Program oversight efforts. This proposal would allow the use of existing information to fulfill administrative review requirements. There may be minimal administrative savings in State agencies that are able to utilize activities completed outside of review to satisfy administrative review requirements. Due to the wide variation in which State agencies may apply this proposed change, program impacts cannot be quantified.

Provide Incentives to Invest in Integrity-Focused Process Improvements

This proposed change introduces a new concept to encourage program integrity-focused reforms. The proposed framework would include optional reforms that State agencies and SFAs can adopt

in exchange for alleviating existing administrative review requirements. This incentive-based approach is intended to encourage States and SFAs to adopt research-based approaches to directly reduce improper payments. This proposal provides a new framework for redirecting program resources toward solving Program integrity challenges. The State and local investments made under this proposal aim to improve and streamline program integrity efforts. There is no immediate impact to Program costs with this proposal because existing program funds are used and impact on Program integrity is unknown. As new integrity challenges arise and solutions determined to impact improper payments are implemented, an impact on Program cost is anticipated; however, the impact cannot be quantified at this time.

Omit the On-site Breakfast Review in Extenuating Circumstances

The administrative review requires an on-site review of the SBP. The review of SBP is imperative to ensure compliance with Program requirements. Current procedures require on-site review of the SBP in half of the sites selected for review that offer the SBP. This requirement was established at half of sites to reduce the burden associated with reviewing the SBP in all sites. Some SFAs still struggle to review half of the SBP sites. These challenges are unique to certain States with SFAs in remote areas with limited transportation and lodging options. The proposed change would allow States with extenuating circumstances to omit the on-site review and use other existing processes to review the SBP. This rule requests comments on identifying areas of the on-site SBP review that cannot be met during the review of the NSLP, risks to Program integrity, challenges encountered by State agencies and SFAs, and various tools available that could be used to review the SBP. USDA will consider public comments to this proposed rule to inform guidance on if/how this proposed change will be implemented. Pending

more information from the comment process, impacts to Program costs cannot be estimated at this time.

Add Flexibility to Resource Management Review

This proposed change is in response to feedback received by USDA on concerns about the off-site assessment of the Resource Management module. The current process requires an off-site resource management assessment, conducted at least four weeks prior to the on-site administrative review, to identify how many SFAs need a comprehensive review. State agencies voiced concerns that evaluating the financial health of the nonprofit school food service account can be challenging to complete off-site, depending on State agency procedures. State agencies also have flexibility to conduct the comprehensive Resource Management review off-site, providing more discretion on how this financial oversight is executed.

In the SY 2016-2017 review dataset, 87 percent of the reviewed SFAs triggered a Resource Management risk flag requiring a comprehensive review. Based on the feedback received from States, some of these SFAs may have been identified as at risk due to the complications of conducting the assessment off-site within the proper timeframes. Ensuring Program integrity is imperative; however, if the current off-site assessment does not accurately reflect the SFA operations once the on-site review is conducted, the result is undue burden and the misdirection of important Program resources.

This proposed change would provide State agencies the flexibility to conduct the Resource Management portion of the review in a way that makes the most operational sense for the State

agency. This does not change the requirement that State agencies must conduct an assessment of the SFA's nonprofit school food service account following the administrative review procedures. This proposed change would allow State agencies the flexibility to conduct the Resource Management module at any point in the review process, including the discretion to conduct the risk assessment and/or the comprehensive review off- or on-site. There are negligible impacts to Program costs associated with this proposed change.

Set Consistent Fiscal Action for Repeated Meal Pattern Violations

This proposal aligns fiscal action requirements for repeated violations concerning milk type and vegetable subgroup requirements to increase consistency and reduce confusion. Currently, State agencies must take fiscal action for missing food components and for repeated violations of milk type and vegetable subgroup requirements. State agencies may take fiscal action for repeated violations concerning food quantities, whole grain-rich foods, and dietary specifications (calories, saturated fat, trans fat, and sodium). This proposal would allow State discretion for fiscal action for repeated violations for milk type and vegetable subgroup requirements to be consistent with the requirements for food quantities, whole grain-rich foods, and dietary specifications.

In this instance, students are still receiving the correct food components, just not the specific type of food component that fully meets the meal standards. State agencies are in the best position to use discretion to determine an appropriate course of action for repeated violations of this nature. Fiscal action is still required for meals missing components. This proposed change would allow

State discretion and align requirements with similar intent. There are negligible impacts to program costs with this proposed change.

Add Buy American to General Areas of Administrative Review

This proposed change would add the Buy American provisions to the regulations that list the general areas of review. Currently, the Buy American provision review is specified in the FNS Administrative Review Manual, but it is not included in the general areas of review listed at §210.18(h)(2). This proposed change aligns the regulations with guidance and clarifies existing monitoring requirements. There are no program cost impacts to this proposed change.

Simplifying Meal Service

The following section proposes a number of changes to facilitate school meals service operations for local Program operators. These proposed changes are customer service-focused and intended to simplify program procedures and requirements to address existing challenges. The proposed changes do not significantly affect program costs, but rather allow State and local Program operators to focus critical resources to ensure sustained meal service success. There is a small reduction in burden due to changing the reporting frequency (of a report on the status of SFA compliance with the meal standards) from quarterly to annually.

Facilitate the Service of Vegetable Subgroups in the NSLP

The specific proposed changes in this section are intended to reduce operator challenges with two areas of the vegetable subgroup requirements. The proposed changes would: 1) for all age/grade groups, change the weekly minimums for all subgroups to ½ cup; and 2) allow legumes offered as a meat alternate to simultaneously meet the weekly legumes vegetable

subgroup requirement. The overall daily and weekly vegetable quantity requirements remain intact across all age/grade groups.

As stated in the preamble, these flexibilities are proposed to assist program operators struggling with different quantity requirements across subgroups, and challenges with meeting the legumes subgroup requirement.⁴⁵ Between 92 and 95 percent of weekly menus met the quantity requirements for dark green vegetables, red/orange vegetables, starchy vegetables, and “other” vegetables. About 80 percent of weekly menus met the quantity requirement for legumes.

While the vast majority of menus were meeting the weekly quantity requirements for each of the vegetable subgroups (aside from legumes), offering enough vegetables to satisfy the overall weekly quantity requirement proved more difficult. Nearly 80 percent of weekly lunch menus met the quantity requirement for vegetables overall⁴⁶. The proposed changes would lower the requirement for the red/orange vegetable subgroup for all age grade groups to ½ cup and the requirement for the “other” vegetable subgroup to ½ cup for the 9-12 age grade group.⁴⁷ This flexibility would still ensure students are exposed to all vegetable subgroups over a school week, but seeks to eliminate confusion caused by requiring different quantities of different vegetable subgroups for different age/grade groups. Lower amounts of vegetables required from some

⁴⁵ Due to high protein content, menu planners may offer legumes as a meat alternate or a vegetable, but not both in the same meal. This rule proposes to allow menu planners that offer legumes as a meat alternate to credit those same legumes toward the weekly legumes subgroup requirement, without reducing the total amount of vegetables that students are offered daily or weekly.

⁴⁶ 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.

⁴⁷ Current requirement for red/orange for K-5 and 6-8 is ¾ cup. Current requirement for 9-12 for red/orange is 1^{1/4} cups and ¾ cup for other vegetables. The Dietary Guidelines for Americans group vegetables into categories based on similar nutrient content. The Other vegetable subgroup contains vegetables (e.g., cabbage, green beans, onions, mushrooms) that are not nutritionally similar enough to fit into one of the already named subgroups.

subgroups would give menu planners more space to offer additional vegetables that students prefer to meet daily and weekly vegetables requirements (which remain unchanged from the original 2012 meal standards). The ability to offer more vegetables that students prefer may result in lower food waste. About 31 percent of vegetables served were wasted according to a study conducted in SY 2014-2015 and this did not vary much by subgroup with the exception of starchy vegetables (e.g., white potatoes, corn, green peas). Starchy vegetables were wasted slightly less at about 25 percent compared to around 30 percent for the other vegetable subgroups.⁴⁸ This proposed change would allow any one subgroup to make up one-third to one-half of the weekly requirement of vegetables offered; therefore, children could be offered less vegetable variety.

This proposed change is not expected to impact program costs as the total vegetable quantity requirements for daily and weekly remain unchanged. This proposal allows local Program operators more flexibility to include in their menus vegetables that align with student acceptability.

Compared to other vegetable subgroups, the legume vegetable subgroup requirement proved to be more difficult to meet. Some of this difficulty may be explained by current requirements: beans may credit as a vegetable or a meat alternate, but not both in the same meal (i.e., menu planners cannot “double-credit” beans to meet both the vegetable and meat/meat alternate requirement). Nearly all (99 percent) daily lunch menus included one or more vegetables that

⁴⁸ 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.

were not part of a combination entrée or an entrée salad bar. Most daily lunch menus (84 percent) included cooked vegetables. Beans and peas (legumes) were the second most common cooked vegetable (second to starchy) not served as part of a combination entrée with 23 percent of all daily lunch menus offering legumes (including black, baked beans, and other beans—such as white beans, chickpeas, and hummus—as well as pinto and kidney beans).

However, legumes are often an ingredient in combination entrées where the meat/meat alternate component is typically available especially in Mexican-style entrées. These type of entrées are common in lunch menus, especially in high schools with about 25 percent of daily menus including a Mexican-style entrée.⁴⁹ About 17 percent of daily lunch menus had an “other” protein credited as a meat alternate. This was primarily cheese, but legumes were also included in this group. Children will still benefit from the array of essential nutrients legumes offer, including protein and fiber, regardless of how legumes credit toward vegetable or meat alternate requirements. This proposed change allows legumes that are offered as a meat alternate to simultaneously meet the weekly legumes requirement. This aims to help local Program operators meet the weekly legumes requirement. The daily and weekly menus must still meet minimum quantity requirements for vegetables, which ensures this change does not result in a reduction in calories or vegetables, but rather allows local Program operators the ability to develop menus that better reflect student preferences. The daily and weekly vegetable and meat/meat alternate quantities are unchanged. There is negligible impact to program costs associated with this proposed change.

⁴⁹ 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.

Add Flexibility to Established Age/Grade Groups

This proposed change addresses challenges in SFAs that serve children in multiple age/grade groups. Currently, schools are required to serve an age-appropriate meal pattern – for grades K-5, 6-8, and/or 9-12 – to all age/grade groups in a school. The only exception is the narrow overlap between K-5 and 6-8 age/grade group meal pattern requirements: because of overlapping requirements, local Program operators can use one meal pattern to plan menus for students in grades K-8. The food component requirements are the same, but meals must meet the calorie and sodium standards in the narrow overlap between both age/grade groups.

The requirement to offer meals for specific age/grade groups resulted in a number of challenges for local Program operators, especially for smaller SFAs with unique grade configurations that do not align with established age/grade groups. A goal of the school meal programs is to ensure students are offered age-appropriate meals that meet specific nutrient targets to optimize growth and development. In SFAs of all sizes (including SFAs with and without schools serving multiple age/grade groups), the School Nutrition Meal Cost Study found that local Program directors reported that it was a moderate challenge (mid-way between “not a challenge” and “a significant challenge”) to offer varying portion sizes to different age/grade groups within a school. About 30 percent (about 27,500) of schools participating in the National School Lunch

Program have unique age/grade group combinations.⁵⁰ The majority of these schools are likely in SFAs with 2,500 or fewer students enrolled.⁵¹

The proposed changes in this rule would: 1) allow all schools with multiple age/grade groups (in SFAs of any size) to serve the established meal patterns to a broader range of students. This allows the addition or subtraction of a grade on either or both ends of the current meal pattern age/grade groups (K-5, 6-8, and 9-12); and 2) Allow schools with multiple or unique grade configurations in small SFAs (with 2,500 students or fewer enrolled) to use one or two meal patterns to plan meals for all children.

The first proposed change would allow schools in any SFA to serve one meal pattern if the age/grade groups in the school include one or two grades from an established age/grade group. This means that the K-5 meal pattern could be expanded to serve students in grades K-6; the 6-8 meal pattern could be expanded to serve any students in grades 5-9; and the 9-12 meal pattern could be expanded to serve any students in grades 8-12. For example, a school serving students in grades K-6 could either (1) use the existing K-8 meal pattern age/grade group overlap, or (2) exercise this proposed flexibility and serve the K-5 meal pattern for all children in the K-6 school by adding one year (grade 6) to the upper end of the established K-5 age/grade group. Providing this flexibility seeks to alleviate Program operator burden in schools with students in grades

⁵⁰ U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 1: School Meal Program Operations and School Nutrition Environments by Sarah Forrestal, Charlotte Cabili, Dallas Dotter, Christopher W. Logan, Patricia

⁵¹ FNS administrative data show that about 80 percent of SFAs participating in the NSLP have 2,500 or less students enrolled in SY 2017-2018

close to the next established meal pattern age/grade group by giving them the ability to serve one meal pattern to all students.

The second proposed change targets schools with multiple or unique grade groupings in smaller SFAs that serve 2,500 or fewer students. This change would allow smaller SFAs, with multiple or unique grade configurations, to use one or two meal patterns to plan meals for students in all grades. This proposed change could impact about 23 percent of total schools (approximately 22,000 schools).⁵² However, some of these schools that have successfully implemented the existing age/grade groups would likely continue with their existing practices. In addition, schools serving grades that overlap between grades K-5 and grades 6-8 that have been successful planning meals that meet the K-8 meal pattern overlap could choose to continue that practice.

As stated in the preamble, meeting the calorie requirements in school meal offerings proved to be a challenge: overall, 41 percent of average weekly lunch menus fell within the specified calorie range (that is, they met both the minimum and maximum calorie levels). Elementary and middle schools were more likely to offer meals above the calorie maximums, while high schools were more likely offer meals with too few calories. Schools adopting these proposed flexibilities are encouraged to find solutions to offer older students larger portions or additional choices to meet their calorie and nutrient needs.

⁵² The difference in the number of schools that may be impacted is the number of schools in large SFAs including those that would not be able to utilize the first flexibility (for example, a K-12 school in a SFA that has over 2,500 enrolled students).

USDA is requesting public comments on solutions to balance operational constraints and student nutritional needs. There may be some minimal savings associated with streamlining menus for some SFAs; however, we do not anticipate significant impacts at this time pending the public comments on this proposed rule.

Increase Flexibility to Offer Meats/Meat Alternates in SBP

This proposed change would allow schools to offer meat/meat alternates or grains interchangeably in the SBP. Currently, schools may offer meat/meat alternate foods in SBP only after one ounce equivalent of grains is offered, then meats/meat alternates may be counted towards the grain component requirements. Meats/meat alternates may also be offered as “extra” foods that do not credit toward meal pattern requirements, but must meet the dietary specifications for calories, saturated fat, and sodium.

This proposed change would allow Program operators to offer 1-2 ounce equivalents of grains or meat/meat alternates, or a combination of the two, daily to meet the minimum of 7-9 ounce equivalents over the course of a school week (amounts vary depending on age/grade group). This would allow Program operators the ability to use grains and meat/meat alternates interchangeably in the SBP. This proposed change recognizes the need for flexibility in SBP offerings. While the meal pattern for SBP does not specifically require meats/meat alternates to be offered, meats/meat alternates were included in nearly half (48 percent) of all daily breakfast menus.⁵³

⁵³ 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

This would not change the SBP meal pattern, and Program operators may continue to offer grains only in the SBP (consistent with the current requirements). The remaining SBP requirements would not change under this proposal. This change is intended to allow Program operators local control 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 provide flexibility for local Program operators to work within current resources and student preferences when planning SBP menus.

Allow Schools to Serve ½ Cup of Fruit in Breakfasts Served in non-Cafeteria Settings

This proposed change would allow schools that serve breakfast in non-cafeteria settings to offer ½ cup of fruit -- consistent with the offer-vs-serve (OVS) option in SBP -- instead of offering the full-required 1 cup of fruit. In a cafeteria setting, students in schools with OVS have the option to only take ½ cup of fruit. OVS is mandatory for SBP and NSLP for high schools and optional for middle and elementary schools, however about 80 percent of both middle and elementary schools use the option. This practice helps control food waste as the use of OVS at breakfast was associated with lower percentages of waste for calories (15 percent in OVS schools versus 19 percent in non-OVS schools) and fruits (14 percent in OVS schools versus 23 percent in non-OVS schools).⁵⁴

Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019.

⁵⁴ 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.

The cafeteria or other foodservice area was the most common place where students ate breakfast (82 percent of schools). Many schools do use other SBP models, often in non-cafeteria settings. Breakfast in the classroom was offered in more than a quarter of elementary schools, which was more frequent than middle and high schools. However, pre-packaged “grab-and-go” breakfasts were offered more frequently in high schools (21% of high schools) than middle and elementary schools. Due to cited concerns about students being offered sufficient calories, especially older students⁵⁵, local Program operators are encouraged to have additional fruits, such as a basket of whole fruits, available for students to select additional fruit if desired. The proposed change is not expected to significantly impact program costs but may result in minimal savings by reducing the amount of fruit offered in non-cafeteria SBP models.

Remove Synthetic Trans Fat Limit as a Dietary Specification

This proposed change would eliminate the requirement for SBP, NSLP, and competitive foods to have zero synthetic *trans* fat effective July 1, 2021.⁵⁶ FDA regulations are removing synthetic *trans* fat from the United States food supply by January 1, 2021 and the requirement to monitor synthetic *trans* fat in the school meal programs will be unnecessary. This proposed change would eliminate additional regulations that are not necessary after synthetic *trans* fat is no longer in the food supply (January 1, 2021). This proposed change will align Program regulations with the food supply standards. There are negligible impacts to program costs associated with this change.

⁵⁵ USDA’s School Nutrition and Meal Cost Study found that, overall, more than half (56 percent) of average weekly breakfast menus fell within the specified calorie range (that is, they met both the minimum and maximum calorie levels). While it was more common for average weekly breakfast menus across all school types to exceed the maximum calorie level (36 percent overall), approximately 18 percent of average weekly menus for high schools offer too few calories

⁵⁶ This restriction does not apply to naturally occurring trans fats, which are present in meat and dairy products.

Change Performance-based Reimbursement Quarterly Report to an Annual Report

This proposed change would reduce, from quarterly to annually, the frequency of a State agency report on the status of SFAs certified for the performance-based reimbursement. As of February 2019, 99 percent of SFAs are certified to receive the performance-based reimbursement. This change responds to feedback from the Child Nutrition Program Reducing Burden Study: State agencies requested USDA to review the reporting requirements and determine areas to streamline reporting.⁵⁷ USDA currently receives a count of the monthly number of lunches receiving the performance-based reimbursement on the Report of School Meal Operations (form FNS-10) from States.⁵⁸

The reduced frequency of the quarterly certification report aims to enable State and local Program operators to direct resources to maintain effective and efficient program operations, while still providing USDA the necessary information on SFA certification. Along with the monthly FNS-10 reporting, the annual update will be sufficient for USDA to track the status of SFA certification. This proposed change slightly decreases the burden hours associated with moving the frequency of reporting from quarterly to annually. This is a small reduction of 42 annual burden hours, which is about \$3,000 annually.

Update Meal Accommodations for Disability and Non-Disability Reasons

The proposed changes in this section are intended to align current FNS regulations with current statutory requirements and do not change the requirement that schools, institutions, and facilities

⁵⁷ <https://fns-prod.azureedge.net/sites/default/files/resource-files/CN-Reducing%20Burden.pdf>

⁵⁸ 99.7% of lunches served in FY 2018 received the performance-based reimbursement

make reasonable modifications for Program participants with a disability that restricts their diet. The proposed changes aim to make a clear distinction between reasonable modifications for disability requests and variations for non-disability requests. The proposal would also broaden who is authorized to write medical statements consistent with the Department of Justice’s final rule that determining an individual’s impairment as a disability under ADA should not demand extensive analysis. Schools, institutions, and facilities are still encouraged to meet Program participants’ dietary preferences that are not considered disabilities, which includes those related to cultural, ethical, Tribal, or religious preferences. The proposed alignment of USDA regulations with statutory requirements and existing FNS guidance is not expected to impact program costs, but clarify procedures for Program participants with disabilities that restrict their diets.

Proposals to Simplify Foods Sold A La Carte

Extend the Entrée Exemption Timeframes

The proposed change in this section would address concerns from Program operators regarding the number of days schools are permitted to sell reimbursement meal entrées as a competitive food (i.e., à la carte). The majority of schools had at least one source of competitive foods available to students. Availability of foods for à la carte purchase in the school cafeteria during meal times was the most common source (in 87 percent of schools for lunch and 56 percent for breakfast). About 40 percent of schools offer entrées (these are not separated out by reimbursable meal entrées and other entrées) as part of their competitive food service. This practice was more common in middle and high schools, where over half of schools sold entrées

as competitive foods. In elementary schools, a little over a quarter sold entrées as competitive foods.⁵⁹

There are some entrées that meet the reimbursable meal standards (as part of the unitized, reimbursable meal); an entrée alone may not meet the competitive food standards, which are based on individual items. In these cases, USDA, recognizing that foods sold in reimbursable meals are typically healthier due to the meal pattern standards, allows these entrées to be sold on the same day as served as part of the reimbursable meal, and the day after to help use leftovers and reduce waste. This proposed rule would extend this flexibility by allowing SBP and NSLP entrées to be sold à la carte on the day offered in SBP and NSLP, and two school days after (or for one additional school day). The proposed change promotes improved meal planning flexibility and leftover usage.⁶⁰ This proposed change is intended to further reduce waste and streamline operations between the reimbursable meal service and competitive food service.

There are minimal impacts to Program costs associated with this change.

This proposed rule also requests specific public comment on whether SBP and NSLP side dishes that do not meet the competitive foods standards should also receive exemptions. Currently only entrées, as noted above, are exempt with this proposed rule extending the exemption for an

⁵⁹ U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 1: School Meal Program Operations and School Nutrition Environments by Sarah Forrestal, Charlotte Cabili, Dallas Dotter, Christopher W. Logan, Patricia Connor, Maria Boyle, Ayseha Enver, and Hiren Nissar. Project Officer: John Endahl. Alexandria, VA: April 2019.

⁶⁰ To ensure the food safety of food offered or sold to children, schools must maintain a food safety management system that includes Standard Operating Procedures related to basic sanitation and all Hazard Analysis and Critical Control Point (HACCP) principles. Final rule. School Food Safety Program Based on the Hazard Analysis and Critical Control Point Principles (74 FR 66213, published December 15, 2009).

additional school day. USDA is not proposing a change to the side dish requirements in this rule. However, since the competitive food standards have been in place for a period of time, the Department is taking the opportunity to solicit public input on whether to extend the competitive food entrée exemption to all food items offered as part of the reimbursable SBP and NSLP meals. There are no impacts to program costs at this time as the proposed rule is only seeking public comment on extending the competitive foods exemptions to all menu items in reimbursable meals.

Seeking Public Input on Whether to Remove the Requirement to Make a la Carte Entrées Whole Grain-Rich

USDA is also taking this opportunity to solicit public input on grain products and the definition of entrée. Currently competitive food standards require that entrées that include grains, and are sold à la carte, must be whole grain-rich or have whole grain as the first ingredient. This requirement is not consistent with the NSLP and SBP, where whole grain-rich refers to products that contain at least 50 percent whole grains and any remaining grains must be enriched. USDA is seeking public input to determine if the whole grain-rich/whole grain as a first ingredient requirement should be removed from the definition of entrée for competitive foods. This change would make the whole grains requirement consistent between SBP/NSLP and entrées sold à la carte as competitive foods. At this point, USDA is only seeking public input to determine if this change is necessary, especially in light of the proposal to extend the exemption for SBP/NSLP entrées. There are no impacts to program costs as USDA is not proposing a change, but using this opportunity to seek public input.

Expand Flexibility for Sale of Calorie-Free, Flavored Waters to All Age/Grade Groups

This proposed change would expand the ability to sell calorie-free, naturally-flavored waters (with or without) carbonation in middle and elementary schools. Currently only high schools can sell these products. Calorie-free/low calorie, non-naturally flavored, carbonated beverages (i.e., diet soft drinks) may also be sold to high school students. This proposed change is not extending the ability to sell diet soft drinks to middle and elementary school students. This rule also proposes to expand the potable water requirement to permit schools to offer calorie-free, naturally-flavored, noncarbonated water. These waters would be required to meet the FDA’s definition of “natural flavor or natural flavoring.”

This rule proposes to allow local Program operators to sell calorie-free, naturally flavored waters (with or without carbonation), in portions up to 20 ounces, to students in all age/grade groups.

This proposed change would allow local Program operators the flexibility to expand calorie-free beverages to students who wish to purchase only certain items and not an entire school lunch.

Competitive food sales support the financial health of the nonprofit school food service account and can be used to cover costs of operating the school meal programs. Over 40 percent of schools offer bottled water (includes plain, flavored, or sparkling) for purchase à la carte. This varies quite a bit by school type, with only 30 percent of elementary schools, 58 percent of middle schools, and 61 percent of high schools offering bottled water for sale.⁶¹ This proposed change would increase the types of beverages local Program operators may offer à la carte. It may however, impact the amount of milk purchased through à la carte sales; milk was the most

⁶¹ U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 1: School Meal Program Operations and School Nutrition Environments by Sarah Forrestal, Charlotte Cabili, Dallas Dotter, Christopher W. Logan, Patricia Connor, Maria Boyle, Ayseha Enver, and Hiren Nissar. Project Officer: John Endahl. Alexandria, VA: April 2019.

commonly offered à la carte item at lunch (73 percent of all schools offered milk as an à la carte item at lunch)⁶² followed by water and 100 percent juice (48 percent of all schools). This proposal is not expected to impact program costs but rather provide flexibility for local Program operators to offer calorie-free beverage choices to students across all grades.

Local Program operators have also requested flexibility to offer naturally flavored noncarbonated water (e.g., water infused with fruit) to meet the potable requirement. This rule proposes to allow the flexibility to offer this type of water to meet the requirement. This proposal is not expected to increase costs as Program operators will need to work with existing resources to utilize this flexibility. The addition of naturally flavored potable water may encourage water consumption but may impact the consumption of milk if students choose to consume water in lieu of milk.⁶³

Clarifications, Updates, and Technical Corrections

Add Flexibility to State Administrative Expenses

This rule proposes to change the word “unexpended” to “unobligated” in the regulations for the State Administrative Expense (SAE) Funds. Currently States must return to USDA any unexpended SAE funds at the end of the fiscal year following the fiscal year for which the funds were awarded. This proposed change would allow State agencies some additional time to expend

⁶² U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 1: School Meal Program Operations and School Nutrition Environments by Sarah Forrestal, Charlotte Cabili, Dallas Dotter, Christopher W. Logan, Patricia Connor, Maria Boyle, Ayseha Enver, and Hiren Nissar. Project Officer: John Endahl. Alexandria, VA: April 2019.

⁶³ The School Nutrition Meal Cost Study found that milk consumption among school meal participants declined to 66% in SY 2014-2015 compared to 75% in SY 2004-2005

SAE funds they have already obligated. There are negligible impacts to program costs with this proposed change as it is increasing flexibility within the current funding level.

Correct Afterschool Snack Eligibility Erroneous Citations and Definition of “Child”

The proposed changes in this section would provide a technical correction to three erroneous citations and correct a definition relating to the NSLP Afterschool snack service. The rule also proposes to correct an error in the definition of “child” to align with the NSLA. Currently the regulatory definition restricts snacks to children 12 years and younger, or in the case of migrant workers and children with disabilities not more than 15 years of age. This rule proposes to modify the definition of child to consistent with the NSLA and clarify that children through age 18 are eligible to receive snacks through the NSLP Afterschool Snack Service. These proposed changes are not expected to impact program costs, as children through age 18 are currently eligible to receive snacks, but instead provide clarification and correct erroneous citations and definitions.

Add Guam and Hawaii to the List of Outlying Areas Permitted to Serve Vegetables such as Yams, Plantains, or Sweet Potatoes to Meet the Grains Component

Regulations currently permit 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. These foods are traditional foods and may be easier to procure than grains in outlying areas. This proposed change includes Guam and Hawaii in the list of outlying areas permitted to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains requirement. This proposed change is not anticipated to impact program costs, but provide local

Program operators in Guam and Hawaii the ability to develop menus that include traditional foods that align with local preferences.

Change Vitamin A and Vitamin D Units for Fluid Milk Substitutions

This proposed change aligns USDA regulations with the FDA published final rule that changed the labeling requirements for vitamin A and vitamin D: both now must be listed in micrograms (mcg) rather than International Units (IUs). As a conforming amendment, this rule proposes to change the vitamin A requirement for fluid milk substitutes from 500 IUs to 150 mcg per 8 fluid ounces. This rule also proposes to change the units for the vitamin D requirement for fluid milk substitutes from 100 IUs to 2.5 mcg per 8 fluid ounces. This proposed change aligns the labeling requirements with the final FDA rule, so there are negligible impacts to program costs associated with this change.

Proposed Rule is Seeking Public Input to Determine Change

USDA is seeking public comments to determine any changes on the following areas. Any impacts to program costs will have to be assessed after public comments are received.

Substituting Vegetables for Fruits at Breakfast:

This proposed rule requests public comments on whether or not to permanently allow SFAs to credit any vegetable offered, including potatoes and other starchy vegetables, in place of fruit in the SBP, without including vegetables from the specific subgroups in the weekly menus.

Competitive Foods: Definition of Entrée and Expanding Entrée Exemption to All SBP/NSLP Foods

As described earlier, USDA is soliciting public input on whether the whole grain-rich/whole grain as a first ingredient requirement should be removed from the definition of “Entrée” included in 7 CFR 210.11(a)(3)(i), and whether or not to extend the competitive food entrée exemption to all food items offered in SBP and NSLP reimbursable meals.

Transparency for Administrative Review Results:

NSLA directs USDA to ensure that State agencies report the final results of administrative reviews to the public in an accessible, easily understood manner. To satisfy this statutory requirement, State agencies must post a summary of the most recent administrative review results for each SFA on the State agency's public web site, and make a copy of the final administrative review report available to the public upon request. The summary must be posted no later than 30 days after the State agency provides the results of the administrative review to the SFA. This proposed rule requests public comments on how to simplify this transparency requirement, including the process of posting results, the summary content, and the 30-day timeframe.

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.

Pursuant to that review, the Secretary certifies that this rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would not have an adverse impact on small entities in the National School Lunch Program and School Breakfast

Program; it would ease Program operations by adding flexibilities for State monitoring staff and menu planners in small local educational agencies.

Factual Basis: The provisions of this proposed rule would apply to small LEAs with less than 2,500 students operating the National School Lunch Program and School Breakfast Program, and to State agency staff who have to monitor school food authorities in remote locations. These entities meet the definitions of “small governmental jurisdiction” and “small entity” in the Regulatory Flexibility Act. These entities would benefit from the meal pattern and monitoring flexibilities proposed in this rule.

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process. This proposed rule is expected to be an EO 13771 deregulatory action. The changes proposed by this rule aim to simplify meal pattern, monitoring, and reporting requirements in the National School Lunch and School Breakfast programs. This rule is estimated to reduce school meal administrative burden by 171,372 hours, which is \$11.4 million in annualized savings at a 7 percent discount rate, discounted to a 2016 equivalent, over a perpetual time horizon.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) established 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, FNS 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 \$100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of \$100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The NSLP, SMP, SBP, CACFP, and the SFSP are listed in the Catalog of Federal Domestic Assistance under NSLP No. 10.555, SMP No. 10.556, SBP No. 10.553, CACFP No. 10.558, and SFSP 10.559 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 Food and Nutrition Service (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. Discussions also take place in response to technical assistance requests submitted by the State agencies to the FNS Regional Offices. This regular interaction with State and local operators provides FNS valuable input that informs rulemaking. Based on

the inquiries and information from State agencies disclosing challenges with Program requirements, FNS is proposing specific flexibilities to address the requirement issues in a manner that promotes program efficiency and effectiveness.

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.

The Department has considered the impact of this final rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under Section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This proposed 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 is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with USDA Regulation 4300-4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on Program participants on the basis of age, race, color, national origin, sex, or disability. A comprehensive Civil Rights Impact Analysis (CRIA) was conducted on the proposed rule, including an analysis of participant data and provisions contained in the rule. The CRIA indicated the regulatory changes contained in the proposed rule simplify oversight and offer flexibilities that simplify local operations. These proposed flexibilities aim to: (1) facilitate schools offering wholesome meals that fit the operational constraints of schools across the Nation, (2) support operational efficiency, and (3) ease the States' monitoring responsibility. The proposed changes also codify meal modification updates making it easier for Program participants who require meal modifications (that fall outside the meal patterns) to obtain the necessary documentation. After a careful review of the rule’s intent and provisions, FNS has determined that this rule is not expected to limit or reduce the ability of protected classes of individuals to participate in the NSLP, SMP, SBP, CACFP, and SFSP or have a disproportionate adverse impact on the protected classes.

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. FNS has assessed the impact of this proposed rule on Indian Tribes and determined that this rule does not, to the best of its knowledge, have Tribal implications that require Tribal consultation under E.O. 13175. FNS provided opportunity for consultation on the issue but received no feedback. If a tribe requests consultation in the future, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) approve all collections of information 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 rule proposes changes to simplify meal pattern and monitoring requirements in the National School Lunch and School Breakfast Programs. The proposed changes, including optional flexibilities, are customer-focused and are intended to help State and local Program operators overcome operational challenges that limit their ability to manage these Programs efficiently.

Explanatory Note on Existing Information Collection Requirements (OMB#0584-0006)

As explained above, this proposed rule would revise the National School Lunch Program (NSLP) requirements, including recordkeeping and reporting requirements, to ease administrative burden for State agencies and School Food Authorities (SFAs), while continuing to ensure Program integrity. However, in two areas, these existing information collection requirements are not accurately reflected under OMB #0584-0006. These errors were corrected in a revision of this

collection submitted in September 2019. However, for transparency and to provide clarity regarding the impact of the changes proposed in this rulemaking, we are describing the burden of these existing requirements here:

- Administrative Review Cycle:** This rule proposes to allow State agencies to revert from the current 3-year review cycle to a longer review cycle of 5 years, which would reduce the current reporting and recordkeeping burden by increasing the length of the review cycle. However, the burden associated with these reviews, which have been a regulatory requirement since 2016, has not reflected in the approved collection under #0584-0006. The needed change in recordkeeping burden estimates to correct this error is described in the table below:

Recordkeeping under OMB# 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	Hours Currently Approved	Corrected Burden Hour Estimate
SA completes and maintains documentation used to conduct Administrative Review.	210.18 (c-h)	56	113	6,347	48	304,640	0	304,640
Total SA Recordkeeping								-
Total Recordkeeping								304,640

- Reporting on Performance-Based Reimbursement:** This rule proposes that the performance-based reimbursement quarterly reporting requirement specified in §

210.5(d)(2)(ii) be changed to an annual reporting requirement. However, the burden associated with the existing quarterly review requirement was inadvertently omitted from the renewal of #0584-0006 approved on November 13, 2016. The needed change in reporting burden estimates to correct this error is described in the table below:

Reporting under OMB# 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	Hours Currently Approved	Corrected Burden Hour Estimate
SAs submit an annual report to FNS detailing the disbursement of performance-based reimbursement to SFAs.	210.5(d)(2)(ii)	56	4	224	.25	56	0	56
Total SA Reporting								56
Total Reporting								56

Relative to these corrected burden estimates specifically, FNS estimates that this proposed rule will decrease the reporting burden by 42 hours and decrease the recordkeeping burden by 121,856 hours. Specific changes proposed to the existing burdens above are explained in Table for 0584-NEW below.

The rule makes other changes to recordkeeping and reporting that results in additional reductions in burden of 49,474 fewer hours. The currently approved burden inventory for the requirements

outlined in this proposed rule, inclusive of pending corrections to #0584-0006, is 469,986 hours. The average burden per response and the annual burden hours are explained below and summarized in the charts that follow.

In accordance with the Paperwork Reduction Act of 1995, this proposed rule will create information collection requirements and revise existing information collection requirements that are subject to review and approval by the Office of Management and Budget; therefore, FNS is submitting for public comment the information collection burden that would result from adoption of the proposals in the rule. Some information collection requirements being amended by the rule are currently approved under OMB# 0584-0006 7 CFR part 210 National School Lunch Program. Others are new burdens resulting from this rulemaking. Because OMB# 0584-0006 is under review by OMB, FNS is requesting a new OMB Control Number for the new and existing information requirements which are impacted by this proposed rule in order to ensure that the review of this proposed rule does not interfere with this renewal. After OMB has approved the information collection requirements submitted in conjunction with the final rule, FNS will merge these requirements and their burden into OMB# 0584-0006.

These changes are contingent upon OMB approval. When the information collection requirements have been approved, FNS will publish a separate action in the Federal Register announcing OMB's approval. Comments on this proposed rule and changes in the information collection burden must be received by [Insert date that is 60 days from publication in the Federal Register].

Comments on this proposed rule must be received by **[Insert date that is 60 days from publication in the FEDERAL REGISTER]**. 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.

Title: Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs

OMB Control Number: 0584-NEW

Expiration Date: [Not Yet Determined.]

Type of Request: New collection.

Abstract: This is a new information collection that revises existing information collection requirements from OMB Number 0584-0006 7 CFR Part 210 National School Lunch Program

which are being impacted by this rulemaking, as well as imposing new information collection requirements. This proposed rule would revise the National School Lunch Program (NSLP) administrative review requirements to ease administrative burden for State agencies and SFAs, while continuing to ensure Program integrity. This rule proposes to allow State agencies to revert from the current 3-year review cycle to a longer review cycle of 5 years. This proposed rule would require State agencies to conduct a comprehensive administrative review of each SFA participating in NSLP, School Breakfast Program, and other Federal school nutrition programs at least once during a 5-year cycle and require State agencies to identify high-risk SFAs for additional oversight. State agencies would continue to have the option to review SFAs more frequently. These changes to the administrative review cycle are intended to reduce reporting and recordkeeping burden currently approved under OMB# 0584-0006 by increasing the length of the review cycle, which FNS estimates will reduce the number of responses submitted by the State agencies. The change to the frequency of the review cycle will reduce the recordkeeping burdens associated with the requirements that State agencies maintain documentation of Local Education Agency/SFA compliance with nutrition standards for competitive foods, maintain records of all reviews (including Program violations, corrective action, fiscal action and withholding of payments), and maintain documentation of fiscal action taken to disallow improper claims submitted by SFAs, as determined through claims processing, reviews, and USDA audits. The change to the frequency of the review cycle will also reduce reporting burden associated with the requirements that State agencies notify SFAs in writing of review findings, corrective actions, deadlines, and potential fiscal action with grounds and right to appeal as well as the reporting burden associated with the requirement that SFAs submit to their State agency a written response to reviews documenting corrective action for Program deficiencies. The burden for the public

notification requirement -- that State agencies must post a summary of the most recent administrative review results of SFAs on the SA website and make a copy available upon request -- is also reduced by the change in the frequency of the review cycle.

The rule also proposes to change the frequency of the performance-based reimbursement reporting requirement from quarterly to annually. These proposed changes are expected to simplify operational requirements, increase efficiency, and make it easier for State and local Program operators to feed children. This proposed rule will also add recordkeeping burdens for high-risk SFAs that would receive a targeted follow-up review within two years of being designated high-risk.

Unless adjustments are made to these requirements during the final rulemaking stage, FNS estimates that this proposed rule will decrease the burden for 0584-0006 by 171,372 burden hours (reporting burden by 44,834 hours, recordkeeping burden by 125,754 hours, and public notification burden by 784 hours). The total burden inventory for this new information collection as a result of this proposed rule is 298,614 hours. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow.

Affected Public: School Food Authorities and State Agencies

Estimated Number of Respondents: 3,864

Estimated Number of Responses per Respondent: 7.25

Estimated Total Annual Responses: 28,000

Estimated Time per Response: 10.66

Reporting								
Description of Activities	Regulation Citation	Estimated # of Respondents	Frequency of Response	Total Annual Responses	Average Burden Hours per Response	Estimated Total Annual Burden Hours	Hours Currently Approved* Under OMB# 0584-0006	Estimated Change in Burden Hours Due to Rulemaking
SA notifies SFAs in writing of review findings, corrective actions, deadlines, and potential fiscal action with right to appeal.	210.18(i)(3)	56	68	3,808	8	30,464	52,864	-22,400
SAs submit an annual report to FNS detailing the disbursement of performance-based reimbursement to SFAs.	210.5(d)(2)(ii)	56	1	56	.25	14	56 (0)*	-42
Total SA Reporting		56		3,864		30,478		-22,442
SFA submits to the SA a written response to reviews documenting corrective action for Program deficiencies.	210.15 (a)(3) & 210.18 (k)(2)	3,808	1	3,808	8	30,464	52,856	-22,392
Total SFA Reporting		3,808		3,808		30,464		-22,392
Total Reporting		3,864		7,672		60,942		-44,834

Estimated Total Annual Burden on Respondents: 298,614

ESTIMATED ANNUAL BURDEN FOR 0584 – NEW

* Denotes corrected estimate of current burden hours; parenthetical indicates actual approved hours (before pending corrections)

Recordkeeping								
Description of Activities	Regulation Citation	Estimated # of Respondents	Frequency of Response	Total Annual Responses	Average Burden Hours per Response	Estimated Total Annual Burden Hours	Hours Currently Approved* Under OMB# 0584-0006	Estimated Change in Burden Hours Due to Rulemaking
SA maintains documentation of LEA/SFA compliance with nutrition standards for competitive foods.	210.18(h)(2)(iv)	56	68	3,808	.25	952	1,652	-700
SA maintains records of all reviews and audits (including Program violations, corrective action, fiscal action and withholding of payments). (FNS-640)	210.20(b)(6) & 210.18(o)(f)(k,l,m) & 210.23(c)	56	68	3,808	8	30,472	52,878	-22,406
SA maintains documentation of fiscal action taken to disallow improper claims submitted by SFAs, as determined through claims processing, reviews, and USDA audits.	210.20(b)(7) & 210.19(c) & 210.18(o)	56	68	3,808	.50	1,904	3,304	-1,400
SA completes and maintains documentation used to conduct Administrative Review.	210.18 (c-h)	56	68	3,808	48	182,784	304,640 (0)*	-121,856
SA completes and maintains documentation	210.18(c)	56	23	1,288	16	20,608	0	+20,608

Recordkeeping								
Description of Activities	Regulation Citation	Estimated # of Respondents	Frequency of Response	Total Annual Responses	Average Burden Hours per Response	Estimated Total Annual Burden Hours	Hours Currently Approved* Under OMB# 0584-0006	Estimated Change in Burden Hours Due to Rulemaking
used to conduct targeted Follow Up Administrative Review.								
Total SA Recordkeeping		56		16,520		236,720		-125,754
Total Recordkeeping		56		16,520		236,720		-125,754

* Denotes corrected estimate of current burden hours; parenthetical indicates actual approved hours (before pending corrections)

Public Notification								
Description of Activities	Regulation Citation	Estimated # of Respondents	Frequency of Response	Total Annual Responses	Average Burden Hours per Response	Estimated Total Annual Burden Hours	Hours Currently Approved Under OMB# 0584-0006	Estimated Change in Burden Hours Due to Rulemaking
State agencies must post a summary of the most recent administrative review results of SFAs on the SA website and make a copy available upon	210.18(m) (1)	56	68	3,808	.25	952	1,736	-784

request.								
Total SA Public Notification		56		3,808		952		-784
Total Public Notification		56		3,808		952		-784

TOTAL NO. RESPONDENTS	3,864
AVERAGE NO. RESPONSES PER RESPONDENT	7.246
TOTAL ANNUAL RESPONSES	28,000
AVERAGE HOURS PER RESPONSE	10.664791
TOTAL BURDEN HOURS	298,614

In summary, although the Information Collection Request for this proposed rule is being submitted as a new information collection, this proposed rule actually impacts existing information and imposes new information collection requirements for OMB# 0584-0006. The current inventory under OMB# 0584-0006 for the information requirements outlined in this proposed rule is 469,986 (165,290) hours.* Once the final rule has been published and the final ICR is approved, these proposals will be merged into OMB# 0584-0006. FNS estimates that these proposed changes will decrease the burden hours by 171,372 hours.

* Denotes corrected estimate of current burden hours; parenthetical indicates actual approved hours (before pending corrections)

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 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 235

State administrative expense funds, Administrative practice and procedure, Food assistance programs, Grant programs-education, Grant programs-health, Infants and children, Reporting and recordkeeping requirements, School breakfast and lunch programs

Accordingly, 7 CFR parts 210, 215, 220, 226, and 235 are proposed to be amended 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. In § 210.2:

a. Revise the definition of “Child”;

b. In the definition of “School”, redesignate paragraphs (a), (b), and (c) as paragraphs (1), (2) and (3); and

c. Add a definition for “State licensed healthcare professional” in alphabetical order.

The revision and addition read as follows:

§210.2 Definitions.

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,” including students who are mentally or physically disabled as defined by the State and who are participating in a school program established for the mentally or physically disabled; 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;” or

(3) For purposes of reimbursement for meal supplements served in afterschool care programs, an individual enrolled in an afterschool care program operated by an eligible school who is 18 years of age or under at the start of the school year, or a mentally or physically disabled individual, as defined by the State, enrolled in an agency or a child care facility serving a majority of persons 18 years of age or younger.

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, and physician’s assistant, depending on State law.

§210.4 [Amended]

3. Amend paragraph (b)(3) introductory text by removing the words “§210.10(n)(1)” and adding, in its place “§210.10(o)(1)”.

4. In § 210.5, revise paragraph (d)(2)(ii) to read as follows:

§210.5 Payment process to States.

(d)***

(2) ***

(ii) Each State agency must also submit an annual report detailing the disbursement of performance-based cash assistance described in § 210.4(b)(1). Such report must be submitted no later than 30 days after the end of each fiscal year. State agencies will no longer be required to submit the annual report once all school food authorities in the State have been certified. The report must include the total number of school food authorities in the State and the names of certified school food authorities.

§210.7 [Amended]

5. Amend paragraph (e) by removing “§210.10(n)(1)” and adding, in its place “§210.10(o)(1)”.

§210.9 [Amended]

6. Amend paragraph (c) introductory text by removing “§210.10(n)(1)” and adding, in its place “§210.10(o)(1)”.

7. In §210.10:

- a. At the end of paragraph (a)(1)(i) add a sentence;
- b. In paragraph (a)(3), add “through June 30, 2021” at the end of the third sentence;
- c. In paragraph (b)(1)(ii), remove “Food” and in its place add “Through June 30, 2021, food”;
- d. Revise paragraph (c) introductory text and table;
- e. Revise paragraph (c)(1);

- f. At the end of paragraph (c)(2) introductory text, add a sentence;
- g. Revise the last two sentences of paragraph (c)(2)(iii) introductory text;
- h. Revise paragraph (c)(3);
- i. Revise paragraph (d)(3);
- j. Revise the table in paragraph (f)(1);
- k. In the first sentence of paragraph (f)(4), remove “Food” and add in its place “Through June 30, 2021, food”;
- l. In paragraph (g), revise the first sentence;
- m. In paragraph (h)(2) introductory text, add “Through June 30, 2021,” at the beginning of the first sentence; and
- n. Revise paragraphs (j) and (m).

The additions and revisions read as follows:

§ 210.10 Meal requirements for lunches and requirements for afterschool snacks.

(a)***

(1)***

(i)*** Potable water must be calorie-free, noncarbonated, and may be unflavored or naturally flavored.

(c) Meal pattern for school lunches. Schools must offer the food components and quantities required in the lunch meal pattern established in the following table, except as permitted in paragraph (m) of this section:

Food Components	Lunch Meal Pattern		
	Grades K-5	Grades 6-8	Grades 9-12
	Amount of food ^a per week (minimum per day)		
Fruits (cups) ^b	2½ (½)	2½ (½)	5 (1)
Vegetables (cups) ^b	3¾ (¾)	3¾ (¾)	5 (1)
Dark green ^c	½	½	½
Red/Orange ^c	¾	¾	1¼
Beans and peas (legumes) ^c	½	½	½
Starchy ^c	½	½	½
Other ^{c,d}	½	½	¾
Additional Vegetables to Reach Total ^e	1	1	1½
Grains (oz eq) ^f	8-9 (1)	8-10 (1)	10-12 (2)
Meats/Meat Alternates (oz eq)	8-10 (1)	9-10 (1)	10-12 (2)
Fluid milk (cups) ^g	5 (1)	5 (1)	5 (1)
Other Specifications: Daily Amount Based on the Average for a 5-Day Week			
Min-max calories (kcal) ^h	550-650	600-700	750-850
Saturated fat (% of total calories) ^h	<10	<10	<10
Sodium Target 2 (mg) ^e	≤935	≤1,035	≤1,080
Trans fat ^{hij}	Nutrition label or manufacturer specifications must indicate zero grams of <u>trans</u> fat per serving (through June 30, 2021).		

^a Food items included in each group and subgroup and amount equivalents. Minimum creditable serving is 1/8 cup.

^b One quarter-cup of dried fruit counts as 1/2 cup of fruit; 1 cup of leafy greens counts as 1/2 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% full-strength.

^c Larger amounts of these vegetables may be served.

^d This category consists of “Other vegetables” as defined in paragraph (c)(2)(iii)(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 beans/peas (legumes) vegetable subgroups as defined in paragraph (c)(2)(iii) of this section.

^e Any vegetable subgroup may be offered to meet the total weekly vegetable requirement.

^f At least half of the grains offered weekly must be whole grain-rich as specified in FNS guidance, and the remaining grain items offered must be enriched.

^g All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk may be unflavored or flavored provided that unflavored milk is offered at each meal service.

^h The average daily calories for a 5-day school week menu must be within the range (at least the minimum and no more than the maximum values). Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, trans fat (through June 30, 2021), and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent are not allowed.

ⁱ Sodium Target 1 is effective from July 1, 2014 (SY 2014-2015) through June 30, 2024 (SY 2023-2024). Sodium Target 2 (shown) is effective July 1, 2024 (SY 2024-2025).

^j Through June 30, 2021, food products and ingredients must contain zero grams of trans fat (less than 0.5 grams) per serving.

(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), except as permitted in paragraph (m) of this section. 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.

(2)*** Allowable modifications, exceptions, and variations are listed in paragraph (m) of this section.***

(iii) *** Cooked dry beans and peas (legumes) offered as a meat alternate may also count toward the weekly legumes requirement, but may not count toward the minimum amount of vegetables that must be offered daily and weekly. Vegetable offerings at lunch over the course of the week must include the following five vegetable subgroups, as defined in this section, in the quantities specified in the meal pattern in this paragraph (c), except as permitted in paragraph (m) of this section:

(3) Food components in outlying areas. Schools in American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands may serve vegetables such as yams, plantains, or sweet potatoes to meet the grains component.

(d)***

(3) Fluid milk substitutions for non-disability reasons. If a school food authority chooses to offer one or more substitutions for fluid milk for non-disability reasons, the nondairy beverage(s) must provide the nutrients listed in the following table. Fluid milk substitutions must be fortified in accordance with fortification guidelines issued by the Food and Drug Administration. A school food authority need only offer the nondairy beverage(s) that it has identified as allowable fluid milk substitutions according to the following chart.

Nutrient	Per Cup (8 fl oz)
Calcium	276 mg.
Protein	8 g.
Vitamin A	150 mcg.
Vitamin D	2.5 mcg.
Magnesium	24 mg.
Phosphorus	222 mg.
Potassium	349 mg.
Riboflavin	0.44 mg.
Vitamin B-12	1.1 mcg.

(f)***

(1)***

	Calorie Ranges for Lunch		
	Grades K-5	Grades 6-8	Grades 9-12
Min-max calories (kcal) ^{a b}	550-650	600-700	750-850

^a The average daily amount for a 5-day school week must fall within the minimum and maximum levels.

^b Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for trans fat (through June 30, 2021), calories, saturated fat, and sodium.

(g) *** 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 trans fat (through June 30, 2021), calorie, saturated fat, and sodium specifications established in paragraph (f) of this section; and the meal pattern requirements in paragraphs (o), (p), and (q) of this section as applicable. ***

(j) *Responsibility for monitoring meal requirements.* Compliance with the meal requirements in paragraph (b) of this section, including dietary specifications for trans fat (through June 30, 2021), calories, saturated fat, and sodium and paragraphs (o), (p), and (q) of this section, as applicable, will be monitored by the State agency through administrative reviews authorized in § 210.18.

(m) *Modifications, exceptions, and variations allowed in reimbursable meals—(1) Reasonable modifications for disability requests.* School food authorities must make reasonable

modifications, including substitutions, to lunches and afterschool snacks for students who have a disability under Federal law and 7 CFR 15b.3 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 student or household. In order to receive reimbursement when a modified meal does not meet the meal pattern requirements specified in paragraph (c) of this section, households must submit to school food authorities a written medical statement from a State licensed healthcare professional that provides sufficient information about the impairment and how it restricts the student's diet. Modified meals that meet the meal pattern requirements in paragraph (c) of this section are reimbursable with or without a medical statement. School food authorities must ensure that parents/guardians and students have notice of the procedure for requesting meal modifications and the process for resolving disputes related to modifications for disabilities. See 7 CFR 15b.6(b) and 15b.25. Expenses incurred when making reasonable 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 requests*—(i) *Dietary preferences*. School food authorities should consider cultural, ethical, Tribal, and religious preferences when planning and preparing meals. For example, school food authorities are encouraged to provide meals to accommodate students' religious needs and practices, unless modifications cannot be made for legitimate, non-discriminatory reasons, such as operational constraints. Any variations must be consistent with the meal pattern requirements specified in paragraph (c) of 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.

(ii) *Option to provide fluid milk substitutions for non-disability reasons.* A school food authority opting to provide fluid milk substitutions for non-disability reasons has discretion to provide the nondairy beverage(s) of its choice, provided the beverage(s) meets the nutritional requirements outlined in paragraph (d) of this section. A school food authority must obtain a written request from a State licensed healthcare professional or a student's parent or legal guardian that identifies the need for the substitute prior to providing a fluid milk substitution. A school food authority must inform the State agency if any of its schools choose to offer fluid milk substitutions for non-disability reasons. Expenses incurred when providing substitutions for fluid milk that exceed program reimbursements must be paid by the school food authority.

(3) *Exceptions for natural disasters.* If there is a natural disaster or other catastrophe, FNS may temporarily allow schools to serve meals for reimbursement that do not meet the requirements in this section.

(4) *Variations for operational reasons.* Schools should consider operational factors when planning and preparing meals. With prior State agency written notification, FNS allows variations as described in this paragraph (m) on an experimental or continuing basis in the food components for the meal pattern in paragraph (c) of this section for operational reasons.

Variations allowed under this paragraph (m) must be necessary to meet operational needs.

(i) *Age/grade group variations for operational reasons—(A) Age/grade group variations for schools with unique grade configurations.* Schools with unique grade configurations that do not align with the grade groups established in paragraph (c)(1) of this section may use the meal pattern appropriate for the majority of students to one grade above and/or below the established

grade groups. For example, a school with students in grades 5-9 may use the grades 6-8 meal pattern for all student meals.

(B) *Age/grade group variations for schools with unique grade configurations in small school food authorities.* In school food authorities serving fewer than 2,500 students, schools with unique grade configurations that do not align with the grade groups established in paragraph (c)(1) of this section may use one or two meal patterns to plan meals for all students. For example, a school with students in grades K-12 in a small school food authority may use the grades 6-8 meal pattern for all student meals.

(ii) *Vegetable subgroups variations for operational reasons.* School food authorities that experience operational challenges offering varied amounts of vegetable subgroups over a school week, as specified in paragraph (c) of this section, may offer ½ cup of each vegetable subgroup to all age/grade groups over a school week. The total amount of vegetables offered daily and weekly for each age/grade group must reflect the meal pattern in paragraph (c) of this section.

8. In § 210.11:

- a. In the first sentence of paragraph (c)(3)(i), remove “the school day” and in its place add “two school days”;
- b. In paragraph (f)(2), remove “trans fat” and in its place add “*trans* fat (through June 30, 2021)”;
- c. In the first sentence of paragraph (f)(3)(i), remove “trans fat” and in its place add “*trans* fat (through June 30, 2021)”;
- d. In the first sentence of paragraph (f)(3)(ii), remove “trans fat” and in its place add “*trans* fat (through June 30, 2021)”;

- e. In paragraph (f)(3)(iii), remove “trans fat” and in its place add “*trans* fat (through June 30, 2021)”;
- f. In paragraph (g), remove “The” and add in its place “Through June 30, 2021, the”;
- g. In paragraph (h)(2)(i), remove “, trans fat” and add in its place add “*trans* fat (through June 30, 2021)”;
- h. In paragraph (h)(2)(ii), remove “trans fat” and add in its place add “*trans* fat (through June 30, 2021)”;
- i. In paragraph (m)(1)(iv), remove “and” after the semicolon;
- j. Revise paragraph (m)(1)(v);
- k. Add paragraph (m)(1)(vi);
- l. In paragraph (m)(2)(iv), remove the word “and” after the semicolon;
- m. Revise paragraph (m)(2)(v); and
- n. Add paragraph (m)(2)(vi).

The additions and revisions read as follows:

§210.11 Competitive food service and standards.

(m)***

(1)***

(v) 100 percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water (with or without carbonation and with no added sweeteners) (no more than 8 fluid ounces); and

(vi) Calorie-free, flavored water, with or without carbonation (no more than 20 fluid ounces).

(2)***

(v) 100 percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water (with or without carbonation and with no added sweeteners) (no more than 12 fluid ounces); and

(vi) Calorie-free, flavored water, with or without carbonation (no more than 20 fluid ounces).

9. In § 210.18:

- a. In paragraph (b), revise the definition of “Administrative reviews”;
- b. Revise paragraph (c) introductory text;
- c. In paragraph (c)(1), remove the two occurrences of “3” and in their place add “5”;
- d. Revise paragraph (c)(2);
- e. Revise paragraph (e)(5);
- f. In paragraph (f) introductory text, add a new second sentence;

- g. Revise paragraph (f)(3);
- h. In paragraph (g) introductory text, add a new third sentence;
- i. In paragraph (g)(1)(ii) introductory text, add a sentence at the end;
- j. Add paragraph (g)(2)(i)(B)(4);
- k. In paragraph (h) introductory text, add a new second sentence;
- l. In paragraph (h)(1) introductory text, revise the first sentence;
- m. Add paragraph (h)(2)(xi);
- n. In paragraph (l), revise the first sentence;
- o. Remove paragraph (l)(2)(ii) and redesignate paragraphs (l)(2)(iii), (iv), and (v) as paragraphs (l)(2)(ii), (iii), and (iv), respectively;
- p. Revise newly redesignated paragraphs (l)(2)(ii) and (l)(2)(iii) introductory text; and
- q. In newly redesignated paragraph (l)(2)(iv), remove “through (iv)” and in its place add “and (iii)”.

The additions and revisions read as follows:

§210.18 Administrative reviews.

(b) ***

Administrative reviews. Administrative reviews means the comprehensive off-site and/or on-site evaluation of all school food authorities participating in the programs specified in paragraph (a) of this section. The term “administrative review” refers to a review of both critical and general areas in accordance with paragraphs (g) and (h) of this section, as applicable for each reviewed program. The administrative review may include other areas of program operations determined by the State agency to be important to program performance. In addition, the Secretary shall establish criteria that provides State agencies the option to omit designated areas of the administrative review when a State or school food authority utilizes FNS-specified monitoring efficiencies outside of the administrative review, or adopts FNS-specified error reduction strategies.

(c) *Timing of reviews.* State agencies must conduct administrative reviews of all school food authorities participating in the National School Lunch Program (including the Afterschool Snacks and the Seamless Summer Option) and School Breakfast Program at least once during a 5-year review cycle, provided that each school food authority is reviewed at least once every 6 years. At a minimum, the on-site portion of the administrative review must be completed during the school year in which the review was begun.

(2) *Targeted follow-up reviews.* The State agency must identify school food authorities that are high-risk. High-risk school food authorities include any school food authorities that have had previous findings on an administrative review, findings found through the oversight of Federal procurement regulations, and as otherwise prescribed by the Secretary. Within two years of

being designated high-risk, such school food authorities must receive a targeted follow-up review. Targeted follow-up review areas include the critical areas found in (g) and (h)(1) of this section, and as otherwise prescribed by the Secretary. Nothing in this section shall preclude the State agency from conducting additional reviews. The State agency may conduct targeted follow-up and additional reviews in the same school year as the administrative review.

(e)***

(5) *Noncompliance with eligibility determinations, meal counting and claiming, and meal pattern requirements.* If the State agency determines there is significant noncompliance with eligibility determinations or meal counting and claiming requirements set forth in §§ 210.8 and 245.6, or the meal pattern and nutrition requirements set forth in §§ 210.10 and 220.8 of this chapter, as applicable, the State agency must select the school food authority for an administrative review early in the review cycle.

(f) *** State agencies may omit designated areas of review, in part or entirely, where a school food authority or State agency has implemented FNS-specified error reduction strategies or utilized FNS-specified monitoring efficiencies. ***

(3) *Audit results.* To prevent duplication of monitoring efforts, the State agency may use any recent and currently applicable results from federally required audit activity or from State-imposed audit requirements. In addition, State agencies may use recent and currently applicable results from local audit activity to assess compliance. Such results may be used only insofar as

they pertain to the reviewed school(s) or the overall operation of the school food authority, that they are relevant to the review period, and that they adhere to audit standards contained in 2 CFR part 200, subpart F. The State agency must document the source and the date of the audit.

(g) *** However, State agencies may omit designated critical areas of review, in part or entirely, where a school food authority or State agency has implemented FNS-specified error reduction strategies or utilized FNS-specified monitoring efficiencies. ***

(1)***

(ii) *** The State agency may omit the on-site visit for breakfast in extenuating travel circumstances, such that lodging is not available within 50 miles of the reviewed school, and with prior notice to FNS.

.....
(2) ***

(i) ***

(B) ***

(4) The State agency may omit the observation of the on-site breakfast review in extenuating travel circumstances, such that lodging is not available within 50 miles of the reviewed school, and with prior notice to FNS.

(h)*** However, State agencies may omit designated general areas of review, in part or entirely, where the school food authority or State agency has implemented FNS-specified error reduction strategies or utilized FNS-specified monitoring efficiencies.***

(1)*** The State agency must conduct an assessment of the school food authority's nonprofit school food service to evaluate the risk of noncompliance with resource management requirements as prescribed in the FNS Administrative Review Manual.***

(2)***

(xi) *Buy American*. The State agency shall ensure that the school food authority complies with the Buy American requirements set forth in § 210.21(d), as specified in the FNS Administrative Review Manual for the general areas of review.

(1) ***The State agency must take fiscal action for all Performance Standard 1 violations and specific Performance Standard 2 violations identified during an administrative review, including targeted follow-up or other reviews, as specified in this section.***

(2)***

(ii) For repeated violations involving food quantities, whole grain-rich foods, milk type, and vegetable subgroups cited under paragraph (g)(2) of this section, the State agency has discretion to apply fiscal action as follows:

(A) If the meals contain insufficient quantities of the required food components, the affected meals may be disallowed/reclaimed;

(B) If no whole grain-rich foods are offered during the week of review, meals for the entire week of review may be disallowed and/or reclaimed;

(C) If insufficient whole grain-rich foods are offered during the week of review, meals for one or more days during the week of review may be disallowed/reclaimed.

(D) If an unallowable milk type is offered or no milk variety is offered, any of the deficient meals selected may be disallowed/reclaimed; and

(E) If one vegetable subgroup is not offered over the course of the week reviewed, the reviewer should evaluate the cause(s) of the error and may determine the appropriate fiscal action. All meals served in the deficient week may be disallowed/reclaimed.

(F) If a weekly vegetable subgroup is offered in insufficient quantity to meet the weekly vegetable subgroup requirement, meals for one day of the week of review may be disallowed/reclaimed; and

(G) If the amount of juice offered exceeds the weekly limitation, meals for the entire week of review may be disallowed/reclaimed.

(iii) For repeated violations of *trans* fat (through June 30, 2021), calorie, saturated fat, and sodium 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:

.....

* * * * *

§ 210.19 [Amended]

.....
10. In § 210.19, in paragraph (a)(5), remove “3” and in its place add “5”.

PART 215-SPECIAL MILK PROGRAM FOR CHILDREN

11. The authority citation for part 215 continues to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

12. In § 215.7a, revise paragraph (b) to read as follows:

§215.7a Fluid milk and non-dairy milk substitute requirements.

(b) *Fluid milk substitutes.* Non-dairy fluid milk substitutions that provide the nutrients listed in the following table and are fortified in accordance with fortification guidelines issued by the Food and Drug Administration may be provided for non-disabled children who cannot consume fluid milk due to medical or special dietary needs when requested in writing by the child's parent or guardian. A school or day care center need only offer the non-dairy beverage that it has identified as an allowable fluid milk substitute according to the following table.

Nutrient	Per Cup (8 fl oz)
Calcium	276 mg.
Protein	8 g.
Vitamin A	150 mcg.
Vitamin D	2.5 mcg.
Magnesium	24 mg.
Phosphorus	222 mg.
Potassium	349 mg.
Riboflavin	0.44 mg.
Vitamin B-12	1.1 mcg.

PART 220-SCHOOL BREAKFAST PROGRAM

13. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

14. In §220.2:

- a. Amend the definition of “Breakfast” by removing “§§ 220.8 and 220.23” and adding “§ 220.8” in its place;
- b. Amend the definition of “Fiscal year” by removing “the period of 15 calendar months beginning July 1, 1976, and ending September 30, 1977; and” and by removing “1977” and adding, in its place “2019”;
- c. Revise the definition of “Menu item”;
- e. Remove the definition of “Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning”; and
- f. Amend the definition of “School week” by removing “and §220.23”.

The revision reads as follows:

§220.2 Definitions.

Menu item means a food offered as part of the reimbursable meal.

15. In §220.8:

- a. In paragraph (a)(1), add a sentence at the end;
- b. In paragraph (a)(3), revise the third sentence;
- c. In paragraph (b)(1)(ii), remove “Food” and in its place add “Through June 30, 2021, food”;
- d. In paragraph (b)(1)(iii), add “, except as allowed in paragraph (m)” before the period;
- e. Revise the table in paragraph (c) introductory text;
- f. In paragraph (c)(1), revise the last sentence;
- g. Revise paragraph (c)(2)(i);
- h. Revise the first sentence of paragraph (c)(2)(ii);
- i. Remove paragraph (c)(2)(iv);
- j. Revise paragraph (c)(3);
- k. Revise the table in paragraph (f)(1);
- l. In the first sentence of paragraph (f)(4), remove “Food” and in its place add “Through June 30, 2021, food”;
- m. Revise the first sentence of paragraph (g);
- n. In paragraph (h)(2) introductory text, add “Through June 30, 2021,” at the beginning of the sentence; and
- o. Revise paragraph (m).

The addition and revisions read as follows:

§220.8 Meal requirements for breakfasts.

(a)***

(1)*** Potable water must be calorie-free, noncarbonated, and may be unflavored or naturally flavored.

(3) *** Through June 30, 2021, labels or manufacturer specifications for food products and ingredients used to prepare school meals for students in grades K through 12 must indicate zero grams of trans fat per serving (less than 0.5 grams). ***

(c)***

Food Components	Breakfast Meal Pattern		
	Grades K-5	Grades 6-8	Grades 9-12
	Amount of food ^a per week (minimum per day)		
Fruits (cups) ^{b c}	5 (1)	5 (1)	5 (1)
Vegetables (cups) ^c	0	0	0
Dark green	0	0	0
Red/Orange	0	0	0
Beans and peas (legumes)	0	0	0
Starchy	0	0	0
Other	0	0	0
Additional Vegetables to Reach Total ^e	0	0	0
Grains (oz eq) ^d and/or Meats/Meat Alternates (oz eq) ^e	7-10 (1)	8-10 (1)	9-10 (1)
Fluid milk (cups) ^f	5 (1)	5 (1)	5 (1)
Other Specifications: Daily Amount Based on the Average for a 5-Day Week			
Min-max calories (kcal) ^{g h}	350-500	400-550	450-600
Saturated fat (% of total calories) ^h	<10	<10	<10
Sodium Target 2 (mg) ^{h 1}	≤485	≤535	≤570
<u>Trans</u> fat ^{h j}	Nutrition label or manufacturer specifications must indicate zero grams of <u>trans</u> fat per serving (through June 30, 2021).		

^a Food items included in each group and subgroup and amount equivalents. Minimum creditable serving is $\frac{1}{8}$ cup.

^b One quarter cup of dried fruit counts as $\frac{1}{2}$ cup of fruit; 1 cup of leafy greens counts as $\frac{1}{2}$ 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% full-strength.

^c Schools must offer 1 cup of fruit daily and 5 cups of fruit weekly, except for service variations allowed under paragraph (m) of this section. Vegetables may be substituted for fruits, but the first two cups per week of any such substitution must be from the dark green, red/orange, beans and peas (legumes) or “Other vegetables” subgroups, as defined in §210.10(c)(2)(iii) of this chapter. Schools offering breakfast in a non-cafeteria setting may offer $\frac{1}{2}$ cup of fruits daily, as permitted in paragraph (m) of this section.

^d At least half of the grains offered weekly must be whole-grain-rich as specified in FNS guidance, and the remaining grain items offered must be enriched.

^e There is a combined grains and/or meat/meat alternate component. Schools may offer meats/meat alternates and/or grains interchangeably to meet the daily and/or weekly ounce equivalents requirement.

^f All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk may be unflavored or flavored provided that unflavored milk is offered at each meal service.

^g The average daily calories for a 5-day school week must be within the range (at least the minimum and no more than the maximum values).

^h Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, trans fat (through June 30, 2021), and sodium. Fluid milk with fat content greater than 1 percent milk fat is not allowed.

ⁱ Sodium Target 1 (shown) is effective from July 1, 2014 (SY 2014-2015) through June 30, 2024(SY 2023-2024). Sodium Target 2 (shown) is effective July 1, 2024 (SY 2024-2025).

^j Through June 30, 2021, food products and ingredients must contain zero grams of trans fat (less than 0.5 grams) per serving.

(1) ***Age/grade group variations are allowed as specified in §210.10(m) of this chapter.

(2) ***

(i) *Grains and/or meats/meat alternates component.* Schools may offer grains and/or meats/meat alternates interchangeably to meet the daily and weekly ounce equivalents for this component requirement.

(A) *Grains—(1) Enriched and whole grains.* All grains offered must be made with enriched and/or whole grain meal or flour. Whole grain-rich products must contain at least 50 percent whole grains and the remaining grains in the product must be enriched.

(2) *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 ($\frac{1}{5}$) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent ($\frac{1}{5}$) for each day less than 5. The servings for biscuits, rolls, muffins,

and other grain/bread varieties are specified in FNS guidance. At least half of the grains offered weekly must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched.

(B) *Meats/meat alternates*—(1) *Enriched macaroni*. Enriched macaroni with fortified protein as defined in appendix A to part 210 may be used to meet part of the meats/meat alternates requirement when used as specified in appendix A to part 210. An enriched macaroni product with fortified protein as defined in appendix A to part 210 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.

(2) *Nuts and seeds*. Nuts and seeds and their butters are allowed as meat alternates in accordance with program guidance. Acorns, chestnuts, and coconuts may not be used because of their low protein and iron content. Nut and seed meals or flours may be used only if they meet the requirements for Alternate Protein Products established in appendix A to part 220. Nuts or seeds may be used to meet no more than one-half (50 percent) of the meats/meat alternates component with another meats/meat alternates to meet the full requirement.

(3) *Yogurt*. Yogurt may be used to meet all or part of the meats/meat alternates component. Yogurt may be plain or flavored, unsweetened or sweetened. 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.

(4) *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. Noncommercial and/or non-standardized tofu and products are not creditable.

(5) *Beans and peas (legumes).* Cooked dry beans and peas (legumes) may be used to meet all or part of the meats/meat alternates component. Beans and peas (legumes) 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.

(6) *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 in accordance with FNS guidance.

(ii) *** Schools must offer daily the fruit quantities specified in the breakfast meal pattern in this paragraph (c), except for fruit service variations allowed under paragraph (m) of this section.

(3) *Food components in outlying areas.* Schools in American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands may serve a vegetable such as yams, plantains, or sweet potatoes to meet the grains component.

(f)***

(1)***

Calorie Ranges for Breakfast—Effective SY 2013-2014

	Grades K-5	Grades 6-8	Grades 9-12
Minimum-maximum calories (kcal) ^{a b}	350-500	400-550	450-600

^aThe average daily amount for a 5-day school must fall within the minimum and maximum levels.

^bDiscretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, trans fat (through June 30, 2021), and sodium.

(g) ***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 for *trans* fat (through June 30, 2021), calories, saturated fat, and sodium established in paragraph (f) of this section, and the meal pattern in paragraphs (o) and (p) of this section, as applicable. ***

(m) *Exceptions and variations allowed in reimbursable meals.* (1) With State agency approval, schools that offer breakfast in a non-cafeteria setting may serve students ½ cup of fruit as part of the reimbursable meal.

(2) The modifications, exceptions, variations, and requirements in §210.10(m) of this chapter also apply to this Program.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

16. 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).

17. In §226.2, add a definition for “State licensed healthcare professional” in alphabetical order to read as follows:

§226.2 Definitions.

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, and physician’s assistant, depending on State law.

18. In 226.20, revise the paragraph (g) subject heading and paragraphs (g)(1) introductory text and (g)(1)(i), (g)(2) introductory text, (g)(2)(i), and (g)(3) to read as follows:

§226.20 Requirements for Meals.

(g) Modifications, exceptions, and variations allowed in reimbursable meals—(1) Reasonable modifications for disability requests. Reasonable modifications, including substitutions, must be made on a case-by-case basis for foods and meals described in paragraphs (a), (b), and (c) of this section for individual participants who have a disability under Federal law and 7 CFR 15b.3 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 adult participant. Institutions and facilities must ensure that parents, guardians, adult participants, and persons on behalf of adult participants have notice of the procedure for requesting meal modifications and the process for resolving disputes related to modifications for disabilities. See 7 CFR 15b.6(b) and 15b.25. Expenses incurred when making reasonable modifications that exceed program reimbursement rates must be paid by the institution or facility; costs may be paid from the institution's nonprofit food service account.

(i) In order to receive reimbursement when a modified meal does not meet the meal pattern requirements specified in paragraphs (a), (b), and (c) of this section, households must submit to the institution or facility a written medical statement from a State licensed healthcare professional that provides sufficient information about the impairment and how it restricts the child or adult participant's diet. Modified meals that meet the meal pattern requirements in paragraph (a), (b), or (c) of this section are reimbursable with or without a medical statement.

(2) *Variations for non-disability requests*—(i) *Dietary preferences*. Institutions and facilities should consider cultural, ethical, tribal, and religious preferences when planning and preparing meals. For example, institutions and facilities are encouraged to provide meals to accommodate participants' religious needs and practices, unless modifications cannot be made for legitimate, non-discriminatory reasons, such as operational constraints. Any variations must be consistent with the meal pattern requirements specified in paragraphs (a), (b), and (c) of this section. Expenses incurred from meal pattern variations that exceed program reimbursement rates must

be paid by the institution or facility. These costs may be paid from the institution's nonprofit food service account.

(3) Fluid milk substitutions for non-disability reasons. Non-dairy fluid milk substitutions that provide the nutrients listed in the following table and are fortified in accordance with fortification guidelines issued by the Food and Drug Administration may be provided for non-disabled child and adult participants when requested in writing by a State licensed healthcare professional, the child's parent or guardian, or by, or on behalf of, an adult participant. Expenses incurred when providing substitutions for fluid milk that exceed program reimbursements must be paid by the participating institution, family or group day care home, or sponsored center. An institution or facility need only offer the non-dairy beverage that it has identified as an allowable fluid milk substitute according to the following table.

Nutrient	Per Cup (8 fl oz)
Calcium	276 mg.
Protein	8 g.
Vitamin A	150 mcg.
Vitamin D	2.5 mcg.
Magnesium	24 mg.
Phosphorus	222 mg.
Potassium	349 mg.
Riboflavin	0.44 mg.
Vitamin B-12	1.1 mcg.

PART 235-STATE ADMINISTRATIVE EXPENSE FUNDS

19. The authority citation for part 235 continues to read as follows:

Authority: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

20. In § 235.5:

a. Revise the third sentence of paragraph (d);

b. Revise the second sentence of paragraph (e)(1); and

c. In paragraph (e)(2), remove “unexpended” and add in its place “unobligated”.

The revisions read as follows:

§ 235.5 Payments to States.

(d) *** Based on this information or on other available information, FNS shall reallocate, as it determines appropriate, any funds allocated to State agencies in the current fiscal year which will not be obligated in the following fiscal year and any funds carried over from the prior fiscal year which remain unobligated at the end of the current fiscal year. ***

(e) ***

(1) *** In subsequent fiscal years, up to 20 percent may remain available for obligation and expenditure in the second fiscal year. ***

Stephen L. Censky
Deputy Secretary

Dated: January 8, 2020.

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