Proposed Rules

Federal Register
Vol. 85, No. 228
Wednesday, November 25, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, and 226

[FNS–2020–0038]

RIN 0584–AE81

Restoration of Milk, Whole Grains, and Sodium Flexibilities

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

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes to codify three menu planning flexibilities established by the interim final rule titled, *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* published November 30, 2017, and made permanent with some modifications by a final rule of the same title published December 12, 2018, hereafter referred to as the 2018 Final Rule. An April 2020 court decision vacated and remanded the 2018 Final Rule. In response to the vacatur and remand of the 2018 Final Rule, this rule proposes targeted changes to: Allow National School Lunch Program and School Breakfast Program operators to permanently offer flavored, low-fat milk as part of a reimbursable meal and for sale as a competitive beverage and allow flavored, low-fat milk in the Special Milk Program for Children and in the Child and Adult Care Food Program for participants ages 6 and older; allow for half of the weekly grains in the National School Lunch Program and School Breakfast Program menus to be whole grain-rich; and provide schools participating in the National School Lunch Program and School Breakfast Programs more time for gradual sodium reduction by retaining Sodium Target 1 through the end of school year (SY) 2023–2024, continuing to Target 2 in SY 2024–2025, and eliminating the Final Target.

DATES:

Comment date: Online comments submitted through the Federal eRulemaking Portal on this proposed rule must be received on or before December 28, 2020. Mailed comments on this rule must be postmarked on or before December 28, 2020.

Comments on Paperwork Reduction Act requirements: Comments on the information collection requirements associated with this rule must be received by December 28, 2020.

ADDRESSES: The USDA, Food and Nutrition Service invites interested persons to submit written comments on this proposed rule. USDA seeks comment on all aspects of this proposal.

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 22031–0885.
- *Overnight, courier, or hand delivery:* Shawn Martin, 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, telephone: 703–305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

This rulemaking proposes to maintain operational flexibility in certain Child Nutrition Program requirements related to milk, grains, and sodium. The proposed changes are expected to be effective in the spring of 2021. The proposed changes to the milk, grains, and sodium requirements are discussed in detail in Section IV. This section provides an overview of administrative and legislative actions that precipitated this rulemaking.

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). FNS regulations at 7 CFR 210.10 and 220.8 detail the meal patterns and nutrition standards for the NSLP and SBP, respectively.

Section 201 of Public Law 111–296 (the Healthy, Hunger-Free Kids Act of 2010) amended Section 4(b) of the NSLA (42 U.S.C. 1753(b)), requires FNS 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, January 26, 2012), hereafter referred to as the 2012 Final Rule, updated the school meal requirements to be consistent with the 2010 Dietary Guidelines, as recommended in the report *School Meals: Building Blocks for Healthy Children*.[1]

In 2012, FNS updated the NSLP and SBP meal requirements to reflect the latest Dietary Guidelines, as required by Section 9(a)(4) of the NSLA (42 U.S.C. 1758(a)(4)). The implementing regulations increased the availability of fruits, vegetables, whole grains, and fat-free and low-fat milk in school meals; required sodium and saturated fat limits; eliminated synthetic trans-fat in the weekly school menu; and established calorie ranges to reflect the age-appropriate calorie needs of children.[2] The updated requirements

[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] Final rule. *Nutrition Standards in the National School Lunch and School Breakfast Programs, 77*

Continued

were largely based on recommendations issued by the Health and Medicine Division of the National Academies of Science, Engineering, and Medicine. This was the first major change to the meal patterns since 1995. The 2012 Final Rule required most schools to increase the availability of fruits, vegetables, whole grains, and fat-free and low-fat fluid milk in school meals; reduce the levels of sodium, saturated fat and trans-fat in meals; and meet the nutrition needs of schoolchildren within their age appropriate calorie requirements. These 2012 changes were intended to enhance the diet and health of schoolchildren and mitigate trends in childhood obesity.

The regulations implemented in 2012 included three key changes with regard to the milk, grains, and sodium requirements:

- Allowed flavoring only in fat-free milk in the NSLP and SBP. Prior to 2012, schools could offer flavored or unflavored, fat-free, low-fat, reduced fat, or whole milk;
- Implemented whole grain requirements and required that half of the grains offered in the NSLP and SBP be whole grain-rich beginning in SY 2012–2013 and SY 2013–2014, respectively, and required that, effective SY 2014–2015, all grains offered in both programs be whole grain-rich (meaning the grain product contains at least 50 percent whole grains and the remaining grain content of the product must be enriched). Prior to 2012, grains had to be made from any combination of enriched grains, whole grains, bran, and/or germ; and
- Required schools participating in the NSLP and SBP to gradually reduce the sodium content of meals offered on average over the school week by meeting progressively lower sodium targets over a 10-year period. At the end of the 10-year period, the sodium reduction in school breakfast and lunch would be significant. For example, schools would have had to reduce the sodium content of the meals by approximately 25–50 percent from the 2012 baseline to meet the Final Sodium Target by SY 2022–2023 (July 1, 2022). Prior to 2012, there were no limits on sodium for school meals.

While some schools successfully implemented the updated nutrition standards, others required additional flexibility and support from FNS to meet the standards. FNS continued to hear about persistent challenges with the milk, grains, and sodium requirements. The challenges identified by schools included decreased student participation, decreased meal consumption, difficulties preparing whole grain-rich food items, and limited ability to offer appealing meals with lower sodium content.

The requirement to offer exclusively whole grain-rich products was particularly challenging for some schools and, due to a long history of administrative and legislative actions allowing exemptions, it was never fully implemented nationwide. Seeking to assist schools, FNS allowed enriched pasta exemptions for SYs 2014–2015 and 2015–2016. Through successive legislative action, Congress also provided flexibilities for the whole grain-rich requirements, expanding the pasta flexibility to include other grain products. Congress also repeatedly delayed compliance with Sodium Target 2 through Federal appropriations.[3]

On May 1, 2017, the Secretary of Agriculture issued a Proclamation acknowledging the challenges that some schools faced in meeting milk, grains, and sodium requirements and committing to working with stakeholders to ensure that the requirements are practical and result in wholesome and appealing meals that schoolchildren enjoy eating. Subsequently, and consistent with the Consolidated Appropriations Act, 2017 (Pub. L. 115–31), FNS issued policy guidance (SP 32–2017, May 22, 2017, *School Meal Flexibilities for School Year 2017–2018*) providing milk, grains, and sodium flexibilities for SY 2017–2018 while taking steps to formulate practical regulatory relief in these areas. FNS policy guidance was followed by the interim final rule titled, *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (82 FR 56703, November 30, 2017), hereafter referred to as the 2017 Interim Final Rule, which established regulations that extended school meal flexibilities through SY 2018–2019 and applied the flavored milk flexibility to the Special Milk Program for Children (SMP) and the Child and Adult Care Food Program (CACFP) for participants age 6 and older. As a result, the regulations applicable in SY 2018–2019 provided relief with regard to the milk, grains, and sodium requirements, while retaining other essential meal standards (*e.g.,* fruit and vegetable quantities, fat restrictions, and calorie ranges) that contribute to wholesome meals.

The 2017 Interim Final Rule extended the flexibilities already allowed through policy guidance and previous appropriations legislation. In addition, the 2017 Interim Final Rule allowed milk flexibility in NSLP, SMP, SBP, and CACFP. Furthermore, the rule asked the public to submit comments on the long-term availability of the milk, grains, and sodium flexibilities. The 2017 Interim Final Rule generated significant interest. FNS received 86,247 comments, most of which were form letters that opposed the regulatory changes. Opponents argued that making the flexibilities permanent would undermine the progress already made and discourage continued progress, not support children's dietary habits, and increase children's risk of developing health problems. Opponents also argued that most schools were already compliant, and that the food industry has resources to support compliance. In general, proponents argued that the flexibilities would provide more menu planning options for schools, and thus enhance their ability to offer wholesome and appealing meals. They stated that the flexibilities would lead to increased participation and meal consumption. Writing in support of the changes, the School Nutrition Association, representing 57,000 members, urged FNS to adopt a permanent solution to operational challenges rather than temporary rules and annual waivers.

After careful consideration of the stakeholders' comments, FNS published the 2018 Final Rule giving schools the operational flexibility they needed to move forward with menu planning that met student preferences. In publishing the 2018 Final Rule, FNS determined that school nutrition operators made the case that the 2017 Interim Final Rule's targeted regulatory flexibility was practical and necessary for efficient Program operation and sought to improve student participation by enabling schools to offer children more appealing meals that would still be consistent with the goals of the DGAs. FNS recognized that allowing for taste preferences and operational flexibility was essential to incentivize the food industry's efforts to support the service of wholesome and appealing school meals.

FR 4088, January 26, 2012. Available at: *https://www.federalregister.gov/documents/2012/01/26/2012-1010/nutrition-standards-in-the-national-school-lunch-and-school-breakfast-programs.*

[3] Section 751 of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235); Section 743 of the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112–55); Section 752 of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235); Section 733 of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113); Section 747 of the Consolidated Appropriations Act, 2017 (Pub. L. 115–31); and Section 101(a)(1) of the Continuing Appropriations Act, 2018, Division D of the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Pub. L. 115–56).

In general, the 2018 Final Rule, which became effective July 1, 2019, for SY 2019–2020, codified the flexibilities offered in the 2017 Interim Final Rule with some modifications. The optional flexibilities codified in the 2018 Final Rule included the following targeted changes; the balance of the meal pattern remained intact:

- Allowing schools in the NSLP and SBP to offer flavored, low-fat milk (1-percent fat) at lunch and breakfast and as a beverage for sale à la carte, and requiring that unflavored milk (fat-free or low-fat) be available at each school meal service;
- requiring that half of the weekly grains in the NSLP and SBP be whole grain-rich and that the remaining weekly grains offered be enriched; and
- retaining Sodium Target 1 through SY 2023–2024, recognizing more time was needed for Target 2 and moving it to SY 2024–2025, and removing the Final Target.

On April 3, 2019, the Center for Science in the Public Interest challenged the 2018 Final Rule claiming that the regulation was unlawful under the Administrative Procedure Act. On April 13, 2020, a decision by the District of Maryland in *Center for Science in the Public Interest* v. *Perdue,* 438 F. Supp. 3d 546 (D. Md. 2019), found that the 2018 Final Rule was not a logical outgrowth of the 2017 Interim Final Rule, and therefore violated the Administrative Procedure Act. Although the District Court concluded that the 2018 Final Rule was not inconsistent with Federal law, did not reflect unexplained and arbitrary decision-making, did not represent an unacknowledged and unexplained change in position, and that FNS appropriately responded to public comments, the District Court ultimately vacated the rule based on the procedural violation. The District Court found that both the elimination of the final sodium target and the elimination of the one-hundred percent whole grain-rich requirement were not logical outgrowths of the Interim Final Rule. As such, the entire rule was vacated due to these two procedural violations.

The District Court also concluded that the 2018 Final Rule was a reasonable interpretation of the relevant statutory language from the NSLA as it relates to the Dietary Guidelines and that the USDA was not arbitrary in its explanation for its decision making.

The NSLA states that schools must serve meals ''consistent with the goals of the most recent'' Dietary Guidelines, 42 U.S.C. 1758(f)(1)(A). It is well established by Federal courts that if a statute is silent or ambiguous with respect to the specific issue, an agency may provide an interpretation that is based on a permissible construction of the statute. As the District Court explained, the statutory language ''consistent with the goals of'' is ambiguous and may lead to numerous permissible interpretations. The District Court found that the USDA reasonably interpreted ''consistent with the goals of'' of the Dietary Guidelines to be a broad, deferential phrase that requires consistency with the ultimate objectives of the Dietary Guidelines—in this case, increasing whole-grain consumption and reducing sodium consumption—but that also provides USDA with flexibility to rely on its expertise to depart from the Dietary Guidelines specific consumption requirements. As the District Court decision explained, it is also reasonable for USDA to interpret ''consistent *with the goals*'' of the Dietary Guidelines as meaningfully different from ''consistent with'' the Dietary Guidelines, and to interpret that difference to permit a looser connection between the Dietary Guidelines and school meal standards. The District Court determined that the 2018 Final Rule is consistent with this interpretation as it reflects the ultimate objective of increasing whole grain consumption and decreasing sodium consumption.

The NSLA states, that USDA shall ''promulgate rules, based on the most recent Dietary Guidelines, that reflect specific recommendations, expressed in serving recommendations, for increased consumption of foods and food ingredients offered in school nutrition programs,'' 42 U.S.C. 1758(a)(4)(B), and ''promulgate proposed regulations to update the meal patterns and nutrition standards for the [school lunch and breakfast programs] . . . based on recommendations'' in the School Meals Report Dietary Guidelines and the Food and Nutrition Board of the National Research Council of the National Academy of Sciences in its report entitled ''*School Meals: Building Blocks for Healthy Children*'' [4] (''School Meals Report''), 42 U.S.C. 1753(b)(3)(A)(i). The District Court also concluded that the statutory language ''based on'' was ambiguous. Similarly to ''consistent with the goals,'' the District Court determined that USDA reasonably interpreted Congress' mandate that it promulgate rules ''based on'' the School Meals Report to broadly require it to use these resources as the ''starting point'' for or ''foundational part'' of its rulemaking regarding the school meal standards.

The 2018 Final Rule reflected this interpretation in that it used the recommendations in the Dietary Guidelines and the School Meals Report as a starting point, but provided an explanation for its departure from the specific consumption requirements based on taste and operational flexibilities, the role of product innovation, health, and the need for nationwide standards. Regarding whole grains, it explained that the whole grain-rich requirement in this final rule is a minimum standard, not a maximum, and reflects in a practical and feasible way the Dietary Guidelines' emphasis on whole grains consumption. Regarding sodium, the 2018 Final Rule explains that USDA's intention is to ensure that the sodium targets reflect the most current Dietary Guidelines, are feasible for most schools, and allow them to plan appealing meals that encourage consumption and intake of key nutrients that are essential for children's growth and development. Thus, the 2018 Final Rule demonstrated that the USDA used its expertise to balance the nutrition science in the Dietary Guidelines with the practical considerations of implementation.

In the promulgation of the 2018 rule, USDA considered student taste preferences, operational flexibilities, the role of product innovation, nutrition science, and student health. Federal courts have found that an agency's decision must show that it examined the relevant data and articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made. Furthermore, Federal courts have also found an agency's actions to be arbitrary if it does one of the following: Relies on factors that Congress did not intend for it to consider, entirely ignores important aspects of the problem, explains its decisions in a manner contrary to the evidence before it, or reaches a decision that is so implausible that it cannot be ascribed to a difference in view.

The District Court found that the USDA examined relevant data when it considered student taste preferences, operational flexibilities, and product innovation in formulating the 2018 Final Rule. Although USDA is required to consider certain factors, including nutritional science and the Dietary Guidelines, in establishing standards for the school meal programs, see, *e.g.,* 42 U.S.C. 1758(a)(1)(A), 1773(e)(1), this requirement does not exclude other factors from USDA's consideration. The

[4] 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.*

District Court continued by stating that Congress has the authority to limit the factors the USDA considers when promulgating rules, but that it had not explicitly chosen to do so. USDA provided a satisfactory explanation to the District Court that regulatory certainty was essential to incentivize the food industry's efforts to support the service of wholesome and appealing school meals.

The District Court found that the USDA had considered student taste preferences, operational flexibilities, and the role of product innovation at the expense of student health and nutritional science and balanced these considerations against each other. Concerning whole-grain requirements, the District Court found that the USDA was permitted to balance the nutritional benefits of whole grains against the need for gradual adjustments in school menu planning, procurement, and food service equipment. As for sodium requirements, the District Court found that the USDA did not act arbitrarily by balancing nutrition science, practical application of requirements, and the need to ensure that children receive wholesome and appealing meals. Furthermore, the 2018 Final Rule did explain that almost a quarter of schools had asked for hardship exemptions from the whole-grain rich requirement for SY 2017–2018 and that continuing to operate these nationwide programs in an ad hoc fashion, with recurrent exemptions, was not feasible. The Final Rule also made clear that it was a minimum standard, not a maximum and that program operators may exceed the 2018 Final Rule's minimum requirements, and that USDA would continue to provide training and technical assistance resources to assist schools in increasing whole-grain content and decreasing sodium content in school meals.

The USDA acknowledged in the 2018 Final Rule that it was shifting its policy to find a better balance of practical operational concerns with student health needs. Federal courts have repeatedly found that an agency may not depart from prior policy sub silentio or simply disregard rules that are still in effect. However, Federal courts have permitted an agency to change its existing policies if it provides a reasoned explanation for the change. The District Court found that the USDA offered a reasoned explanation for the change of policy from the 2012 Final Rule's whole grain requirements and sodium targets to the 2018 Final Rule. The 2018 Final Rule explained that the USDA balanced practical operational concerns with student health needs in forming the altered whole grains standard.

The District Court also found that the USDA's decision to delay Sodium Target 2 was similarly adequate. The 2018 Final Rule delayed this target to provide schools more time for gradual sodium reduction. USDA established this delay for practical reasons, such as the fact that many schools are not equipped for scratch cooking, which makes further sodium reduction challenging.

This more flexible approach to sodium reduction allows more time for product reformulation, school menu adjustments, food service changes, personnel training, and changes in student preferences. Keeping the original date for Sodium Target 2 could potentially lower the acceptance of meals by students, who are currently accustomed to eating foods with higher sodium content outside of school. This could negatively impact program participation and contribute to food waste. Regarding elimination of the Final Target, the District Court found that it was within USDA's discretion to wait until after the new Dietary Guidelines and DRIs were released to set any final targets for sodium content. The District Court found that the USDA adequately explained and acknowledged its shift in policy from the 2012 Final Rule to the 2018 Final Rule.

This proposed rule seeks to remedy the procedural issues in the 2018 Final Rule by proposing to codify the operational flexibilities offered in the 2018 Final Rule. Codifying these flexibilities would provide the operational flexibility schools had been calling for and that Congress had repeatedly required through appropriations, while reflecting the recommendations of the Dietary Guidelines, as Section 9(a)(4), 42 U.S.C. 1758(a)(4) requires. The targeted optional flexibilities offered in this proposed rule apply only to the milk, grains, and sodium requirements that were addressed in the 2018 Final Rule and to which schools are accustomed. This rulemaking would help schools continue to provide wholesome and appealing meals that reflect the Dietary Guidelines and meet the needs and preferences of their students.

Since publication of the 2018 Final Rule, several relevant actions have taken place. USDA's School Meals Nutrition Cost Study (SNMCS), a rigorous evaluation conducted by an independent contractor, found high compliance in a nationally representative sample of schools in SY 2014–2015. Compared to school meals served before the new standards (SY 2009–2010), breakfasts and lunches served in 2014–2015 scored more than 20 percentage points higher on the Healthy Eating Index (HEI), a measure of overall diet quality. Both breakfasts and lunches showed significant reductions in empty calories, added sugars, and refined grains, and significant improvements in total fruit, whole fruit, and whole grains.[5] These changes in the lunch line influence what students are eating. In SY 2014–2015, NSLP participants had significantly higher average HEI–2010 scores than matched nonparticipants, with higher intake of vegetables, whole grains, and dairy, and lower intakes of refined grains and empty calories. Looking at intakes across a 24-hour period, lunches made a larger contribution to participating students' overall intakes than non-participants, which speaks to the important role that school meals play for the youth who depend on them.

On October 20, 2020, the U.S. Surgeon General released ''The Surgeon General's Call to Action to Control Hypertension'' [6] (Call to Action) to help improve hypertension control across the U.S. The Call to Action highlights the need to help Americans, including young children, reduce sodium intake through evidence-based interventions that can be implemented in diverse settings, including schools, in order to reduce the risk of hypertension and later cardiovascular disease.

However, many schools reported challenges in implementing or maintaining compliance with certain nutrition standards, including the cost and availability of foods, limited staff and equipment resources, and difficulty understanding the new nutrition standards.[7] Providing more flexibility that may not significantly affect HEI scores, but could elicit continued participation and acceptance of the meals would benefit more children, providing more children nutrition that they actually consume (versus throw in the trash). Further, the SNMCS found food waste was highest among categories directly affected by these proposed changes.

As previously stated, this rule proposes retaining Target 2, but allowing more time for product

[5] Gearan EC & MK Fox, 2020, SMNCS Vol 2.

[6] See *https://www.cdc.gov/bloodpressure/CTA.htm.*

[7] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study: Volume 1—School Meal Program Operations and School Nutrition Environments, by Sarah Forrestal et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

reformulation. Reaching this requires a more gradual process. FNS must ensure continued participation in the program during this process—if children will not eat the healthy food served in schools, children are not benefiting from the nutrition standards enacted. Students need to eat the food to acquire the nutrition, meaning we need to increase participation and decrease food waste.

II. Timeline and Instructions to Commenters

FNS requests comments on the final flexibilities that were implemented in SY 2019–2020, which this rule proposes to codify without change. Comments on the day-to-day impact of these flexibilities from State agencies, schools, the food industry, nutrition advocates, parents and guardians, and other stakeholders will be extremely helpful in the development of the final rule. FNS will consider all relevant comments submitted during the 30-day comment period for this rulemaking, and intends to issue a final rule in spring 2021 to ensure that stakeholders can continue to rely on the operational flexibilities proposed in this rule.

III. Need for Action

As explained in detail in the 2017 Interim Final Rule, widespread improvements to the NSLP and SBP meal patterns were first implemented in 2012; since then administrative and Congressional action has provided short-term assistance to schools facing challenges in fulfilling certain requirements, namely the grains and sodium requirements. This approach, however, did not allow enough lead time to have a significant beneficial impact on menu planning, procurement, and contract decisions made in advance of the school year. To implement recurring appropriations legislation, FNS developed and disseminated policy memoranda to State agencies and schools. This created a time lag that reduced the potential impact of the flexibilities. It also caused confusion, as the Congressional flexibilities were limited to specific school years, and were therefore issued through multiple memoranda with various effective dates that State agencies and schools were required to track. For example, FNS issued several memoranda in response to annual appropriations legislation addressing the whole grain-rich requirement. These include SP 20–2015, *Requests for Exemption from the School Meals' Whole Grain-Rich Requirement for School Years 2014–2015 and 2015–2016;* SP 33–2016, *Extension Notice: Requests for Exemption from the School Meals' Whole Grain-Rich Requirement for School Year 2016–2017;* and SP 32–2017, *School Meal Flexibilities for School Year 2017–2018.*[8]

With these considerations in mind, FNS published the 2017 Interim Final Rule and, ultimately, the 2018 Final Rule related to milk, grains, and sodium. Through these actions, FNS responded to the need for more operational flexibilities to accommodate menu planning, procurement challenges, local operational differences, taste, and community preferences. These actions were targeted to the areas of the meal pattern that have been continually troublesome since its inception in 2012. This proposed rule seeks to respond to the need for continued flexibility regarding these specific requirements.

FNS recognizes that schools, for several years now, have come to rely on the operational flexibilities proposed in this rule. In fact, due to the continued Congressional and administrative actions described above, many schools have never truly implemented the 2012 requirements for grains as written in the 2012 Final Rule and have not prepared for stricter sodium standards. Moreover, once FNS took action on these flexibilities with a regulation, States and schools became even more reliant on the flexibilities. With the vacatur of the 2018 Final Rule, there is a renewed need for these operational flexibilities. Based on the District Court action, schools are expected to revert immediately to the previous requirements of the 2012 regulations. However, section 2202(a) of the Families First Coronavirus Response Act (the FFCRA) (Pub. L. 116–127), permits the Secretary to establish a waiver for the purpose of providing meals under the Child Nutrition Programs with appropriate safety measures with respect to COVID–19, which FNS recently extended in the Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs—Extension #5, and which remains in effect through June 30, 2021. Without additional regulatory action, schools will have to immediately implement Sodium Target 2 and ensure that all grains served are whole grain rich, and would be restricted from serving flavored low-fat milk upon expiration of the FFCRA waivers. Schools and manufacturers are unprepared for these immediate and drastic changes to the meal programs.

This proposed rule reinforces FNS's commitment to a process that will result in a final rule that provides long-term operational flexibility for the milk, grains, and sodium requirements and provides schools with adequate time to implement important changes. To require a return to these strict standards would be especially burdensome to schools who cannot meet these standards without continued operational flexibility.

Product Development Challenges

As explained in detail in the 2017 Interim Final Rule, since 2012, the school food industry has advised FNS that product development and testing take considerable time.[9] Food manufacturers suggest that it takes at least two to three years to reformulate and develop food products that support new requirements. The process involves innovation, research and development, testing, commercialization, launch, and marketing. Food manufacturers have also noted several specific barriers to meeting the lower sodium targets, including a low level of demand for these products outside of the school market, the cost and time involved in reformulating existing products, and challenges with replacing sodium in some foods given its functionality (*e.g.,* adding flavor or preserving food). They have also indicated that a significant investment of time and resources is necessary to effect even marginal sodium reductions. School food manufacturers have made it known that transitioning to Sodium Target 2 requires product reformulation and innovation in the form of new technology and/or food products. Making these changes can present significant challenges in the school marketplace. Additionally, a professional association and policy advocacy organization stated that the final target is fundamentally unattainable. They expressed concern that the final sodium target relies on changes to manufacturing processes that could use technologies or chemical substitutes that pose greater health risks than the sodium they would replace.[10]

[8] See discussion in the interim final rule *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (82 FR 56703, at 56704, November 30, 2017). Available at: *https://www.federalregister.gov/documents/2017/11/30/2017-25799/child-nutrition-programs-flexibilities-for-milk-whole-grains-and-sodium-requirements.*

[9] See discussion in the interim final rule *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (82 FR 56703 at 56705, November 30, 2017). Available at: *https://www.federalregister.gov/documents/2017/11/30/2017-25799/child-nutrition-programs-flexibilities-for-milk-whole-grains-and-sodium-requirements.*

[10] See discussion in the final rule *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium* Requirements (83 FR 63775, at 63782 December 12, 2018). Available at: *https://*

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Food manufacturers note that innovations for grain products can also take several years, and involve steps similar to those needed to reformulate products lower in sodium. The formulation and processing of foods made with whole grains differ from and can be more challenging to manufacture than those made with refined grains. Manufacturers have indicated that in the past, when companies reformulated products early, they incurred significantly more costs compared to those that took a ''wait and see'' approach. The persistent uncertainty about the whole grain-rich requirement and the possibility of further meal pattern changes resulting from legislative activity have deterred manufacturers from investing time or resources to develop additional whole grain-rich products.

While product-specific information is proprietary, the overwhelming and consistent message is that it will be difficult, time-consuming, and expensive to develop products that meet the final sodium target, and the 100 percent whole grain-rich requirement and that, most importantly, students will eat. Practically, even if the food industry is able to eventually develop products meeting these strict standards, if students will not eat them, there is no benefit to the strict standards. Instead, as proposed, the standards would allow for healthy products that are still acceptable to students. If the proposed standards are finalized, manufacturers will have the incentive to commit to reformulating products and work towards innovative solutions knowing that the program requirements are stable, attainable, and acceptable to students. Given their unique perspective on product development and reformulation, FNS welcomes input from the school food industry in developing the final rule.

Operational Challenges

This proposed rule seeks to address the operational challenges experienced by some schools. It seeks to ease specific requirements beginning in SY 2021–2022, to help children gradually adjust to and enjoy school meals that are consistent with science-based recommendations. This proposed rule seeks to give menu planners more flexibility to make procurement decisions that reflect local preferences, empowering them in ways that may increase student participation and meal consumption.

Although many schools have had success in implementing the 2012 meal patterns and nutrition standards, FNS recognizes that many schools have not yet fully implemented the 2012 meal patterns due to feasibility and student preferences. In fact, due to administrative and Congressional action many schools have never implemented the grains and sodium requirements as intended by the 2012 Final Rule. This proposed rule aims to ensure that the operational flexibilities would be available for those schools that need them. It is important to stress that the proposed changes are optional, intended as additional tools for schools across the country working to provide students with wholesome meals they enjoy eating. In addition, as noted in the 2017 Interim Final Rule and in the 2018 Final Rule, and as allowed in 7 CFR 210.19(e), State agencies have discretion to set stricter requirements that are not inconsistent with the minimum nutrition standards for school meals.

IV. Discussion of Proposed Changes

Milk Flexibility

Previous and Current Requirements

The 2012 Final Rule required milk offered in the NSLP, SBP, and CACFP to be fat-free or low-fat milk,[11] and limited flavored milk to fat-free milk only. On May 5, 2017, through the Consolidated Appropriations Act, 2017 (Pub. L. 115–31), for SY 2017–2018, Congress instructed the Secretary to allow State agencies to grant exemptions for the service of flavored, low-fat milk (1 percent fat), through the NSLP and SBP and as a competitive food available for sale, provided schools demonstrated hardship by documenting a reduction in student milk consumption or increase in milk waste. The 2017 Interim Final Rule allowed NSLP, SMP, SBP, and CACFP operators the option to serve flavored, low-fat milk as part of the reimbursable meal, and for schools, as a competitive beverage for sale, during SY 2018–2019. NSLP and SBP operators that chose to exercise this option were not required to demonstrate a reduction in student milk consumption or an increase in milk waste, but were expected to incorporate this option into the weekly menu in a manner consistent with the dietary specifications for these programs. This flexibility was intended to encourage children's consumption of fluid milk and to ease administrative burden for schools, institutions, and facilities participating in multiple Child Nutrition Programs. The 2018 Final Rule, implemented in SY 2019–2020, and vacated in April 2020, maintained this flexibility as proposed in the 2017 Interim Final Rule, but added a requirement that unflavored milk be offered at each meal service. Due to the vacatur of the 2018 Final Rule, the 2012 requirements are currently in effect.

Proposal

In this proposed rule, FNS seeks to continue the flavored milk flexibility, which has been available in some form since SY 2017–2018.[12] This proposed rule would provide schools the option to offer flavored, low-fat milk in reimbursable school meals, and maintain the requirement that unflavored milk be offered at each meal service. For consistency, the flavored, low-fat milk option would be extended to beverages for sale during the school day, and would also apply in the SMP and CACFP for participants ages 6 and older. FNS recognizes that regulatory consistency across programs facilitates administration and operation at the State and local levels and responds to stakeholder concerns. The Summer Food Service Program (SFSP) currently allows flavored, low-fat milk in reimbursable meals; therefore, this rulemaking does not include a proposed change to milk service in the SFSP.

In addition, FNS proposes a technical correction to clarify in CACFP regulations that lactose-free and reduced-lactose fluid milk meet the CACFP meal pattern requirements for fluid milk. Current NSLP and SBP regulations allow schools to serve lactose-free and reduced-lactose milk to meet the fluid milk requirements for reimbursable meals (7 CFR 210.10(d) and 220.8(d)). FNS has clarified that these options are also available in CACFP through policy, and it is generally understood that lactose-free and reduced-lactose milk are considered fluid milk in the CACFP. Clarifying in CACFP regulations that lactose-free and reduced-lactose milk may be served as milk in reimbursable meals builds greater consistency in program regulations and is expected to reduce confusion for CACFP institutions and facilities, as well as families.

Through this proposal, FNS seeks to maintain operational regulatory flexibilities that schools have come to rely on, and that FNS believes may

www.federalregister.gov/documents/2018/12/12/2018-26762/child-nutrition-programs-flexibilities-for-milk-whole-grains-and-sodium-requirements.

[11] Program operators in the CACFP and SMP are required to serve unflavored milk to children through age five, whole milk for children age one, and low-fat or fat-free milk for children age two through five.

[12] FNS issued SP 32–2017 guidance on May 22, 2017, implementing Section 747 of the Consolidated Appropriations Act, 2017 (Pub. L. 115–31), which provides flexibilities related to whole grains, sodium, and flavored milk for school year (SY) 2017–2018.

enhance milk consumption among children. Aligning the meal patterns across Child Nutrition Programs when appropriate provides consistency and stability for schools, institutions, and facilities operating multiple Child Nutrition Programs. FNS's intent to expand milk options is also based on concerns over decreasing milk consumption in the U.S. population. Data from USDA's Economic Research Service shows a decrease in fluid milk consumption from 196 pounds per person in 2000 to 141 pounds per person in 2019.[13] Milk is an important source of calcium, vitamin D and potassium and this rule aims to increase children's consumption of milk.

Consistent with comments received for the 2017 Interim Final Rule and the requirement included in the 2018 Final Rule, this proposed rule would also require that schools that choose to offer flavored milk also offer unflavored milk (fat-free or low-fat) at each meal service. This proposal would ensure that milk variety in the NSLP and SBP is not limited to flavored milk, underscoring the importance of having unflavored milk as an option at each meal service. For example, parents and guardians may prefer that their child consumes unflavored milk, and unflavored milk may be a more appropriate pairing with a student's meal (*e.g.,* with breakfast cereal). It is also intended to help schools that choose to offer flavored milk to stay within the weekly dietary specifications, as flavored milk is higher in calories than unflavored milk. Further, every edition of the Dietary Guidelines since 1980, including the *Scientific Report of the 2020 Dietary Guidelines Advisory Committee,*[14] has recommended reducing added sugar intake. Consistent with this recommendation, many State agencies have promoted unflavored milk in the NSLP and SBP as the lower-sugar option.

The proposed requirement to ensure that unflavored milk is available on the school breakfast and lunch menu would not apply in the NSLP afterschool snack service, the SMP, or the CACFP, consistent with existing requirements for those Programs. These meal services do not have a requirement to offer a variety of fluid milk, as they are smaller in size and generally have fewer resources than schools that participate in the NSLP and SBP.

Accordingly, this proposed rule seeks to amend the following milk provisions:

- NSLP (7 CFR 210.10(d)(1)(i); 7 CFR 210.11(m)(1)(ii), (m)(2)(ii) and (m)(3)(ii));
- SBP (7 CFR 220.8(d));
- SMP (7 CFR 215.7(a)(3)); and
- CACFP (7 CFR 226.20(a)(1)(iii) and (iv), and 7 CFR 226.20(c)(1), (2) and (3)).

Whole Grain-Rich Flexibility

Previous and Current Requirements

The 2012 Final Rule revised the NSLP and SBP meal patterns to require that, beginning in SY 2014–2015, all grains offered on the school menu meet the FNS whole grain-rich criteria. To meet FNS's whole grain-rich criteria, a product must contain at least 50 percent whole grains and the remaining grain content of the product must be enriched. Due to reported limitations on the availability of certain products that met this criterion when the whole grain-rich requirement first went into effect, FNS allowed State agencies the option to provide certain exemptions for SY 2014–2015. As noted earlier, successive legislative action in 2012, 2015, and 2016 impeded full implementation of the whole grain-rich requirement. For SY 2017–2018, Congress extended the option allowing State agencies to grant whole grain-rich exemptions to SFAs that requested exemptions and demonstrated hardship in procuring or preparing specific products that met the whole grain-rich criteria and were acceptable to students.

For SY 2018–2019, the 2017 Interim Final Rule provided State agencies discretion to grant exemptions to the whole grain-rich requirement to SFAs that demonstrated hardship in meeting the whole grain-rich criteria. SFAs that received an exemption were required to offer at least half of the weekly grains as whole grain-rich.

The 2018 Final Rule, implemented in SY 2019–2020, and vacated in April 2020, required that at least half of the weekly grains offered in the NSLP and SBP meet the whole grain-rich criteria specified in FNS guidance, and that the remaining grain items offered must be enriched; exemptions were no longer required. This decision, which was recommended by the School Nutrition Association, representing 57,000 school nutrition professionals, eliminated the requirement that SFAs request exemptions based on hardship, which many commenters, including State agencies and schools, described as burdensome. Due to the vacatur of the 2018 Final Rule, the 2012 requirements are currently in effect.

Proposal

This rulemaking proposes to require that at least half of the weekly grains offered in the NSLP and SBP meet the whole grain-rich criteria specified in FNS guidance,[15] and that the remaining grain items offered must be enriched. This proposal is consistent with FNS's commitment to simplify operational procedures and increase operational flexibility.

Maintaining the grains requirement that menu planners have grown accustomed to would allow schools to continue to provide menu items that meet local preferences. For example, since certain regional foods are not widely available in acceptable whole grain-rich varieties, granting more flexibility through this change would help ensure that schools have more options to meet the expectations of their students. This proposal would not require schools to submit whole grain-rich exemption requests based on hardship as was required in the 2017 Interim Final Rule.

As previously described, the requirement to offer exclusively whole grain-rich products has been challenging for some schools and, due to a long history of administrative and legislative actions allowing exemptions, it was never fully implemented nationwide. FNS recognizes that continually granting short-term exemptions to the whole grain-rich requirement has created confusion for menu planners. Schools and the food industry have requested a workable regulatory solution that provides the long-term operational flexibility needed for food procurement and product reformulation.

The whole grain-rich requirement in this proposed rule would remain a minimum—not a maximum—standard. By maintaining the whole grain-rich requirement that was in place from SY 2012–2013 through SY 2013–2014, and then again in SY 2019–2020, FNS acknowledges the nutritional benefits of whole grains, while emphasizing the need for taste and operational flexibility in school menu planning, procurement, and food service equipment. As noted above, the requirement is a minimum

[13] U.S. Department of Agriculture Economic Research Service. *Dairy products: Per capita consumption, United States (Annual).* September 2020. Available at: *https://www.ers.usda.gov/data-products/dairy-data/.*

[14] Dietary Guidelines Advisory Committee. 2020. *Scientific Report of the 2020 Dietary Guidelines Advisory Committee: Advisory Report to the Secretary of Agriculture and the Secretary of Health and Human Services.* U.S. Department of Agriculture, Agricultural Research Service, Washington, DC. Available at: *https://www.dietaryguidelines.gov/2020-advisory-committee-report.*

[15] 7 CFR 210.10(c)(2)(iv) *Grains component.* (A) *Enriched and whole grains.* Whole grain-rich products must contain at least 50 percent whole grains and the remaining grains in the product must be enriched.

standard; at least half of the grains offered weekly must be whole grain-rich, and the other grain items offered must be enriched. Schools are encouraged to exceed this threshold, if possible. The Dietary Guidelines describe whole grains as a source of dietary fiber, iron, zinc, and other key nutrients, and recommend including whole grains in a healthy eating pattern while limiting the intake of refined grains.

FNS believes the food industry will continue efforts to develop more acceptable, affordable whole grain-rich products that are appealing to students. For instance, whole grain-rich pizza crust and different types of breads, such as whole grain-rich pita and flatbread, are now available to schools. In cases where additional product research and development continue to be necessary, this proposal would provide the food industry time to develop whole grain-rich food products that are suitable for reheating and hot holding, resulting in more acceptable meals for students. These appealing, new products could assist schools in sustaining student participation, encouraging meal consumption, and limiting food waste.

Accordingly, this proposed rule seeks to amend the following grains provisions:

- NSLP (7 CFR 210.10(c)(2)(iv)(B)); and
- SBP (7 CFR 220.8(c)(2)(iv)(B)).

Sodium Flexibility

Previous and Current Requirements

The 2012 Final Rule also set average weekly sodium limits for school meals.[16] The 2012 Final Rule initiated a gradual reduction of the sodium content of school meals by establishing two intermediate sodium targets and a final sodium target. The targets were calculated based on the sodium recommendation from the 2010 Dietary Guidelines, which was subsequently reinforced by the 2015–2020 Dietary Guidelines. To facilitate sodium reduction over a 10-year period, the 2012 Final Rule required compliance with Sodium Target 1 beginning July 1, 2014 (SY 2014–2015), Target 2 beginning July 1, 2017 (SY 2017–2018), and the Final Target beginning July 1, 2022 (SY 2022–2023). As noted in the 2012 Final Rule, meeting Target 1 required menu and recipe modification, reaching Target 2 requires product reformulation, and meeting the Final Target would require innovation by product manufacturers. As noted previously, recognizing the challenges schools and the food industry were facing with regard to sodium reduction, Congress repeatedly delayed compliance with Sodium Target 2 through Federal appropriations.[17]

The 2017 Interim Final Rule retained Sodium Target 1 through SY 2018–2019, and requested comments on continuing Target 1 for a longer time period. It also retained Target 2 and the Final Target as part of the gradual sodium reduction timeline. The 2018 Final Rule, which was vacated in April 2020, provided schools even more time for gradual sodium reduction by maintaining Sodium Target 1 through the end of SY 2023–2024; delaying compliance with Target 2 until SY 2024–2025; and eliminating the Final Target. Due to the vacatur of the 2018 Final Rule, the 2012 requirements are currently in effect.

Proposal

This proposed rule seeks to maintain Sodium Target 1 requirements through SY 2023–2024 (June 30, 2024); delay required compliance with Target 2 requirements to SY 2024–2025 (July 1, 2024); and remove the Final Target. This change to the sodium requirements is consistent with previous Congressional actions directing USDA to maintain Sodium Target 1.

While FNS recognizes the importance of reducing the sodium content of school meals, this proposal reflects a recognition that reaching this objective requires a more gradual process—extended beyond the planned 10 years. A 2019 FNS study on sodium found that many challenges to meeting stricter standards remain. Food manufacturers noted the difficulty of decreasing sodium in processed food products, including bakery items, when sodium serves a functional purpose (*e.g.,* salt to strengthen gluten, baking soda to help baked goods rise). In particular, manufacturers were concerned that the Final Target could affect the ability to produce these products and that the shelf life for food products would be shorter without enough salt to act as a preservative. Additionally, schools were concerned that foods reformulated to meet Target 2 standards did not taste good and were not accepted by students, which contributed to lower school meal participation and cost implications.[18] Procuring lower sodium products is an especially important factor for those schools that are not equipped for scratch cooking. Extending the sodium reduction timeline allows more time for product reformulation, school menu adjustments, food service changes, personnel training, and adapting student preferences.

By proposing to retain Sodium Target 2, FNS recognizes the need to continue improving the nutritional quality of school meals. Most Americans exceed the Dietary Guidelines' recommended intakes for sodium, including nearly 9 in 10 children.[19] Consuming too much sodium can lead to high blood pressure (hypertension), and raising an individual's risk of having a heart attack or stroke. Reducing sodium in children's diets—including in school meals—helps to support their overall health and wellbeing. However, as commenters on the 2017 Interim Final Rule noted, the Final Sodium Target is fundamentally unattainable and could require changes to manufacturing processes that could require technologies or chemical substitutes that pose greater health risks than the sodium they would replace.[20] Further, as the District Court acknowledged when vacating the 2018 Final Rule, FNS is permitted to deviate from the Final Sodium Target for the purpose of providing feasible goals for schools that increase consumption of meals.

FNS remains committed to strong nutrition standards for school meals, consistent with the statutory requirement that school meals reflect the Dietary Guidelines. In the 2018 Final Rule, FNS also indicated an intention to consider the ongoing update of the current Dietary Reference Intakes (DRI) for sodium and potassium.

[16] For the sake of clarity, it is important to note that the sodium limit applies to the average meal offered during the school week; it does not apply per day, per meal, or per food item. Menu planners may offer a relatively high sodium meal or high sodium food at some point during the week if meals with lower to moderate sodium content are offered the rest of the week.

[17] Section 751 of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub .L. 113–235); Section 743 of the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112–55); Section 752 of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235); Section 733 of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113); Section 747 of the Consolidated Appropriations Act, 2017 (Pub. L. 115–31); and Section 101(a)(1) of the Continuing Appropriations Act, 2018, Division D of the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Pub. L. 115–56).

[18] Gordon, E., Morrissey, N., Adams, E., et al. Successful Approaches To Reduce Sodium in School Meals Study. Prepared by 2M Research and Abt Associates, Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, June 2019. Project Officer: Holly Figueroa. Available online at: *www.fns.usda.gov/research-and-analysis.*

[19] Centers for Disease Control and Prevention. *Salt.* Available at: *https://www.cdc.gov/salt/index.htm.*

[20] See discussion in the final rule *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium* Requirements (83 FR 63775, at 63782 December 12, 2018). Available at: *https://www.federalregister.gov/documents/2018/12/12/2018-26762/child-nutrition-programs-flexibilities-for-milk-whole-grains-and-sodium-requirements.*

The DRIs, a set of reference values used to plan and assess the diets of healthy individuals and groups developed by the National Academies of Sciences, Engineering, and Medicine, were updated in 2019.[21] The DRI recommendations update the 2005 DRI for sodium and incorporate the new DRI concept of dietary intake recommendations to reduce the risk of chronic disease. The DRIs for sodium are generally consistent with those reflected in the 2015 Dietary Guidelines for Americans. While the DRIs recommended further reductions in sodium intake for young children, no specific recommendations relating to schools have been provided. In this proposed rule, FNS intends to ensure that the sodium targets reflect the most recent DRIs, are feasible for most schools, and allow schools to plan appealing meals that encourage consumption and intake of key nutrients that are essential for children's growth and development.

In recognition of the need for continued review of the most current recommendations, as well as the need to provide adequate notice to stakeholders of any adjustments in the requirements, this proposed rule would retain the sodium reduction timeline set in the 2018 Final Rule. Extending Target 1, delaying Target 2 implementation, and refraining from setting sodium reduction goals beyond Target 2 would give FNS the opportunity to assess the impact of the forthcoming 2020 Dietary Guidelines on school meals and maintain the regulatory plan relied upon by schools and the food industry. This timeline is intended to address concerns regarding student acceptability and consumption of meals with lower sodium, food service operational issues, product reformulation and innovation challenges, and the importance of safeguarding the health of millions of schoolchildren.

Reverting to a more aggressive timeline while schools are facing the effects of a global pandemic would create challenges for which schools and the food industry are unprepared. The most recent data collected and analyzed by FNS on this topic indicated that 81 percent of schools were not meeting Target 2 sodium levels in SY 2014–2015.[22] Given the need for operational flexibility around the Targets over the past years, requiring those schools to immediately meet Target 2 and move to the Final Target by July 1, 2022, as required under the 2012 requirements, would be nearly impossible, especially given the expectation by schools and the school food industry that these targets had been delayed or eliminated.

Instead, the sodium timeline proposed by this rule would provide the operational flexibility and time necessary for manufacturers, producers, and vendors to develop and produce compliant products. This proposed rule acknowledges the persistent menu planning challenges experienced by schools, which have become infinitely more difficult during the ongoing global pandemic, seeks to balance nutrition science, practical application of requirements, and the need to ensure that children receive school meals they will eat, and reaffirms the agency's commitment to give schools more control over food service decisions and greater ability to offer wholesome and appealing meals that reflect local preferences.

FNS will continue to engage with the public, health advocates, nutrition professionals, schools, and the food industry to gather input on needs and challenges associated with managing sodium levels in school meals. In addition, FNS will continue to ensure that low-sodium products are offered through USDA Foods; develop recipes that assist with sodium reduction; and provide menu planning resources, technical assistance, and information to schools through the FNS Team Nutrition initiative.

Accordingly, this proposed rule seeks to amend the following sodium provisions:

- NSLP (7 CFR 210.10(f)(3)); and
- SBP (7 CFR 220.8(f)).

Procedural Matters

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, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Economic Summary

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This proposed rule is likely to have an economic impact of $100 million or more in any one year, and therefore, meets the definition of ''economically significant'' under Executive Order 12866. The RIA for the 2012 Final Rule, underscores the importance of recognizing the linkage between poor diets and health problems such as childhood obesity. In addition to the impacts on the health of children, the RIA also cites information regarding the social costs of obesity and the additional economic costs associated with direct medical expenses of obesity. The RIA for the 2012 Final Rule included a literature review to describe qualitatively the benefits of a nutritious diet to combat obesity and did not estimate individual health benefits or decreased medical costs that could be directly attributed to the changes in the 2012 Final Rule, due to the complex nature of factors that impact food consumption and obesity.[23] FNS believes the specific flexibilities proposed in this rule are intended to ease burden and increase feasibility while ensuring the majority of the changes resulting from the 2012 Final Rule remain intact.

The Secretary of Agriculture acknowledged the operational challenges in meeting the meal standards related to flavored milk, whole grain-rich requirements, and sodium targets in the May 1, 2017, Proclamation and committed to working with stakeholders to ensure that school meal requirements are practical and result in wholesome and appealing meals. The 2017 Interim Final Rule, established regulations that extended

[21] Dietary Reference Intake for Sodium and Potassium, National Academies of Sciences, Engineering, and Medicine, *https://www.nap.edu/resource/25353/030519DRISodiumPotassium.pdf.*

[22] Based on an internal FNS analysis using data from: 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.

[23] *https://www.gpo.gov/fdsys/pkg/FR-2012-01-26/pdf/2012-1010.pdf:* ''Because of the complexity of factors that contribute both to overall food consumption and to obesity, we are not able to define a level of disease or cost reduction that is attributable to the changes in meals expected to result from implementation of the rule. As the rule is projected to make substantial improvements in meals served to more than half of all school-aged children on an average school day, we judge that the likelihood is reasonable that the benefits of the rule exceed the costs, and that the final rule thus represents a cost-effective means of conforming NSLP and SBP regulations to the statutory requirements for school meals.''

the school meal flexibilities through SY 2018–2019. FNS published the 2018 Final Rule, providing the operational flexibilities needed to move forward with menu planning that met student preferences.

As noted in the preamble, on April 13, 2020, the decision in the *Center for Science in the Public Interest et al.,* v. *Sonny Perdue, Secretary, et al.,* No. 8:19–cv–01004–GLS (D. Md. 2019), the U.S. District Court for the District of Maryland found a procedural error with the promulgation of the 2018 Final Rule. This rule proposes similar flexibilities addressed in the 2017 Interim Final Rule and the 2018 Final Rule. The purpose of this rule is to ease operational burden and provide school nutrition professionals the operational flexibility needed to successfully operate the Child Nutrition Programs. This rule proposes the following changes beginning in SY 2021–2022:

- Allow NSLP and SBP operators to permanently offer flavored, low-fat milk as part of the reimbursable meal and for sale as a competitive beverage. Also allow flavored, low-fat milk in the SMP and CACFP for participants ages 6 and older;
- Require that at least half of the weekly grains offered in the NSLP and SBP to be whole grain-rich; and
- Provide schools participating in the NSLP and SBP more time for gradual sodium reduction by retaining Sodium Target 1 through the end of SY 2023–2024; continuing to Target 2 in SY 2024–2025 and eliminating the Final Target.

FNS expects the health benefits of the meal standards, which are mainly left intact, to be similar to the overall benefits of improving the diets of children cited in the RIA for the 2012 Final Rule. While the changes in this proposed rule would provide operational flexibilities to the meal standards, the targeted nature of the three specific changes address persistent challenges with milk, grain, and sodium requirements. Schools must continue to meet the same caloric and fat limits specified in the 2012 Final Rule irrespective of whether they use the flexibilities proposed in this rule. The nation's students will continue to benefit from the changes in the 2012 Final Rule, and the health benefits of a nutritious diet to reduce obesity qualitatively described in the 2012 RIA still apply. The updated standards are associated with higher nutritional quality for lunches among low-income, low-middle-income, and middle-high income NSLP participants from 2013 to 2016 compared to nonparticipants.[24]

As noted above, this proposed rule would ease the operational challenges associated with these three requirements while balancing the nutrition science and operational concerns. While there have been many successes in the implementation of the 2012 Final Rule,[25] some schools still face challenges with fully implementing the suite of changes. A 2019 FNS study found that, in SY 2014–2015, the majority of SFA directors rated the new nutrition standards as helpful in meeting the underlying nutrition goals for children, including decreasing children's sodium intakes, meeting—but not exceeding—children's calorie requirements, and increasing the variety of vegetables. However, many reported challenges in implementing or maintaining compliance with certain nutrition standards, including the cost and availability of foods, limited staff and equipment resources, and difficulty understanding the new nutrition standards.[26] Among students who have ever eaten a school lunch, just over half (52 percent) reported that the school lunch was only okay, more than one-third (36 percent) reported that they liked the school lunch, and 12 percent said they did not like the school lunch. Students who usually never eat a school lunch cited that they preferred to eat a lunch brought from home and that they did not like school lunch/the taste in general as reasons for not participating in the NSLP (52 percent and 40 percent respectively).[27] The operational flexibilities in this rule provide the relief that some SFAs need to successfully offer wholesome and appealing meals to students they enjoy eating.

FNS is committed to nutrition science, but also understands the importance of practical requirements for schools to successfully operate the Child Nutrition Programs. The changes set forth in this rule still show progress in school meal nutrition, and children would continue to be offered and exposed to a variety of nutritious food choices. Further, FNS does not anticipate this proposed rule would deter the significant progress made to date[28] by State and local operators, USDA, and industry manufacturers to achieve healthy, palatable meals for students.[29] The operational flexibilities in this rule provide industry the ability to commit to reformulating products and work towards innovative solutions.

Two key questions we would like response from the public on:

1. Is there any feedback on costs or benefits experienced in using the provided flexibilities since the Final Rule was enacted?
2. Are there any advantages or challenges from SFAs that are implementing these flexibilities to meet the weekly nutrient requirements (*i.e.,* calories, saturated fat, etc.)?

Cost Impact

FNS anticipates minimal if any costs associated with the proposed changes to the nutrition standards for milk, grains, and sodium. The overall meal components, macro nutrient, and calorie requirements for the lunch and breakfast programs remain unchanged. Schools would choose whether or not to use the milk flexibility, and may exceed the minimum whole grain-rich requirements and sodium standards proposed in this rule. While the average cost to produce a school lunch has increased significantly since SY 2005–2006, the higher nutritional quality of NSLP lunches did not cost significantly

[24] Association of the Healthy, Hunger-Free Kids Act With Dietary Quality Among Children in the U.S. National School Lunch Program: *https://jamanetwork.com/journals/jama/article-abstract/2768807*.

[25] Robert Wood Johnson Foundation's Bridging the Gap Release on School Meals Perceptions in Childhood Obesity. September 2013. *http://www.rwjf.org/en/library/research/2014/06/bridging-the-gap-s-work-on-childhood-obesity.html.*

[26] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study: Volume 1—School Meal Program Operations and School Nutrition Environments, by Sarah Forrestal et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[27] 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.

[28] FNS National Data Bank Administrative Data: 99.8% of lunches served in fiscal year (FY) 2019 received the performance based reimbursement for compliance with the meal standards. This includes lunches served in SFAs granted whole grain exemptions.

[29] Across all schools, NSLP lunches with HEI–2010 scores in the third or highest quartiles of the distribution were associated with significantly higher student participation rates, relative to NSLP lunches with HEI–2010 scores in the lowest quartile of the distribution: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/researchand-analysis.*

more to produce than those of lower nutritional quality.[30] The changes proposed in this rule are not expected to measurably impact program costs overall and there will be variation across schools electing some, all, or none of these proposed flexibilities. Under the proposed changes, schools would continue to work with existing school foodservice resources to serve nutritious and appealing meals that meet the overarching meal standards.

Milk Flexibility

As stated in the 2017 Interim Final Rule, there may be some cases in which flavored, low-fat milk is slightly more expensive, and some in which it is slightly less expensive, compared to the varieties currently permitted in the 2012 Final Rule. However, any overall difference in cost is likely to be minimal. The requirement that unflavored milk be offered at each school meal service is not expected to impact cost. Unflavored milk was a popular offering prior to the 2012 Final Rule. In SY 2009–2010, the most commonly offered milks were unflavored, low-fat (73 percent of all daily NSLP menus) and flavored, low-fat (63 percent).[31] In SY 2014–2015, 91 percent of all daily menus offered flavored fat-free and unflavored low fat milk. Unflavored fat-free milk was offered in half of all daily lunch menus.[32] Given that unflavored milk was already a part of most school meal menus prior to the new standards, the requirement to offer unflavored along with flavored milk is not anticipated to be an additional burden or cost, as schools are accustomed to offering it to satisfy the milk variety requirement.

Whole Grain-Rich Flexibility

The changes in this proposed rule would provide schools the operational flexibility to offer some non-whole grain-rich products that are appealing to students without the administrative burden of the exemption process. All grains offered were required to be whole grain-rich starting in SY 2014–2015; however exemptions were available to schools starting in the same year. Only 27 percent of weekly lunch menus offered only whole grain-rich items in SY 2014–2015. The majority (87 percent) of weekly lunch menus did offer at least 50 percent grains as whole grain-rich.[33]

Relative to the 2012 Final Rule, the requirement that at least half of the weekly grains offered in NSLP and SBP are whole grain-rich may provide savings for some SFAs facing challenges procuring certain whole grain-rich products; however, FNS expects that as more products become available, any differential costs associated with whole grain-rich and non-whole grain-rich products will normalize in the market. The availability of whole grain-rich products through USDA Foods[34] and the commercial market has increased significantly since the implementation of the 2012 Final Rule and continues to progress, providing new and affordable options to integrate into school meal menus. The majority of grain products offered in schools are moving toward whole grain-rich, and that the remaining challenges are specific to certain products.[35] Due to the wide variation in local adoption of this flexibility, any potential overall savings are likely minimal.

Sodium Flexibility

This proposed rule would extend Sodium Target 1 through SY 2023–2024, require compliance with Sodium Target 2 in SY 2024–2025, and would eliminate the final Sodium Target. The extension of Target 1 and the resulting delay of the implementation of Target 2 to SY 2024–2025 would provide additional time to assess potential changes, including regulatory adjustments to incorporate updated recommendations from the 2020 Dietary Guidelines for Americans. FNS recognizes the need for sodium reduction in school meals and is retaining Target 2 in this proposed rule.

FNS anticipates schools will continue their efforts to reduce sodium in school meals while industry will continue to work towards lower sodium formulations. FNS does not anticipate any measurable costs associated with this change, as it allows additional time for schools and industry to reduce sodium levels in meals with practical requirements.[36]

Overview of Public Comments From 2017 Interim Final Rule

There were about 20 comment submissions that provided input on risks or benefits of the 2017 Interim Final Rule. The comments expressed concern that the flexibilities could lower health benefits over time of the meal standards if children are offered more sodium, fewer whole grain-rich foods, and milk with higher calories and saturated fat. The following sections review the changes and provide additional information regarding potential nutritional impacts.

Milk Flexibility

In this proposed rule, FNS would allow NSLP and SBP operators the

[30] School Nutrition and Meal Cost Study (SNMCS) for SY 2014–2015 reported the cost of producing an NSLP lunch in the average SFA was $3.81, which was 26 percent greater than the comparable (inflation-adjusted) cost in SY 2005–2006 ($3.03). The reported cost per SBP breakfast in 2015 dollars for the average SFA did not change significantly from SY 2005–2006 to SY 2014–2015 after adjusting for inflation. The overall nutritional quality of NSLP lunches is not associated with the reported cost to produce these meals. NSLP lunches of higher nutritional quality, as measured by the Healthy Eating Index (HEI)–2010, did not cost significantly more to produce than those of lowest nutritional quality. The average reported cost for schools with lunches in the highest quartile of the HEI–2010 (scores between 85.2 and 97.9 out of a possible 100) was $3.90 and was not statistically different than the reported cost of $3.85 for schools with lunches in the lowest quartile of the HEI2010 distribution (scores between 60.5 and 78.9). U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 3: School Meal Costs and Revenues by Vinh Tran et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/researchand-analysis.*

[31] U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, School Nutrition Dietary Assessment Study IV, Vol. I: School Foodservice Operations, School Environments, and Meals Offered and Served, by Mary Kay Fox, Elizabeth Condon, Mary Kay Crepinsek, et al. Project Officer, Fred Lesnett Alexandria, VA: November 2012. Available online at: *www.fns.usda.gov/research-and-analysis.*

[32] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[33] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[34] Information about USDA Foods is available online at: *https://www.fns.usda.gov/usda-fis.*

[35] Over 85 percent of grain items offered in school meals during SY 2014–2015 were identified as whole grain-rich. Internal Analysis of data from: U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[36] In the RIA for the final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088), meeting the first sodium target was not estimated as a separate cost due to the fact that the first target was meant to be met using food currently available when the target went into effect in SY 2014–2015 (or by making minimal changes to the foods offered). While the regulatory impact analyses did not estimate a separate cost to implement Sodium Target 1, it did factor in higher labor costs for producing meals that meet all the meal standards at full implementation to factor in the costs of schools replacing packaged goods to food prepared from scratch. Over 5 years, the final rule estimated that total SFAs costs would increase by $1.6 billion to meet all standards. The cost estimate extended only through FY 2016, two years before the 2012 Final Rule's second sodium target would have taken effect. The second sodium target was designed to be met with the help of industry changing food processing technology.

option to offer flavored, low-fat milk and require that unflavored milk be offered at each meal service. The flavored milk flexibility would be extended to beverages for sale during the school day and would also apply in the SMP and CACFP for participants ages 6 years and older.

As noted in the 2017 Interim Final Rule, the regulatory impact analyses for the 2012 Final Rule did not estimate the health benefits associated with specific changes in meal components such as the exclusion of flavored, low-fat milk. The decision to allow flavored low-fat milk reflects the concerns of declining milk consumption and the importance of the key nutrients provided by milk for school-aged children.[37]

Menu planners must make necessary adjustments in the weekly menu to account for the additional calories and fat content associated with offering flavored low-fat milk because this proposed rule would not change the upper caloric and fat limits specified in the 2012 Final Rule. The requirement to offer unflavored milk at each meal service ensures that students would have access to a choice in milk types and also prevents schools from only offering different flavored milk types to satisfy the milk variety requirement. FNS estimates the nutritional impact of allowing flavored, low-fat milk to be minimal. The added calories and fat would be managed by the upper caloric and fat limits. Further, student intake of key nutrients provided through milk would increase if milk consumption increases, including calcium, vitamin D, and vitamin B12, helping participants meet the Dietary Reference Intakes.[38] Flavored milks are also wasted less than other milks in the school meals programs.[39] The type of milk most frequently consumed was flavored, fat-free milk[40] in SY 2014–2015, indicating student preference for flavored milks, and as noted earlier, flavored, low-fat milk was a popular choice prior to the 2012 Final Rule. Allowing flavored, low-fat milk as an option may decrease waste and increase nutrient consumption.

Whole Grain-Rich Flexibility

Starting in SY 2021–2022, this proposed rule would require that at least half of the weekly grains offered in the NSLP and SBP meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched. This flexibility would ease burden while ensuring the majority of the changes resulting from the 2012 Final Rule remain intact.

The requirement to offer all whole grain-rich items was never fully implemented due to a long history of administrative and legislative actions allowing exemptions. As noted earlier in SY 2014–2015, the first year in which all grains were required to be whole grain-rich, only 27 percent of weekly lunch menus actually met this requirement. However, the majority (87 percent) of weekly lunch menus offered at least 50 percent of the grains as whole grain-rich. In SBP, about half of all weekly breakfast menus offered only whole grain-rich grains, while 95 percent of all weekly breakfast menus offered at least 50 percent of the grains as whole grain-rich. However, schools still made considerable progress offering whole grain-rich products.[41]

In SY 2014–2015, even though almost three quarters of weekly lunch menus did not meet the 100 percent whole grain-rich requirement, the HEI–2010 component score[42] for whole grains in NSLP lunches served improved significantly from SY 2009–2010 to SY 2014–2015, by 71 percentage points (from 25 to 95 percent of the maximum score).[43] Similarly for SBP breakfasts served, the score for whole grains increased by 58 percentage points (from 38 to 96 percent of the maximum score) over the same time period.[44] These high scores were achieved with very few menus meeting the requirement that all grains must be whole grain-rich.

Schools that have already made strides toward meeting the 100 percent whole grain-rich requirement can continue their current path with the flexibility to accommodate local preferences and intermittent challenges related to the food supply or market. Industry continues to work diligently to increase the number of products reformulated to be whole grain-rich and appealing to students. While significant progress has been made, schools still face challenges with serving all whole grain-rich items. In SY 2014–2015, more than half of students who had ever eaten a school lunch reported that they never or only sometimes liked the whole grain-rich foods that were available.[45]

[37] *https://www.gpo.gov/fdsys/pkg/FR-2017-11-30/pdf/2017-25799.pdf*

[38] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

School Nutrition and Meal Cost Study on SY 2014–2015 found that ''the vast majority of average weekly lunch menus were consistent with the DRI-based target for calcium (91 percent to virtually all weekly menus). This is driven by the fact that virtually all NSLP lunches prepared included a serving of milk (typically one cup), which provides all or most of the targeted amount of calcium.'' Similarly, the study also found that milk accounts for 10 percent of dietary fiber at breakfast. And that ''lunches consumed by NSLP participants provided significantly more vitamins D and B12, on average, than lunches consumed by matched nonparticipants. This finding is consistent with the fact that NSLP participants were more likely than matched nonparticipants to consume milk at lunch.''

[39] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 4: Student Participation, Satisfaction, and Dietary Intakes by Mary Kay Fox et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[40] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 4: Student Participation, Satisfaction, and Dietary Intakes by Mary Kay Fox et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[41] 70 percent of the weekly menus offered at least 80 percent of the grain items as whole grain-rich: U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[42] ''The Healthy Eating Index (HEI) is a measure of diet quality used to assess how well a set of foods aligns with key recommendations of the *Dietary Guidelines for Americans.* The HEI uses a scoring system to evaluate a set of foods. The scores range from 0 to 100. An ideal overall HEI score of 100 reflects that the set of foods aligns with key dietary recommendations from the *Dietary Guidelines for Americans.*

[43] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[44] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[45] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 4: Student Participation, Satisfaction, and Dietary Intakes by Mary Kay Fox et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

FNS does not have evidence that setting the whole grain-rich requirement to a percentage between 50 and 100 percent would successfully address the specific concerns and challenges cited by this requirement. Schools should be mindful of the progress to-date by ensuring school meal participants are continuously exposed to whole grain-rich offerings. Both NSLP and SBP participants had significantly higher usual daily intakes of whole grains than similar students not eating school meals. Specifically, NSLP participants were more likely than nonparticipants to consume a whole grain-rich bread, roll, bagel, and other plain bread.[46] Similarly, at breakfast, higher SBP participant consumption of whole grains was also associated with lower consumption of ''empty calories.'' [47]

The proposed change would result in some decrease in whole grain-rich offerings, and children may not receive the same level of key nutrients associated with whole grain-rich items. This rule would not change requirement that the grains that are not whole must be enriched.[48] Schools choosing to offer only half of the grain offerings as whole grain-rich will likely reduce the amount of dietary fiber available to children, making it more challenging for schools to meet the DRI-target for dietary fiber for school meals. Less than two-thirds (62 percent) of average weekly lunch menus in elementary schools and less than half in middle and high schools (46 percent and 38 percent, respectively) were consistent with the DRI-based target for dietary fiber. Additionally, mean usual dietary fiber intakes of both NSLP participants and matched nonparticipants were low, relative to the benchmark on which the DRIs are based.[49] Fiber is identified as a nutrient of concern in the most recent Dietary Guidelines.[50]

By continuing to require that at least half of the offered grain items be whole grain-rich, this rule would continue to ensure that children are exposed to whole grain-rich products. The change in this proposed rule would allow more time for industry to develop appealing whole grain-rich items. Additionally, USDA Foods, which makes up about 15 to 20 percent of the food items offered on an average school day, continues to develop new whole grain-rich products each year. This proposed flexibility would allow additional flexibility for schools that are still struggling to serve all whole grain-rich products and would allow for additional time for the availability of innovative whole grain-rich items.

Sodium Flexibility

This proposed rule would extend Sodium Target 1 through the end of SY 2023–2024, require compliance with Sodium Target 2 starting in SY 2024–2025, and eliminate the Final Target that would have gone into effect in SY 2022–2023. In SY 2014–2015, the first year Target 1 was scheduled to take effect, 72 percent of all average weekly NSLP menus, and 67 percent of all average weekly SBP menus met Target 1.[51]

There has been significant progress to date with sodium reduction in school meals. From SY 2009–2010 to SY 2014–2015, the average sodium content of NSLP lunches served decreased by 19 percent (from 1,375 mg to 1,105 mg).[52] Similarly, the average sodium content of SBP breakfasts served decreased by 23 percent overall (from 618 mg to 473 mg) during the same time frame.[53] [54]

Prior to the updated 2012 standards, sodium levels only slightly decreased between 5-year periods, by 2 percent overall for NSLP lunches and 11 percent for SBP breakfasts between SY 2004–2005 and SY 2009–2010. The updated standards had a significant impact on sodium levels in the school meal programs.

[46] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 4: Student Participation, Satisfaction, and Dietary Intakes by Mary Kay Fox et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[47] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 4: Student Participation, Satisfaction, and Dietary Intakes by Mary Kay Fox et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[48] Enriched grains are refined grains that have been processed to remove the nutrient-rich bran and germ, and then have thiamin, riboflavin, niacin, folic acid, and iron added after processing. Similarly, a food that is fortified has certain vitamins and minerals added to increase the nutritional quality. *https://fns-prod.azureedge.net/sites/default/files/resource-files/SP37_CACFP16-2019os.pdf#page=3.*

[49] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[50] U.S. Department of Health and Human Services and U.S. Department of Agriculture. 2015–2020 Dietary Guidelines for Americans. 8th Edition. December 2015. Available at *http://health.gov/dietaryguidelines/2015/guidelines/.*

[51] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[52] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 4: Student Participation, Satisfaction, and Dietary Intakes by Mary Kay Fox et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[53] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[54] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.* This improvement is also reflected in the HEI–2010 score for sodium, which has increased by 17 percentage points from SY 2009–2010 to SY 2014–2015, meaning that the concentration of sodium in NSLP lunches has decreased over time.

[55] U.S. Department of Agriculture, Food and Nutrition Service, Office of Research, Nutrition and Analysis, School Nutrition Dietary Assessment Study III, Vol. I: School Foodservice, School Food Environment, and Meals Offered and Served, by Anne Gordon, et al. Project Officer: Patricia McKinney. Alexandria, VA: 2007. Available online at: *www.fns.usda.gov/research-and-analysis.*

[56] U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, School Nutrition Dietary Assessment Study IV, Vol. I: School Foodservice Operations, School Environments, and Meals Offered and Served, by Mary Kay Fox, Elizabeth Condon, Mary Kay Crepinsek, et al. Project Officer, Fred Lesnett Alexandria, VA: November 2012. Available online at: *www.fns.usda.gov/research-and-analysis.*

[57] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and MealCost Study, Final Report Volume 2: Nutritional Characteristics of School Meals by Elizabeth Gearan, Mary Kay Fox,Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

COMPARISON OF NSLP AND SBP SODIUM LEVELS IN MENUS SERVED

	Sodium (mg) in menus served:			Sodium (mg) in menus Served:			Sodium (mg) in menus prepared:		
	SY 2004–2005 [55]			SY 2009–2010 [56]			SY 2014–2015 [57]		
	NSLP	SBP	Total	NSLP	SBP	Total	NSLP	SBP	Total
Elementary	1,278	631	1,909	1,324	569	1,893	1,125	505	1,630
Middle	1,407	761	2,168	1,392	687	2,079	1,200	564	1,764
High	1,529	884	2,413	1,515	703	2,218	1,345	584	1,929
All	1,348	701	2,049	1,375	618	1,993	1,105	473	1,578

Sodium values are calculated using menus served to students that are weighted based on student preference patterns. This enables a comparison of sodium values across the three study years.

School children are consuming a considerable amount of sodium, and school meals contribute to their daily total. In 2011–2012, more than 9 in 10 U.S. school children consumed more sodium than the age-specific Tolerable Upper Intake Level established by the Food and Nutrition Board, NASEM (over 130 to 150 percent of the daily recommended amount).[58] On average, most students consumed 14 percent of their daily sodium intake at breakfast, 31 percent at lunch, 39 percent at dinner, and the remaining 16 percent through snacks.[59]

In SY 2014–2015, 81 percent of NSLP participants and similar nonparticipants had usual sodium intakes that exceeded the Tolerable Upper Intake Level recommended in the 2010 Dietary Guidelines for Americans. Lunches consumed by NSLP participants provided significantly less sodium than lunches consumed by similar nonparticipants.[60]

The impact of extending Sodium Target 1 through SY 2023–2024 increases the average daily sodium level permitted by about 55–70 mg for breakfast and 300–340 mg for lunch depending on the age/grade group compared to Sodium Target 2. In SY 2014–2015, about 19 percent of average weekly NSLP menus met Target 2, and 52 percent of average weekly SBP menus met Target 2.[61] The elimination of the Final Target would allow 55–70 mg per day more sodium for breakfast and 300–340 mg per day for lunch.[62]

The extension of Target 1 and delay in Target 2 would provide additional time for FNS to assess the 2020 Dietary Guidelines for Americans, which are scheduled for release at the end of 2020. Extending the Sodium Target 1 through SY 2023–2024 would allow FNS to incorporate the latest scientific evidence into the school meal standards, including time needed for potential regulatory changes. The updated DRIs, as noted in the preamble of this rule, were released in 2019. The updated DRIs recommend lower levels of sodium intake for children ages 1 to 13 years.[63]

The DRI recommendations update the 2005 DRI for sodium and incorporate the new DRI concept of dietary intake recommendations to reduce the risk of chronic disease. As part of the new DRI concept, the 2019 DRI on sodium includes a Chronic Disease Risk Reduction Intake (CDRR) level for all age groups over 12 months of age. The risk that was previously captured in the Tolerable Upper Intake Level (UL) of the 2005 DRI for sodium is now captured in the CDRR. To reduce the risk of chronic disease in the population, daily sodium intakes should be below the CDRR.

The 2019 CDRR daily level for sodium for children aged 14 to 18 years is 2300 mg/day, the same level as the 2005 UL. However, the 2019 CDRR daily level for younger children is lower than the 2005 UL. This means prior to the 2019 DRIs update, Sodium Target 2 would have accounted for 71 to 74 percent of the UL compared to accounting for 87 to 95 percent of the new CDRR for the K–5 and 6–8 age grade/group.

COMPARISON OF CHRONIC DISEASE RISK REDUCTION INTAKE LEVEL AND TOLERABLE UPPER INTAKE LIMIT TO SCHOOLS MEALS (NSLP+SBP) SODIUM TARGET LEVELS

Grade/age	2019 Chronic disease risk reduction intake (CDRR) level (mg)	Target 1 (%)	Target 2 (%)	Target 3*(%)	2005 Tolerable upper intake (UL) level (mg)	Target 1 (%)	Target 2 (%)	Target 3* (%)
K–5 (4–8)	1,500	118.0	94.7	71.3	1,900	93.2	74.7	56.3
6–8 (9–13)	1,800	108.9	87.2	65.6	2,200	89.1	71.4	53.6
9–12 (14–18)	2,300	89.6	71.7	53.9	2,300	89.6	71.7	53.9

*Target 3 is presented for demonstration purposes, this rule proposed to eliminate Sodium Target 3.

Salt preferences develop in childhood and can influence long term sodium intakes. In adults, there is moderate to strong evidence for a causal and intake-response relationship between sodium intake and cardiovascular risk factors, including hypertension. Reducing daily sodium intake below the CDRR reduces these risks and would particularly

[58] Sodium Intake among U.S. School-Aged Children: National Health and Nutrition Examination Survey, 2011–2012 Quader, Zerleen S. et al. Journal of the Academy of Nutrition and Dietetics, Volume 117, Issue 1, 39–47.e5.

[59] Sodium Intake among U.S. School-Aged Children: National Health and Nutrition Examination Survey, 2011–2012 Quader, Zerleen S. et al. Journal of the Academy of Nutrition and Dietetics, Volume 117, Issue 1, 39–47.e5.

[60] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 4: Student Participation, Satisfaction, and Dietary Intakes by Mary Kay Fox et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[61] Unpublished data from published study. U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[62] 0.95% of all schools average weekly NSLP menus and 34% of average weekly SBP menus met Target 3.

[63] National Academies of Sciences, Engineering, and Medicine 2019. Dietary Reference Intakes for Sodium and Potassium. Washington, DC: The National Academies Press. *https://doi.org/10.17226/25353.*

benefit groups with higher prevalence and risk for hypertension and cardiovascular disease, including older adults and certain racial and ethnic groups, particularly non-Hispanic black groups.[64] In SY 2014–2015 about 73 percent of Non-Hispanic black children usually participated in NSLP and about 46 percent participated in SBP. On average elementary school participation was higher than middle and high school participation in both the NSLP and SBP.[65]

Despite insufficient evidence to assess the relationship of sodium intake and cardiovascular risk in children, the development of salt preferences early in life, evidence that blood pressure and cardiovascular disease risk factors track from early childhood into adulthood, and the public health importance of cardiovascular health, contributed to the rational for establishing the CDRR for children and adolescents.[66] While the DRIs recommended further reductions in sodium intake for young children, no specific recommendations relating to school meals have been provided.

FNS is mindful of the change in sodium recommendations, which will be considered in the 2020 Dietary Guidelines for Americans. Publication of the 2020 Dietary Guidelines will provide an additional opportunity to assess the impact of the recommendations on school meals. FNS remains committed to strong nutrition standards for school meals, consistent with the statutory requirement that school meals reflect the Dietary Guidelines, including sodium targets that are achievable for most schools, and allow schools to plan appealing meals that encourage student participation.

The proposed changes in this rule would allow the slow introduction to lower sodium foods and meals to students and for industry to develop and test consistent lower sodium products that are palatable for students. According to a 2019 FNS study on successful approaches to reduce sodium, SFAs noted that there needs to be a gradual change to give time for students to adjust to taste/flavor change. Gradual implementation allowed students adequate time to adjust and increase acceptance.[67] There also appears to be variation in the acceptance of lower sodium foods across student age and school type and location. High school students were perceived as less receptive to lower sodium alternatives due to established taste preferences and easy access to off-campus food, while elementary schools reported fewer barriers to student acceptance when implementing sodium standards. Smaller, rural SFAs also reported fewer resources for purchasing and procuring foods, while large urban SFAs procured higher quantities of food at lower costs, with access to a larger number of suppliers.[68]

While the majority of average weekly menus in SY 2014–2015 met Sodium Target 1,[69] compliance with Sodium Target 1 was associated with a significantly lower NSLP participation rate (54 percent versus 64 percent). Additionally, elementary and middle school students in schools meeting Sodium Target 1 had significantly lower levels of student satisfaction with school lunches. Meeting Sodium Target 1 was also associated with a significantly lower level of student satisfaction across all types of schools for school breakfast.[70] These findings demonstrate time is needed to be able to successfully develop lower sodium products that appeal to children.

There were also concerns from Food Service Management Companies (FSMCs) that the Final Sodium Target could create inequities across companies. Larger FSMCs indicated they were positioned and equipped to meet sodium targets in different ways than smaller FSMCs. Larger FSMCs have a broader capacity to work with food manufacturers compared to the smaller, more regional FSMCs. There was also concern that the Final Sodium Target may be so low in sodium that it will affect the ability to produce processed food products, including bakery items, when sodium serves a functional purpose (*e.g.,* salt to strengthen gluten, baking soda to help baked goods rise and extended shelf life).[71]

The proposed flexibilities to the nutrition standards would allow additional time to work with available products to provide wholesome and appealing meals to students within available resources. This may increase student consumption of school meals and reduce food waste and revenue loss. While the changes resulting from the 2012 Final Rule may not have resulted in long-term impacts for participation in some schools,[72] FNS understands there is a wide variation in challenges encountered by schools. The changes in this proposed rule would provide the local level control necessary to successfully operate the school meal programs.

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, it has been certified that this rule would not have a significant impact on a substantial number of small entities.

This proposed rule would not have an impact on small entities because it adds flexibility to current Child Nutrition Program regulations, the changes

[64] National Academies of Sciences, Engineering, and Medicine 2019. Dietary Reference Intakes for Sodium and Potassium. Washington, DC: The National Academies Press. *https://doi.org/10.17226/25353.*

[65] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[66] National Academies of Sciences, Engineering, and Medicine 2019. Dietary Reference Intakes for Sodium and Potassium. Washington, DC: The National Academies Press. *https://doi.org/10.17226/25353.*

[67] SFAs measured student acceptance over time and in single occurrences by monitoring food waste, informally discussing preferences with students, and formally and regularly polling students on satisfaction.

[68] Gordon, E., Morrissey, N., Adams, E., et al. Successful Approaches To Reduce Sodium in School Meals Study. Prepared by 2M Research and Abt Associates, Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, June 2019. Project Officer: Holly Figueroa. Available online at: *www.fns.usda.gov/research-and-analysis.*

[69] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[70] For NSLP student satisfaction 43 percent versus 64 percent for elementary schools and 27 percent versus 49 percent for middle schools; overall for all school types in SBP 53 percent versus 63 percent; and for specific school types in SBP 58 percent versus 83 percent for elementary schools and 29 percent versus 54 percent for high schools. 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.

[71] Gordon, E., Morrissey, N., Adams, E., et al. Successful Approaches To Reduce Sodium in School Meals Study. Prepared by 2M Research and Abt Associates. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, June 2019. Project Officer: Holly Figueroa. Available online at: *www.fns.usda.gov/research-and-analysis.*

[72] Vaudrin N, Lloyd K, Yedidia MJ, Todd M, Ohri-Vachaspati P. Impact of the 2010 US Healthy, Hunger-Free Kids Act on School Breakfast and Lunch Participation Rates Between 2008 and 2015. *Am J Public Health.* 2018;108(1):84–86. doi:10.2105/AJPH.2017.304102.

intended through this proposed rule are expected to benefit small entities operating meal programs under 7 CFR parts 210, 215, 220, and 226. The impacts are not expected to be significant.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a major rule as defined by 5 U.S.C. 804(2).

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's designation under E.O. 13771 will be informed by comments received. It alleviates the milk, grains, and sodium requirements in the Child Nutrition Program and provides flexibilities similar to those made available as a result of appropriations legislation in effect for SY 2017–2018 and administrative actions.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of $146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at *http://www.bea.gov/iTable*) in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This 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 $146 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, and the CACFP are listed in the Catalog of Federal Domestic Assistance under NSLP No. 10.555, SMP No. 10.556, SBP No. 10.553, and CACFP No. 10.558, respectively, and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Since the Child Nutrition Programs are State-administered, USDA's FNS Regional Offices have formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operations. This provides FNS with the opportunity to receive regular input from program administrators and contributes to the development of feasible program requirements.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of this proposed 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 the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed the proposed rule, in accordance with Department Regulation 4300–004, Civil Rights Impact Analysis, to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. A comprehensive Civil Rights Impact Analysis (CRIA) was conducted on the proposed rule, including an analysis of any available participant data and provisions contained in the rule. The CRIA outlines mitigation, outreach, and monitoring and evaluation strategies to lessen any possible civil rights impacts. FNS finds the implementation of the mitigation, outreach, and monitoring and evaluation strategies outlined in the CRIA by the FNS Civil Rights Division and FNS Child Nutrition staff may lessen these impacts. If deemed necessary, the FNS Civil Rights Division will propose additional mitigation strategies to alleviate impacts that may result from the implementation of this rule.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' 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.

The Office of Tribal Relations (OTR) 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. If consultation is requested, OTR will work with FNS to ensure quality 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) to 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 contains information collections that have been approved by OMB under OMB #0584–0006 (7 CFR part 210 National School Lunch Program), expires 7/31/2023; OMB #0584–0012 (7 CFR part 220, School Breakfast Program) expires 4/30/2022; OMB # 0584–0005 (7 CFR part 215—Special Milk Program for Children)

expires 7/31/2022, and 0584–0055 (Child and Adult Care Food Program), expired 2/29/2020. However, the provisions of this rule do not impose new or existing information collection requirements subject to approval by the OMB under the Paperwork Reduction Act of 1994.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act of 2002 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.

Accordingly, 7 CFR parts 210, 215, 220 and 226 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.10:

■ a. Revise the table in paragraph (c) introductory text;

■ b. Add a sentence to the end of paragraph (c)(2)(iv)(A); and

■ c. Revise paragraphs (c)(2)(iv)(B), (d)(1)(i), and (f)(3).

The revisions and addition read as follows:

§ 210.10 Meal requirements for lunches and requirements for after school snacks.

* * * * *

(c) * * *

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]	[e] 1	[e] 1	[e] 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 1 (mg) [h i]	≤1,230	≤1,360	≤1,420
Trans fat [h j]	Nutrition label or manufacturer specifications must indicate zero grams of *trans* fat per serving.		

[a] Food items included in each group and subgroup and amount equivalents. Minimum creditable serving is ⅛ cup.

[b] One quarter-cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% 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] 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, 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] Food products and ingredients must contain zero grams of *trans* fat (less than 0.5 grams) per serving.

* * * * *

(2) * * *

(iv) * * *

(A) * * * The whole grain-rich criteria included in FNS guidance may be updated to reflect additional information provided by industry on the food label or a whole grains definition by the Food and Drug Administration.

(B) *Daily and weekly servings.* The grains component is based on minimum daily servings plus total servings over a 5-day school week. Schools serving lunch 6 or 7 days per week must increase the weekly grains quantity by approximately 20 percent (⅕) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (⅕) for each day less than 5. 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.

* * * * *

(d) * * *

(1) * * *

(i) Schools must offer students a variety (at least two different options) of fluid milk. All milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk with higher fat content is not allowed. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered. Milk may be unflavored or flavored provided that unflavored milk is offered at each meal service.

* * * * *

(f) * * *

(3) *Sodium.* School lunches offered to each age/grade group must meet, on average over the school week, the levels of sodium specified in the following table within the established deadlines:

National school lunch program	Sodium timeline & limits	
Age/grade group	Target 1: July 1, 2014 (SY 2014–2015) (mg)	Target 2: July 1, 2024 (SY 2024–2025) (mg)
K–5	≤1,230	≤935
6–8	≤1,360	≤ 1,035
9–12	≤1,420	≤1,080

* * * * *

§ 210.11 [Amended]

■ 3. In § 210.11, in paragraphs (m)(1)(ii), (m)(2)(ii), and (m)(3)(ii) add the words ''or flavored'' after the word ''unflavored''.

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

■ 4. The authority for 7 CFR part 215 continues to read as follows:

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

■ 5. In § 215.7a, revise paragraph (a)(3) to read as follows:

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

* * * * *

(a) * * *

(3) *Children 6 years old and older.* Children six years old and older must be served low-fat (1 percent fat or less) or fat-free (skim) milk. Milk may be unflavored or flavored.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

■ 6. The authority citation for 7 CFR part 220 continues to read as follows:

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

■ 7. In § 220.8, revise the table in paragraph (c) introductory text and revise paragraphs (c)(2)(iv)(A), (c)(2)(iv)(B), (d), and (f)(3) to read as follows:

§ 220.8 Meal requirements for breakfasts.

* * * * *

(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)[b 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
Grains (oz eq)[d]	7–10 (1)	8–10 (1)	9–10 (1)
Meats/Meat Alternates (oz eq)[e]	0	0	0
Fluid milk[f] (cups)	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 1 (mg)[h i]	≤540	≤600	≤640
Trans fat[h j]	Nutrition label or manufacturer specifications must indicate zero grams of *trans* fat per serving.		

[a] Food items included in each group and subgroup and amount equivalents. Minimum creditable serving is ⅛ cup.

[b] One quarter cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.

[c] Schools must offer 1 cup of fruit daily and 5 cups of fruit weekly. 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.

[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. Schools may substitute 1 oz. eq. of meat/meat alternate for 1 oz. eq. of grains after the minimum daily grains requirement is met.
[e] There is no meat/meat alternate 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, and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent milk fat 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] Food products and ingredients must contain zero grams of *trans* fat (less than 0.5 grams) per serving.

* * * * *

(2) * * *

(iv) * * *

(A) *Enriched and whole grains.* All grains must be made with enriched and whole grain meal or flour, in accordance with the most recent FNS guidance on grains. Whole grain-rich products must contain at least 50 percent whole grains and the remaining grains in the product must be enriched. The whole grain-rich criteria included in FNS guidance may be updated to reflect additional information provided by industry on the food label or a whole grains definition by the Food and Drug Administration. Schools may substitute meats/meat alternates for grains, after the daily grains requirement is met, to meet the weekly grains requirement. One ounce equivalent of meat/meat alternate is equivalent to one ounce equivalent of grains.

* * * * *

(B) *Daily and weekly servings.* The grains component is based on minimum daily servings plus total servings over a 5-day school week. Schools serving breakfast 6 or 7 days per week must increase the weekly grains quantity by approximately 20 percent (⅕) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (⅕) for each day less than 5. 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.

* * * * *

(d) *Fluid milk requirement.* Breakfast must include a serving of fluid milk as a beverage or on cereal or used in part for each purpose. Schools must offer students a variety (at least two different options) of fluid milk. All fluid milk must be fat-free (skim) or low-fat (1percent fat or less). Milk with higher fat content is not allowed. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered. Milk may be unflavored or flavored provided that unflavored milk is offered at each meal service. Schools must also comply with other applicable fluid milk requirements in § 210.10(d) of this chapter.

* * * * *

(f) * * *

(3) *Sodium.* School breakfasts offered to each age/grade group must meet, on average over the school week, the levels of sodium specified in the following table within the established deadlines:

School breakfast program	Sodium timeline & limits	
Age/grade group	Target 1: July 1, 2014 (SY 2014–2015) (mg)	Target 2: July 1, 2024 (SY 2024–2025) (mg)
K–5	≤540	≤485
6–8	≤600	≤535
9–12	≤640	≤570

* * * * *

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 8. The authority citation for 7 CFR 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).

■ 9. In § 226.20, revise paragraph (a)(1) and the tables to paragraphs (c)(1), (c)(2), and (c)(3) to read as follows:

§ 226.20 Requirements for meals.

(a) * * *

(1) *Fluid milk.* Fluid milk must be served as a beverage or on cereal, or a combination of both. Lactose-free and reduced-lactose milk that meet the fat content and flavor specifications for each age group may also be offered.

(i) *Children 1 year old.* Unflavored whole milk must be served.

(ii) *Children 2 through 5 years old.* Either unflavored low-fat (1 percent) or unflavored fat-free (skim) milk must be served.

(iii) *Children 6 years old and older.* Low-fat (1 percent fat or less) or fat-free (skim) milk must be served. Milk may be unflavored or flavored.

(iv) *Adults.* Low-fat (1 percent fat or less) or fat-free (skim) milk must be served. Milk may be unflavored or flavored. Six ounces (weight) or ¾ cup (volume) of yogurt may be used to fulfill the equivalent of 8 ounces of fluid milk once per day. Yogurt may be counted as either a fluid milk substitute or as a meat alternate, but not as both in the same meal.

* * * * *

(c) * * *

(1) * * *

CHILD AND ADULT CARE FOOD PROGRAM BREAKFAST

[Select the appropriate components for a reimbursable meal]

Food components and food items [1]	Minimum Quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 [2] (at-risk afterschool programs and emergency shelters)	Adult participants
Fluid Milk [3]	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces.
Vegetables, fruits, or portions of both [4]	¼ cup	½ cup	½ cup	½ cup	½ cup.
Grains (oz eq): [5 6 7]					
Whole grain-rich or enriched bread	½ slice	½ slice	1 slice	1 slice	2 slices.
Whole grain-rich or enriched bread product, such as biscuit, roll, or muffin.	½ serving	½ serving	1 serving	1 serving	2 servings.
Whole grain-rich, enriched, or fortified cooked breakfast cereal [8], cereal grain, and/or pasta.	¼ cup	¼ cup	½ cup	½ cup	1 cup.
Whole grain-rich, enriched or fortified ready-to-eat breakfast cereal (dry, cold) [8].					
Flakes or rounds	½ cup	½ cup	1 cup	1 cup	2 cups.
Puffed cereal	¾ cup	¾ cup	1¼ cup	1¼ cup	2½ cup.
Granola	⅛ cup	⅛ cup	¼ cup	¼ cup	½ cup.

Endnotes:

[1] Must serve all three components for a reimbursable meal. Offer versus serve is an option for at-risk afterschool participants.

[2] Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs.

[3] Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent fat or less) or unflavored fat-free (skim) milk for children two through five years old. Must be low-fat (1 percent fat or less) or fat-free (skim) milk for children 6 years old and older and adults, and may be unflavored or flavored. For adult participants, 6 ounces (weight) or ¾ cup (volume) of yogurt may be used to meet the equivalent of 8 ounces of fluid milk once per day when yogurt is not served as a meat alternate in the same meal.

[4] Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

[5] At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.

[6] Meat and meat alternates may be used to meet the entire grains requirement a maximum of three times a week. One ounce of meat and meat alternates is equal to one ounce equivalent of grains.

[7] Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.

[8] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

(2) * * *

CHILD AND ADULT CARE FOOD PROGRAM LUNCH AND SUPPER

[Select the appropriate components for a reimbursable meal]

Food components and food items [1]	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 [2] (at-risk afterschool programs and emergency shelters)	Adult participants
Fluid Milk [3]	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces [4].
Meat/meat alternates (edible portion as served):					
Lean meat, poultry, or fish	1 ounce	1½ ounces	2 ounces	2 ounces	2 ounces.
Tofu, soy products, or alternate protein products [5].	1 ounce	1½ ounces	2 ounces	2 ounces	2 ounces.
Cheese	1 ounce	1½ ounces	2 ounces	2 ounces	2 ounces.
Large egg	½	¾	1	1	1.
Cooked dry beans or peas	¼ cup	⅜ cup	½ cup	½ cup	½ cup.
Peanut butter or soy nut butter or other nut or seed butters.	2 Tbsp	3 Tbsp	4 Tbsp	4 Tbsp	4 Tbsp.
Yogurt, plain or flavored unsweetened or sweetened [6].	4 ounces or ½ cup	6 ounces or ¾ cup	8 ounces or 1 cup	8 ounces or 1 cup	8 ounces or 1 cup.
The following may be used to meet no more than 50% of the requirement:					
Peanuts, soy nuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternates (1 ounce of nuts/seeds = 1 ounce of cooked lean meat, poultry, or fish).	½ ounce = 50%	¾ ounce = 50%	1 ounce = 50%	1 ounce = 50%	1 ounce = 50%.
Vegetables [7]	⅛ cup	¼ cup	½ cup	½ cup	½ cup.
Fruits [7 8]	⅛ cup	¼ cup	¼ cup	¼ cup	½ cup.
Grains (oz eq): [9 10]					
Whole grain-rich or enriched bread	½ slice	½ slice	1 slice	1 slice	2 slices.
Whole grain-rich or enriched bread product, such as biscuit, roll, or muffin.	½ serving	½ serving	1 serving	1 serving	2 servings.
Whole grain-rich, enriched, or fortified cooked breakfast cereal [11], cereal grain, and/or pasta.	¼ cup	¼ cup	½ cup	½ cup	1 cup.

Endnotes:

[1] Must serve all five components for a reimbursable meal. Offer versus serve is an option for at-risk afterschool and adult participants.

[2] Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs.

[3] Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent fat or less) or unflavored fat-free (skim) milk for children two through five years old. Must be low-fat (1 percent fat or less) or fat-free (skim) milk for children 6 years old and older and adults, and may be unflavored or flavored. For adult participants, 6 ounces (weight) or ¾ cup (volume) of yogurt may be used to meet the equivalent of 8 ounces of fluid milk once per day when yogurt is not served as a meat alternate in the same meal.
[4] A serving of fluid milk is optional for suppers served to adult participants.
[5] Alternate protein products must meet the requirements in Appendix A to Part 226 of this chapter.
[6] Yogurt must contain no more than 23 grams of total sugars per 6 ounces.
[7] Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.
[8] A vegetable may be used to meet the entire fruit requirement. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.
[9] At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards the grains requirement.
[10] Beginning October 1, 2021, ounce equivalents are used to determine the quantity of the creditable grain.
[11] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

(3) * * *

CHILD AND ADULT CARE FOOD PROGRAM SNACK
[Select two of the five components for a reimbursable meal]

Food components and food items [1]	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 [2] (at-risk afterschool programs and emergency shelters)	Adult participants
Fluid Milk [3]	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces.
Meat/meat alternates (edible portion as served):					
Lean meat, poultry, or fish	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Tofu, soy products, or alternate protein products [4].	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Cheese	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Large egg	½	½	½	½	½.
Cooked dry beans or peas	⅛ cup	⅛ cup	¼ cup	¼ cup	¼ cup.
Peanut butter or soy nut butter or other nut or seed butters.	1 Tbsp	1 Tbsp	2 Tbsp	2 Tbsp	2 Tbsp.
Yogurt, plain or flavored unsweetened or sweetened [5].	2 ounces or ¼ cup	2 ounces or ¼ cup	4 ounces or ½ cup	4 ounces or ½ cup	4 ounces or ½ cup.
Peanuts, soy nuts, tree nuts, or seeds	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Vegetables [6]	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Fruits [6]	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Grains (oz eq): [7 8]					
Whole grain-rich or enriched bread	½ slice	½ slice	1 slice	1 slice	1 slice.
Whole grain-rich or enriched bread product, such as biscuit, roll, or muffin.	½ serving	½ serving	1 serving	1 serving	1 serving.
Whole grain-rich, enriched, or fortified cooked breakfast cereal [9], cereal grain, and/or pasta.	¼ cup	¼ cup	½ cup	½ cup	½ cup.
Whole grain-rich, enriched, or fortified ready-to-eat breakfast cereal (dry, cold) [9]:.					
Flakes or rounds	½ cup	½ cup	1 cup	1 cup	1 cup.
Puffed cereal	¾ cup	¾ cup	1¼ cup	1¼ cup	1¼ cup.
Granola	⅛ cup	⅛ cup	¼ cup	¼ cup	¼ cup.

Endnotes:
[1] Select two of the five components for a reimbursable snack. Only one of the two components may be a beverage.
[2] Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs.
[3] Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent fat or less) or unflavored fat-free (skim) milk for children two through five years old. Must be unflavored low-fat (1 percent fat or less), unflavored fat-free (skim) milk for children six years old and older and adults. For adult participants, 6 ounces (weight) or ¾ cup (volume) of yogurt may be used to meet the equivalent of 8 ounces of fluid milk once per day when yogurt is not served as a meat alternate in the same meal.
[4] Alternate protein products must meet the requirements in Appendix A to Part 226 of this chapter.
[5] Yogurt must contain no more than 23 grams of total sugars per 6 ounces.
[6] Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.
[7] At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards the grains requirement.
[8] Beginning October 1, 2021, ounce equivalents are used to determine the quantity of the creditable grains.
[9] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

* * * * *

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–25761 Filed 11–24–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 55

[Docket ID OCC–2020–0042]

RIN 1557–AF05

Fair Access to Financial Services

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency is proposing a regulation to ensure that national banks and Federal savings associations offer and provide fair access to financial services.

DATES: Comments must be received on or before January 4, 2021.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal, if possible. Please use the title ''Fair Access to Financial