

# Rules and Regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

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

[FNS-2017-0021]

RIN 0584-AE53

#### Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule extends through school year 2018–2019 three menu planning flexibilities currently available to many Child Nutrition Program operators, giving them near-term certainty about Program requirements and more local control to serve nutritious and appealing meals to millions of children nationwide. These flexibilities include: Providing operators the option to offer flavored, low-fat (1 percent fat) milk in the Child Nutrition Programs; extending the State agencies' option to allow individual school food authorities to include grains that are not whole grain-rich in the weekly menu offered under the National School Lunch Program (NSLP) and School Breakfast Program (SBP); and retaining Sodium Target 1 in the NSLP and SBP. This interim final rule addresses significant challenges faced by local operators regarding milk, whole grains and sodium requirements and their impact on food development and reformulation, menu planning, and school food service procurement and contract decisions. The comments from the public on the long-term availability of these three flexibilities will help inform the development of a final rule, which is expected to be published in fall 2018 and implemented in school year 2019–2020.

**DATES:** *Effective Date:* This interim final rule will become effective July 1, 2018.

**Comment Date:** To be considered, written comments on this interim final rule must be received on or before January 29, 2018.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Regular U.S. mail:* Send comments to School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, P.O. Box 2885, Fairfax, VA 22031–0885.

- *Overnight, courier, or hand delivery:* School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, 3101 Park Center Drive, 12th floor, Alexandria, Virginia 22302.

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

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

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Overview

The National School Lunch Program (NSLP) and School Breakfast Program (SBP) provide nutritious and well-balanced meals to millions of children daily. Section 9(a)(4) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1758(a)(4), requires that school meals reflect the latest Dietary Guidelines for Americans (Dietary Guidelines). On January 26, 2012, USDA published a final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088), which updated the school meal requirements consistent with the Dietary Guidelines and the recommendations issued by the Health and Medicine Division of the National

## Federal Register

Vol. 82, No. 229

Thursday, November 30, 2017

Academies of Science, Engineering, and Medicine (formerly, Institute of Medicine) in the report *School Meals: Building Blocks for Healthy Children*.<sup>1</sup> In part, the 2012 regulatory requirements: (1) Allowed flavoring only in fat-free milk, effective school year (SY) 2012–2013; (2) established a requirement that, effective SY 2014–2015, all grains served in the NSLP and SBP must comply with the whole grain-rich requirement (meaning the grain product contains at least 50 percent whole grains and the remaining grain content of the product must be enriched); and (3) required schools to gradually reduce the sodium content of the average weekly school meals offered to each grade group in the NSLP and SBP by meeting progressively lower sodium targets over a period of 10 years.

USDA subsequently published two additional final rules making conforming amendments to the requirements for the service of milk in competitive foods sold outside of the school meal programs (*National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010*, on July 29, 2016, 81 FR 50132) and to the Child and Adult Care Food Program (CACFP) meal requirements and the Special Milk Program for Children (SMP) milk requirements (*Child and Adult Care Food Program: Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010*, on April 25, 2016, 81 FR 24348).

Over the past five years, since the NSLP and SBP regulations were updated in 2012, some Program operators have experienced challenges with the whole grain-rich requirement and the sodium limits. To address these challenges, USDA took administrative steps, such as allowing enriched pasta exemptions for SYs 2014–2015 and 2015–2016, to provide flexibilities and ease the transition to the updated standards. Congress recognized the challenges as well, and, through Section 751 of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235), expanded the pasta flexibility to include other grain products.

Through successive legislative action, Congress directed the Secretary to allow

<sup>1</sup> See <https://www.fns.usda.gov/sites/default/files/SchoolMealsIOM.pdf>.

State agencies that administer the NSLP and the SBP to grant individual exemptions from the regulatory whole grain-rich requirement in those programs, and delay compliance with Sodium Target 2 (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); and Section 733 of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113)). In addition, Section 747 of the Consolidated Appropriations Act, 2017 (Pub. L. 115–31) (2017 Appropriations Act) provided flexibilities related to flavored milk, whole grains, and sodium for SY 2017–2018. Most recently, 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, Public Law 115–56, enacted September 8, 2017, extends the flexibilities provided by section 747 of the Consolidated Appropriations Act, 2017 through December 8, 2017.

The 2017 Appropriations Act provides authority for exemptions for the whole grain-rich requirement through the end of SY 2017–2018, keeps Sodium Target 1 in place through the end of SY 2017–2018, and requires the Secretary to grant State agencies that administer the NSLP and SBP discretion to allow school food authorities (SFAs) that demonstrate a reduction in student milk consumption or an increase in milk waste to serve flavored, low-fat milk as part of a reimbursable meal or as a competitive beverage for sale (as specified in 7 CFR 210.11) through the end of SY 2017–2018.

This interim final rule provides optional flexibilities for SY 2018–2019 in a manner that is consistent with appropriations legislation in effect for SY 2017–2018 and previous administrative actions. In addition, this rule provides an opportunity for public comments that will inform USDA's development of a final rule on the long-term availability of the flexibilities. USDA intends to issue a final rule well in advance of school year 2019–2020, when the final regulations are expected to take effect.

In summary, the flexibilities provided by this interim final rule for SY 2018–2019 are the following:

- This rule allows Program operators in the NSLP, SBP, SMP, and CACFP (the Child Nutrition Programs (CNP)) the option to offer flavored, low-fat (1 percent fat) milk as part of a reimbursable meal for students in grades K through 12, and for SMP and CACFP

participants 6 years of age and older. Schools may also offer flavored, low-fat milk as a competitive beverage for sale. This optional flexibility expands the variety of milk in the CNPs and may encourage children's consumption of fluid milk nationwide.

- This rule allows State agencies to continue granting an SFA's exemption request to use specific alternative grain products if the SFA can demonstrate hardship(s) in procuring, preparing, or serving specific products that are acceptable to students and compliant with the whole grain-rich requirement. This rule responds to challenges experienced by some SFAs with the purchase, preparation, or service of products that comply with the whole grain-rich requirement in the NSLP and SBP.

- This rule retains Sodium Target 1 as the regulatory limit in the NSLP and SBP through the end of SY 2018–2019. Currently, USDA anticipates retaining Target 1 in the final rule through at least the end of SY 2020–2021 to provide SFAs more time to procure and introduce lower sodium food products, allow food industry more time for product development and reformulation, and give students more time to adjust to school meals with lower sodium content. Also, USDA anticipates that the sodium requirement will continue to be reevaluated for consistency with the Dietary Guidelines, which are updated every five years, and in response to Congressional action, as appropriate. To help inform the final rule, USDA seeks public comments on the long-term availability of this flexibility and its impact on the sodium reduction timeline established in 2012 and, specifically, the impact on Sodium Target 2.

This rule also includes minor technical corrections that remove obsolete dates related to the phased-in implementation of the school meal patterns. These technical revisions do not affect the intent or content of the regulations.

## **II. Timeline and Instructions to Commenters**

As noted earlier, Congress has provided mandates regarding flavored, low-fat milk, whole grains, and sodium effective for SY 2017–2018; therefore, this interim final rule is intended to address the optional flexibilities in effect for SY 2018–2019. No changes made under this interim final rule will extend beyond SY 2018–2019. Comments from State agencies, local Program operators, food industry, nutrition advocates, parents and other stakeholders on the day-to-day impact

of these flexibilities will be extremely helpful in the development of the final rule. USDA will carefully consider all relevant comments submitted during the 60-day comment period for this rule, and intends to issue a final rule in fall 2018. USDA is committed to publication of a final rule well before implementation in SY 2019–2020. This will ensure that stakeholders have ample opportunity to make any necessary operational changes.

## **III. Need for Action**

Legislative action taken by Congress through the annual appropriations process, starting with the 2012 fiscal year, provides short-term assistance to Program operators facing challenges but does 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, USDA must take additional steps such as developing and disseminating implementation memoranda for Program operators. This creates a time lag that reduces the potential impact of the flexibilities, and causes confusion for Program operators who must keep track of multiple memoranda. For example, USDA 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.

When the 114th Congress began, but did not complete, the reauthorization process for the CNPs, the House and Senate authorizing committees drafted bills granting flexibilities in the three areas addressed by this rule—milk, whole grains and sodium. These preliminary reauthorization efforts reflected Congress' interest in providing stakeholders with additional flexibility in these areas.<sup>2</sup>

Through this interim final rule, USDA is responding to Program operators' need for more flexibility to accommodate menu planning and procurement challenges, local operational differences, and community preferences. This rule also responds to

<sup>2</sup> The Child Nutrition Programs are generally reauthorized every five years. The last reauthorization resulted from the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296).

the need for clarity and certainty regarding key requirements and flexibilities for the near term. USDA recognizes that all stakeholders have made significant efforts to implement the 2012 school meal regulations. This interim final rule does not undo their hard work. The intent of this rule is to assist Program operators with specific challenges that limit their ability to offer nutritious and appealing meals that reflect community preferences, and that students enjoy and consume.

This rule signals USDA's commitment to an expeditious rulemaking process that will result in a final rule that provides long-term certainty on the flexibilities for milk, whole grains, and sodium. As explained next, food manufacturers need clarity and certainty prior to committing resources for research and product development/reformulation. School districts also need clarity and certainty in order to make menu planning, procurement, and contract decisions in advance of the school year.

#### *Product Development Challenges*

USDA acknowledges that the flexibilities granted through annual appropriations do not provide food manufacturers the certainty they need to engage in product development and reformulation in support of the whole grain-rich and sodium requirements. Manufacturers must overcome numerous challenges before some of the school meal products are widely acceptable to children and schools or commercially available. As explained in the preamble to the 2012 final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088, 4097–98), exceeding Target 1 requires product reformulation and innovation in the form of new technology and/or food products and can present significant challenges to school lunch providers.

Commenters advised USDA in 2012 that food providers need time for product development and testing, and schools need time for procurement changes, menu development, sampling, and fostering student acceptance. (See 77 FR 4097). Through informal conversations with 300 food manufacturers over the past three years at each of the annual National Restaurant Association Shows, FNS senior policy officials learned that product research and reformulation involves numerous steps over a period of several years. Food manufacturers

indicated that it takes at least two to three years to reformulate and develop food products that support new requirements. The process involves innovation of new products, product research and development, testing, commercialization, launch, and marketing of the new products. 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 audience, 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.

Regular interaction with food manufacturers at the National Restaurant Association Show and other events, such as the School Nutrition Association Annual Conference, reveals 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 are challenged with developing technologies to help overcome consumers' sensory barriers (taste and texture), while optimizing the flavor, color, and texture of foods made with whole grain ingredients. Manufacturers have indicated that in the past when companies reformulated products early, they incurred significantly more costs, such as research and development, product testing, and creating new labels, as opposed to those who took a "wait and see" approach. Therefore, because manufacturers perceive uncertainty about the whole grain-rich requirement and the possibility of further meal pattern changes resulting from legislative activity, USDA understands they are not currently investing time or resources to develop new whole grain-rich products.

While product-specific information is proprietary, the overwhelming and consistent message is that the food industry needs consistency and certainty of the regulatory requirements. In addition, ample lead time and predictability about the regulatory requirements must be promptly

provided to food manufacturers to enable them to offer products to schools that support the meal patterns and nutrition standards. While this interim final rule is intended to provide certainty for the near term, input from the food industry and school food service staff will be important to help USDA develop a final rule providing reasonable certainty regarding Program requirements and flexibilities.

#### *Menu Planning and Procurement Cycles*

SFAs also need ample lead time and certainty about regulatory requirements and flexibilities in order to make menu planning, procurement, and contract decisions in advance of the school year; therefore, it is urgent that USDA clarifies the regulatory requirements that impact these processes. The menu, which must reflect the meal patterns and nutrition standards established by Program regulations, drives the procurement process and must be completed first. The menu and standardized recipes help SFAs determine the types of food products to purchase. Menu planners must make many advance decisions involving, first, availability of USDA Foods entitlement commodities, and then soliciting, procuring, ordering, processing, and planning for the delivery of food. Planning in advance saves time, helps avoid repetitive tasks, reduces labor, and implements cost-effective inventory management, according to the Institute for Child Nutrition (ICN).<sup>3</sup>

Once menu planning is complete, SFAs need lead time to screen products, forecast food quantities needed, write product specifications, create solicitation documents, announce the solicitation, and award the contract. As shown in the following chart, due to the numerous steps involved, ICN estimates that the entire procurement process may take up to a year to complete, beginning in August of the previous school year. Public comments from local operators and their State agencies will enable USDA to develop a final rule that provides long-term certainty regarding Program requirements and flexibilities, which will help SFAs conduct procurement more efficiently.

<sup>3</sup> The Institute for Child Nutrition, which is housed at the University of Mississippi, was authorized by Congress in 1989 to improve the operation of CNPs through research, education and training, and information dissemination pursuant to section 21 of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1769b-1.

PROCUREMENT TIMELINE FOR SCHOOL FOOD SERVICE OPERATORS<sup>4</sup>

Month(s)	Task(s)
August–September .....	<ul style="list-style-type: none"> <li>• Begin preparing for procuring items. Planning approximately one year in advance provides sufficient time for preparation for all parties in the food chain.</li> </ul>
October–December .....	<ul style="list-style-type: none"> <li>• Write specifications.</li> <li>• Project USDA Foods needs.</li> <li>• Conduct screen test.</li> <li>• Fall and winter breaks may impact timeline.</li> </ul>
January .....	<ul style="list-style-type: none"> <li>• Develop solicitation document. Include pertinent information about the district; date and time for pre-solicitation conference and solicitation submission; scope of work; time period for the solicitation; any common legalities; ability for price escalations; name brand items; substitutions; discounts, rebates, and applicable credits; communication instructions with the district prior to the closing date; solicitation evaluation criteria.</li> <li>• Plan accordingly to have solicitation document and agenda item at school board meeting.</li> <li>• Modify proposal based on legal counsel's directives. Remember fall and winter breaks may impact the timeline.</li> </ul>
February–March .....	<ul style="list-style-type: none"> <li>• Propose solicitation document to school board.</li> <li>• Follow internal procedures.</li> <li>• Communicate to distributors and manufacturer and publicly announce the solicitation.</li> <li>• Publicize the solicitation document.</li> <li>• Conduct the solicitation meeting.</li> <li>• Allow a minimum of four weeks for vendors to respond.</li> <li>• Evaluate solicitations based on pre-established criteria and select vendors.</li> <li>• Receive School Board approval for the selection of vendor.</li> <li>• Provide information to distributor and/or manufacturer.</li> <li>• Allow longer time for specialty items and name brand items.</li> <li>• Communicate with stakeholders, determine delivery dates, and discuss school opening logistics.</li> <li>• Receive product for upcoming school year.</li> </ul>
April–May .....	
June .....	
July–August .....	

Fluid milk is an integral part of the procurement cycle as it is ordered for millions of preschoolers and students nationwide through the CNPs. According to USDA's Agriculture Marketing Service, fluid milk processors require certainty around school meal program milk needs at the beginning of the school procurement cycle to ensure that they can bid appropriately and successfully to supply schools with the desired types of milk in appropriate packaging. Specifically, schools must be in a position to specify fat content required for both flavored and unflavored milk so that processors can provide bids with accurate and appropriate pricing. The fat content of milk is a significant determinant of cost. In addition, providing flavored, low-fat milk requires processors to modify package labeling and, potentially, adjust other aspects of flavored milk formulation associated with the change in fat content. These changes require planning and adequate lead time to provide a product in a timely and cost-efficient manner.

#### Operational Challenges

This interim final rule seeks to address the operational challenges experienced by some Program operators regarding their ability to offer nutritious and appealing meals that are consistent

with the Dietary Guidelines and conform to local operational differences and community preferences. It provides schools with specific, optional flexibilities for SY 2018–2019 that will help children gradually adjust to and enjoy school meals that are aligned with science-based recommendations. This rule places more control in the hands of local Program operators to make specific menu and procurement decisions that reflect local tastes, preferences and circumstances, empowering them in ways that may increase both participation in the meal programs and food consumption by children. It is important to stress that the flexibilities are optional, intended as additional tools for schools across the country to provide meals that make sense for their communities. States and Program operators may opt to use some or all of these flexibilities and some schools may not use any.

During the initial years of implementation of the 2012 school meal regulations, nearly one third of SFAs reported challenges finding products to meet the updated nutrition standards.<sup>5</sup> According to USDA administrative data,

the largest decrease in NSLP lunch participation (−3 percent) occurred in school year 2012–2013, which was the first year of implementation. This decrease was primarily driven by a substantial decrease in the paid lunch participation category. While paid lunch participation had been decreasing since 2008, the drop in school year 2012–2013 was the largest decrease in over 20 years (−10 percent). There were other changes implemented during this timeframe, most notably the requirement to incrementally increase paid lunch prices; however, some of the drop may have been due to students choosing not to participate due to the updated meal standards. Paid lunch participation continues to decline but at a slower rate in recent years. Total participation remained relatively stable for the past three years.<sup>6</sup>

USDA recognizes that many Program operators have had great success in implementing the updated meal patterns and nutrition standards. We applaud their efforts and encourage them to continue their successful school food service practices. For these Program operators, as well as those who continue to have challenges, publication of this interim final rule ensures that the flexibilities described above will be available for the near term. If there is continued Congressional action in these

<sup>4</sup> See *Procurement in the 21st Century, Institute of Child Nutrition, 2015*, (<http://www.nfsmi.org/documentlibraryfiles/PDF/20151009032855.pdf>).

<sup>5</sup> FNS SN-OPS report: <https://www.fns.usda.gov/special-nutrition-program-operations-study-school-year-2013-14>. J. Murdoch *et al.* (2016). Special Nutrition Program Operations Study, SY 2013–14 Report. Prepared by 2M Research Services, LLC. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service. Project Officers: Toija Riggins and John Endahl. Available online at: [www.fns.usda.gov/research-and-analysis](http://www.fns.usda.gov/research-and-analysis).

<sup>6</sup> The annual change in total participation has been less than 1% for FY 2014, FY2015, and FY 2016.

areas, USDA will provide additional guidance. Public comments, operational experience, and any Congressional directives will help inform USDA's development of a final rule that will provide more certainty with regard to the milk, whole grain, and sodium requirements.

#### IV. Discussion of Meal Pattern Flexibilities

##### Milk Flexibility

The 2015–2020 *Dietary Guidelines* recommend consumption of fat-free (skim) and low-fat (1 percent fat) dairy products as an important source of beneficial nutrients. The current regulatory provisions on fluid milk for the affected CNPs (NSLP, SMP, SBP, and CACFP) require Program operators to offer fat-free or low-fat milk<sup>7</sup> and restrict the use of flavored milk to fat-free milk.

This interim final rule will allow NSLP, SBP, SMP, and CACFP operators the option to serve flavored, low-fat milk, including as a competitive beverage for sale in schools, in SYs 2018–2019. Under this rule, NSLP and SBP operators that choose to exercise this option are not required to demonstrate a reduction in student milk consumption or an increase in milk waste, but are expected to incorporate this option into the weekly menu in a manner consistent with the dietary specifications for these programs. For consistency across CNPs, this interim final rule allows flavored, low-fat milk in the SMP and CACFP for participants six years of age and older, in SY 2018–2019. This flexibility is intended to encourage children's consumption of fluid milk in the CNPs and to ease administrative burden for Program operators participating in multiple CNPs. This flexibility is consistent with the flexibility regarding flavored, low-fat milk mandated by Congress for the SY 2017–2018.

This rule addresses concerns raised by Program operators and industry partners about declining daily milk consumption among Program participants. Declining milk consumption is a specific concern for children and adolescents because milk is a key source of calcium and vitamin D, which are nutrients necessary for optimizing bone health.<sup>8</sup> Recent Centers

<sup>7</sup> 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.

<sup>8</sup> Golden NH, Abrams SA, and AAP Committee on Nutrition. Optimizing Bone Health in Children and Adolescents. *Pediatrics* 2014;134:e1229; originally published online September 29, 2014.

for Disease Control and Prevention (CDC) survey data show that among adolescents attending U.S. high schools, self-reported daily milk consumption did not change significantly during 2007–2011, then decreased significantly from 2011–2015.<sup>9</sup>

Additionally, FNS collected data on milk consumption during the school meals as part of the School Nutrition and Meal Cost Study conducted in SY 2014–2015. The study has not yet been released but a review of preliminary tables from this study compared to the same data from the previous study using comparable methodology in SY 2004–2005 suggests a decline in milk consumption during lunch among NSLP participants from SY 2004–2005 (from 75 percent to 66 percent). The decline was observed in elementary, middle, and high school students. We plan to release the updated data from School Nutrition Meal Cost Study in early 2018.

Fluid milk is a required component in all school meals, and also must be served in the SMP and CACFP. Some studies suggest that the availability of flavored milk products influences student decisions about, and consumption of, milk in school.<sup>10</sup> The research on the impact of lowering the fat content of flavored milk is limited. Only one study looked at milk intake before and after the new standards and the focus was on the amount of milk consumed among those selecting milk, not whether there was a change in the percentage of children selecting milk.<sup>11</sup> However, prior to implementation of the 2012 final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088), flavored, low-fat milk was the most frequently purchased milk by public school districts.<sup>12</sup> It was also among the most commonly offered varieties of milk in NSLP menus (63 percent).<sup>13</sup> Based on

<sup>9</sup> Miller et al. "Trends in Beverage Consumption Among High School Students—United States, 2007–2015." *Morbidity and Mortality Weekly Report*/February 3, 2017/Vol. 66/No. 4.

<sup>10</sup> Patterson J, Saidel M. The removal of flavored milk in schools results in a reduction in total milk purchases in all grades, K–12. *J Am Diet Assoc*. 2009; 109(9): A97; Quann E, Adams D. Impact on Milk Consumption and Nutrient Intakes From Eliminating Flavored Milk in Elementary Schools. *Nutrition Today*. 2013; 48:127–134.

<sup>11</sup> Yon BA, Johnson RK. New School Meal Regulations and Consumption of Flavored Milk in Ten US Elementary Schools, 2010 and 2013. *Prev Chronic Dis* 2015.

<sup>12</sup> U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, School Food Purchase Study-III, by Nick Young et al. Project Officer: John R. Endahl, Alexandria, VA: March 2012, p. 175.

<sup>13</sup> U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, *School and Nutrition Dietary Assessment Study IV*, Vols. I and II, by Mary Kay Fox and John Hall, et

this information, offering the additional variety of flavored, low-fat milk across the CNP may increase student milk consumption.

With the implementation of the 2012 final rule on school meals, NSLP and SBP meal requirements limited flavor to fat-free milk to help schools meet weekly saturated fat and calorie limits, as flavored, fat-free milk contains no saturated fat and approximately 20–40 calories less per 8 fluid ounces than flavored, low-fat milk.<sup>14</sup> The calorie difference is almost entirely due to a difference in fat content. Calories from added sugar vary by only 1–2 calories between the fat-free and low-fat flavored milk varieties.

Data from a recent survey of school food service professionals suggests that roughly a third of schools are well within the weekly calorie maximums for school meals and some are below the weekly calorie minimums.<sup>15</sup> Given the experience of these schools, coupled with the marked decreases in daily milk consumption among high school students across the Nation and the nutritional value of milk for children and adolescents, USDA has determined that it is consistent with the objective of encouraging milk consumption to reduce potential limits on fluid milk by providing schools flexibility to offer flavored, low-fat milk in addition to flavored, fat-free milk. Comments on this interim final rule will help inform USDA's decision regarding the long-term availability of this milk flexibility.

##### Whole Grain-Rich Flexibility

The 2012 final rule *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088) revised the NSLP and SBP meal patterns to require that, beginning SY 2014–2015, all grains in the school menu meet the FNS 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 the whole grain-rich criteria at that time, FNS allowed State agencies the option to provide certain exemptions to this requirement in SY

al. Project Officer, Fred Lesnett. Alexandria, VA: November 2012. Download report at: [www.fns.usda.gov/ora/](http://www.fns.usda.gov/ora/) [https://www.fns.usda.gov/sites/default/files/SNDA-IV\\_Findings\\_0.pdf](https://www.fns.usda.gov/sites/default/files/SNDA-IV_Findings_0.pdf).

<sup>14</sup> <https://supertracker.usda.gov>; data based on the Food and Nutrient Database for Dietary Studies (FNDDS), and the Food Patterns Equivalents Database (FPED).

<sup>15</sup> J. Murdoch et al. (2016). Special Nutrition Program Operations Study, SY 2013–14 Report. Prepared by 2M Research Services, LLC. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service.

2014–2015. As noted earlier, successive legislative action in 2012, 2015, and 2016 has impacted full implementation of the whole grain-rich requirement. More recently, Congress extended through SY 2017–2018 the option allowing State agencies that administer the NSLP and SBP to grant whole grain-rich exemptions to SFAs that request them and demonstrate hardship in procuring or preparing specific products that meet the established criteria and are acceptable to students. This interim final rule allows State agencies to continue to grant whole grain-rich exemptions through SY 2018–2019, thus providing certainty about this flexibility for the near term.

Although this rule retains the whole grain-rich regulatory requirement, extending the exemptions for SY 2018–2019 will give Program operators that continue to experience challenges the opportunity to plan and serve meals that are economically feasible and acceptable to their students and communities. Since certain regional foods are not yet widely available in acceptable whole grain-rich varieties, granting more local control through the whole grain-rich exemption can help ensure that culturally appropriate foods are available to the student population. Pasta, bread, and tortillas are among the most common food items for which exemptions have been requested, and other regionally popular products, such as grits and breakfast biscuits, are also reported. For SY 2016–2017, 49 State agencies indicated that they are offering exemptions to SFAs for specific food items. Reports from State agencies indicated that approximately 2,500 SFAs were approved for such exemptions. This was an increase of approximately 10 percent in the number of approvals for exemptions over the previous school year, providing further indication of the need for continuing the option for State agencies to grant exemptions to local SFAs.

Given the challenges expressed by SFAs and the reported increase in exemption approvals, continued and consistent flexibility in meeting the whole grain-rich requirement is necessary. Therefore, this rule extends through SY 2018–2019 the State agency's discretion to grant an exemption from the whole grain-rich requirements if requested by SFAs that demonstrate hardship in providing specific products that meet the whole grain-rich criteria and as long as at least 50 percent of the grains served are whole grain-rich. Hardships may include those caused by lack of availability in the market, financial

concerns, an increase in plate waste, lack of student acceptability, and others.

USDA believes the food industry will continue efforts to develop more acceptable, affordable products that are appealing to students. Through interaction with industry at multiple food shows, including the National Restaurant Association's Annual Show, USDA has learned that manufacturers are continuing their efforts to expand their product lines for schools. 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. Continuing the State agency's option to offer whole grain-rich flexibility will enable SFAs experiencing challenges to more effectively develop menus and procure foods that are acceptable to students. It also provides manufacturers additional time to develop whole grain-rich food products that are suitable for reheating and hot holding in the food service facility and result in more acceptable meals for students. This will assist schools in sustaining student participation, encouraging meal consumption, and limiting food waste. USDA will evaluate school and food industry progress over time and consider public comments in order to develop a final rule that address the whole grain-rich exemptions.

As a reminder, State agencies that elect to consider whole grain-rich exemption requests by SFAs for specific items are required to develop procedures for accepting and evaluating SFA requests for such exemptions. Because this exemption has been available for several years, many State agencies have already developed such procedures based on FNS guidance (SP 32–2017, School Meal Flexibilities for SY 2017–18; May 22, 2017). Therefore, most State approval procedures are already in place and no changes to those procedures are required by this rule. Additional guidance will be provided to State agencies that have not already developed such procedures.

#### *Sodium Flexibility*

The 2012 final rule *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088) also established average weekly sodium limits for school meals. In order to reduce the sodium content of meals consistent with the report by the Health and Medicine Division of the National Academies of Science, Engineering, and Medicine and the Dietary Guidelines recommendations, the 2012 final rule established two intermediate sodium targets and a final target that were calculated based on the sodium

recommendation from the 2010 Dietary Guidelines, which were subsequently reinforced by the 2015–2020 Dietary Guidelines.

To facilitate sodium reduction over a 10-year period, the current regulations, established in 2012, require 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). Based on Program operators' certification of compliance with the 2012 updated meal pattern requirements, USDA anticipates that nearly all schools have begun the process of reducing the sodium content of school meals. To facilitate this change, USDA makes a wide variety of low-sodium food products available to Program operators through USDA Foods. However, USDA understands that sodium reduction in school meals must be consistent with broader, overall reductions in the food supply and reductions in children's consumption patterns outside of school. The most recent available data from the CDC indicates that, in 2009–2012, approximately 92 percent of school-age children in the United States exceeded the 2015–2020 Dietary Guidelines upper intake level for dietary sodium.<sup>16</sup>

While USDA recognizes the importance of reducing the sodium content of school meals, reaching this objective will likely require a more gradual process than the planned 10 years to accommodate the individual challenges of SFAs and their access to new products lower in sodium. Factors such as sodium preferences and consumption patterns suggest that retaining Target 1 is appropriate and necessary to ensure student consumption of school meals and adequate nutrient intake.

Therefore, this interim final rule retains Sodium Target 1 for an additional school year—from July 1, 2018, through June 30, 2019 (SY 2018–2019)—which has an impact on the overall sodium reduction timeline established in current regulations. However, this sodium flexibility is consistent with previous Congressional actions directing USDA to maintain Sodium Target 1 for the near term. While USDA anticipates retaining Sodium Target 1 as the regulatory limit in the final rule through at least the end of SY 2020–2021, the Department seeks public comments on the long-term availability of this flexibility and suggestions on how to best address the overall sodium requirement in school

<sup>16</sup> See <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6452a1.htm>.

meals. In the future, USDA will also reevaluate the sodium and other school meal requirements in light of the 2020 Dietary Guidelines. Section 9(a)(4) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1758(a)(4), requires that school meals reflect the latest Dietary Guidelines.

USDA will continue to engage with the public, health advocates, nutrition professionals, schools, and the food industry to gather ongoing input on needs and challenges associated with managing sodium levels in school meals. In addition, USDA will continue to expand the availability of low-sodium products 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 *What's Shaking?* sodium reduction initiative and the FNS *Team Up for School Nutrition Success* initiative.

## V. Summary

This interim final rule provides continued flexibility in SY 2018–2019 in three specific menu planning areas—milk, whole grains, and sodium. Implementation of this interim final rule will allow all CNP operators the discretion to offer flavored, low-fat milk as an allowable milk type in the reimbursable meal or as a competitive beverage for sale in schools in SY 2018–2019. It also will provide State agencies with the authority to continue granting exemptions to the whole grain-rich requirement in SY 2018–2019 for schools demonstrating hardship. Finally, by retaining Sodium Target 1 as the regulatory limit through SY 2018–2019 and inviting public comments, this interim final rule will allow children more time to adjust to school meals with less sodium content. Additionally, this interim rule will provide schools and manufacturers with additional time and predictability to make appropriate menu and product changes. Throughout, USDA will continue to encourage steady progress on sodium reduction in school meals and provide technical assistance to Program operators.

USDA will conduct a thorough review of all public comments on the three flexibilities addressed in this interim final rule and submitted within the comment period. Stakeholders and the public are encouraged to provide comments that will assist USDA in developing a final rule on the long-term availability of the milk, whole grains, and sodium flexibilities.

## *Issuance of an Interim Final Rule and Effective Date*

USDA, under the provisions of the Administrative Procedure Act at 5 U.S.C. 553(b)(B), is issuing this as an interim final rule and finds for good cause that, in this limited instance, use of prior notice and comment procedures for issuing this time-limited interim final rule is impracticable.

Following enactment of the Healthy, Hunger-Free Kids Act of 2010, Public Law 111–296, and USDA's codification of effecting regulations beginning in 2012, Program operators have experienced hardships due to persistent uncertainties regarding nutrition requirements as a result of repeated short-term Congressional legislative directives and responsive USDA implementation. As noted in the preamble to this rulemaking, for each of the five intervening school years, Congress has directed USDA to provide exemptions and flexibilities for codified nutrition standards relative to whole grain-rich products, sodium levels, and most recently, flavored fluid milk, consistent with specific legislative provisions. See Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112–55) enacted November 18, 2011, Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) enacted December 16, 2014, Consolidated and Further Continuing Appropriations Act, 2016 (Pub. L. 114–113) enacted December 18, 2015, and Consolidated Appropriations Act, 2017 (Pub. L. 115–31) enacted May 5, 2017. Most recently, 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, Public Law 115–56, enacted September 8, 2017, extends the flexibilities provided by section 747 of the Consolidated Appropriations Act, 2017. Following each legislative directive, USDA timely authored implementing memoranda, notifying affected stakeholders of the availability of exemptions and flexibilities and facilitating utilization despite the inopportune timing.<sup>17</sup> This repetitive legislative action manifests a clear Congressional message to USDA: The current regulatory provisions limiting fluid milk, whole grain-rich, and sodium options in the CNPs are causing

operational challenges and need further consideration.

Recently, USDA has come to understand that the cumulative impact of the unpredictable legislative mandates on Program operators has substantially harmed their ability to accomplish fundamental administrative responsibilities ranging from advance menu planning, to school district budgeting and competitive procurement of allowable foods. As noted elsewhere in this rulemaking, Program operators begin procurement for a school year as early as the previous autumn, after assessing the availability of USDA Foods entitlement commodities and respecting the time and labor required for a fulsome procurement process. Perhaps most importantly, procurement process timing for school meal products is locally determined so as to meet the administrative and planning needs of Program operators.

The successive legislative exemptions and flexibilities for whole grain-rich products and sodium targets significantly impaired Program operators' timely completion of competitive procurements of affected products. Most recently, USDA understands that the exemptions and flexibilities provided by Public Law 115–31, enacted May 5, 2017, could not be effectively incorporated into Program operators' regular procurement processes and menu planning for the 2017–2018 school year, which began July 1, 2017. It is likely that some Program operators were thus deprived of the intended legislated opportunities. Similarly, at this time, many Program operators have already initiated menu-planning for SY 2018–2019, which begins July 1, 2018, with these exemptions and flexibilities in place. Expediting the availability of the three flexibilities for the entire 2018–2019 school year by way of this interim final rule, then, is essential insofar as it provides local Program operators timely notice of the opportunity to utilize the flexibilities in menu-planning for the upcoming school year. Consistent with USDA's understanding, use of an interim final rule to provide sufficient notice of the flexibilities available during SY 2018–2019, rather than a proposed rulemaking, is essential in meeting the needs of local Program operators.

With that in mind, USDA has determined that schools and other local Program operators need reliable nutrition standards in place in order to procure compliant products in the near term through SY 2018–2019 and beyond. Given the realities and time sensitivity of the local procurement

<sup>17</sup> Because the three flexibilities provided for in the Consolidated Appropriations Act, 2017 remain in effect through June 30, 2018, at this time it is not necessary for FNS to promulgate an implementing memorandum.

process, this interim final rule, with a final rule planned for publication in fall 2018, is the most effective method for securing that reliability. Current flexibilities affecting nutrition standards for fluid milk, whole grain-rich, and sodium have been accomplished administratively and are legislatively driven. Without that legislative directive, the Secretary would not have the authority to extend or waive regulatory nutrition standards in the affected programs. See 42 U.S.C. 1760(l). The sole method for USDA to relieve the hardship, providing certainty prior to the local-level decision-making for SY 2018–2019, is by amending these regulatory standards through issuance of this interim final rule. USDA intends to provide reliable and conclusive regulatory support for local procurement decision-makers at schools and other Program operators prior to the beginning of the local procurement process for SY 2019–20.

The interim final rule reflects Congressional direction and provides Program operators certainty in local-level procurement and menu planning operations during SY 2018–19. To that end, this interim final rule aims to maintain the whole grain-rich and sodium standards that Congress has consistently enunciated, continue the fluid milk options legislatively directed for the current school year with slight modifications, and provide the urgent relief stakeholders need. Finally, this interim final rule presents a framework which will benefit from public comments received. In turn, those comments will advise the framework of the final rule, which USDA plans to publish in fall 2018.

Also, based on its ongoing engagement with industry partners USDA believes the critical clarity provided by this interim final rule is necessary for manufacturers, producers, and vendors to develop and produce the products needed by Program operators to meet CNP objectives. Legislative and regulatory uncertainty has reduced research and development of CNP-compliant food and beverage products. Implementation of this interim final rule, with the intent to publish a final rule in fall 2018, provides the certainty needed to stimulate research and development of cost-effective, CNP-compliant products so Program operators can meet the need of America's children. Finally, this interim final rule affords food industry stakeholders an opportunity to comment and aid the Department in developing a final rule that will address these flexibilities for future school years.

Consequently, this interim final rule providing for the three menu planning flexibilities discussed above, will enable Program operators, including schools, day care centers, and family day care homes, to exercise the increased options provided in this de-regulatory rulemaking, increase integrity and accuracy of their local procurement processes and menu planning in the near term. In addition, the interim final rule will provide food suppliers with additional clarity needed to encourage research and develop cost-effective, customized products compliant with CNP standards and responsive to the unique needs of Program operators and America's children. Similarly, the interim rule affords the public, including program operators, food suppliers, and other engaged stakeholders, an opportunity to provide meaningful comments aiding the Department during the development of a final rule which we intend to publish in fall 2018.

#### *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 interim final rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

#### *Regulatory Impact Analysis*

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year). USDA does not anticipate that this interim final rule is likely to have an economic impact of \$100 million or more in any one year, and therefore, does not meet the definition of "economically significant" under Executive Order 12866. The RIA for the 2012 final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs*, (77 FR 4088), 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 rule did not estimate individual health benefits that could be directly attributed to the change in the final rule: "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."<sup>18</sup>

To the extent in which the specific flexibilities in this interim final rule allow Program operators still facing challenges to more efficiently operate within the meal patterns established in 2012, we expect the health benefits in this rule to be similar to the overall benefits of improving the diets of children cited in the RIA for the final meal standard rule. An analysis assessing the costs and benefits of this action is presented below.

As explained above, this interim final rule provides optional flexibilities to the meal patterns established in 2012 by allowing for a more gradual implementation of the whole grain-rich and sodium requirements, as well as offering an additional low-fat milk option. USDA anticipates minimal if any costs associated with the changes to the school meal standards due to the discretionary nature of the additional flexibilities. The overall meal components, macro nutrient, and calorie requirements remain unchanged and Program operators may choose to utilize the additional flexibilities offered in this interim final rule within these constraints. Further, we do not anticipate this interim final rule will deter the significant progress made to date<sup>19</sup> by State and local operators, USDA, and industry manufacturers to achieve healthy palatable meals for students.

These changes are also promulgated in the context of significant progress

<sup>18</sup> See <https://www.gpo.gov/fdsys/pkg/FR-2012-01-26/pdf/2012-1010.pdf>.

<sup>19</sup> FNS National Data Bank Administrative Data: 99.7% of lunches served in FY2016 received the performance based reimbursement for compliance with the meal standards.

made to date by State and local operators, USDA, and industry manufacturers to achieve healthy appealing meals for students. The USDA Special Nutrition Program Operations Studies for SYs 2012–2013 and 2013–2014 suggest that, as with any major change, there were some challenges. For example, food costs, student acceptance, and the availability of product meeting the standards were the primary challenges anticipated in implementing the whole grain-rich requirement in full. As industry has increased the variety and quality of their offerings, SFAs are finding this requirement has become easier to fulfil, so these early studies may not be representative of current status.<sup>20</sup> That said, there are still some Program operators struggling with certain requirements, and regional differences sometimes result in less acceptance of some foods. Based on current exemption data, SFAs in 49 States have requested a waiver for exemption of products not meeting the whole grain-rich criteria. For these reasons, we expect that the flexibilities extended in this interim final rule will be needed and used primarily by the schools still facing challenges to planning and offering healthy meals that students will eat and make sense for their communities.

Local operators struggling with one or all of these requirements may choose to adopt any of the options to balance current and future resources in preparing healthy meals. The flexibilities for flavored milk and the whole grain-rich requirement, and the additional time to implement sodium reduction provide certainty for Program operators for the near term to effectively procure food for appealing and healthy menus. The public comments on this interim final rule will be particularly critical in assisting the process to establish a long-term approach to these flexibilities.

**Flexibility to offer flavored, low-fat (1 percent fat) milk:** The regulatory impact analyses for the 2012 final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088), did not estimate the separate costs of including specifically flavored, low-fat milk as an option to meet the milk variety requirement. Nonfat, flavored milk is currently an allowable option and the addition of flavored, low-fat at local discretion should not impact overall costs. Local operators may choose to

incorporate the new options of milk into their current menus as they deem appropriate for their calorie ranges and available resources. There may be some cases in which flavored, low-fat milk is slightly more expensive and for some it might be slightly less expensive than the varieties currently permitted by regulations established in 2012, but any overall difference in cost is likely to be minimal.

**Flexibility to exempt certain schools from the whole grain-rich requirements:** The 2012 final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088), revised the meal patterns of both the NSLP and the SBP to require that all grains provided in the programs meet FNS whole grain-rich criteria by SY 2014–2015. Due to limitations on the availability of products that meet the whole grain-rich criteria at that time, State agencies were allowed to provide certain exemptions to this requirement in SY 2014–2015. Congress directed the Secretary through successive legislative action<sup>21</sup> to continue to allow State agencies that administer the NSLP and the SBP to grant an exemption from the regulatory whole grain-rich requirement in the meal programs through SY 2017–2018. SFAs must demonstrate hardship in procuring specific products that meet the whole grain-rich criteria, which are acceptable to students and compliant with the whole grain-rich requirements. State agencies have developed procedures for accepting and evaluating exemption requests based on FNS guidance (SP 33–2016, Extension Notice: Requests for Exemption from the School Meals' Whole Grain-Rich Requirement for School Year 2016–2017, April 29, 2016). As specified in this guidance, the exemptions must be based on demonstrated hardship, such as financial hardship, limited product availability, unacceptable product quality, and/or poor student acceptability.

Currently, less than 15 percent of SFAs (2,868/19,530) request the whole grain-rich exemption. Aside from the administrative costs of requesting and recording exemptions, we do not estimate any costs associated with extending the whole grain-rich exemption option, given that this is a discretionary provision. The extent to which SFAs will continue to utilize this option will vary greatly; individual Program operators will need to balance

resources, product availability, and student acceptability.

The RIA for the 2012 final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088), estimated an overall small net cost savings when factoring in the whole grain-rich requirement and the overall reduction in total refined grains offered. The net savings was the result of the overall reduction in refined grains served due to the restrictions on the maximum number of weekly grain servings offered and limits on calories and sodium.<sup>22</sup> The final rule RIA estimated that after “FY 2014, when the rule’s 100 percent whole grain-rich requirement takes effect, the added cost of serving higher priced whole grain products about equals the savings from a reduction in grains products served.”<sup>23</sup>

Forty-nine States indicated to USDA that they are offering whole grain-rich exemptions to approximately 2,500 SFAs for SY 2016–2017. This was an increase of approximately 10 percent. That said, the individual costs/savings to the SFAs are estimated to be minimal with the extension of the exemption options. Any additional costs associated with a whole grain-rich product would be offset with the overall reduction in refined grain offerings. We also expect that as more products become available, any differential costs associated with whole grain-rich products will normalize in the market. The availability of whole grain-rich products through USDA Foods and the commercial market has increased significantly since the implementation of the meal standards and continues to progress, providing new and affordable options for local operators to integrate into menus.

**Extending Sodium Target 1 through SY 2018–2019:** In the RIA for the 2012 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

<sup>22</sup> Flexibilities for the weekly restriction of grains and meat/meal alternate servings were made permanent in the final rule, “Certification of Compliance With Meal Requirements for the National School Lunch Program Under the Healthy, Hunger-Free Kids Act of 2010” (79 FR 325), published on January 3, 2014. There were no costs associated with the additional flexibilities on the weekly grain and meat/meat alternate servings due to the fact program operators still needed to comply with the calorie and sodium requirements, which provide limited flexibility for SFAs to greatly exceed the maximum recommendations.

<sup>23</sup> <https://www.gpo.gov/fdsys/pkg/FR-2012-01-26/pdf/2012-1010.pdf>.

<sup>20</sup> See <https://www.fns.usda.gov/school-nutrition-program-operations-study-school-year-2012-13> and see <https://www.fns.usda.gov/special-nutrition-program-operations-study-school-year-2013-14>.

<sup>21</sup> 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), and Section 747 of the Consolidated Appropriations Act, 2017 (Pub. L. 115-31).

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 final rule's second sodium target would have taken effect. The second sodium target was designed to be able to be met with the help of industry changing food processing technology.

This interim final rule retains Sodium Target 1 as the regulatory limit through June 30, 2019 (SY 2018–2019) and seeks public comments on the long-term sodium requirement. We do not anticipate any additional costs associated with this change as it is simply allowing for additional time for Program operators and industry to reduce sodium levels.

#### *Executive Order 13771*

This interim final rule is an E.O. 13771 deregulatory action. It provides regulatory flexibilities in the meal pattern and nutrition requirements that are consistent with those currently available as a result only of appropriation legislation in effect for SY 2017–2018 and administrative actions.

#### *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. Because Program operators would have discretion to exercise the provisions of this rule and the flexibilities in this rule are only a small part of the overall changes in 7 CFR parts 210, 215, 220, and 226, it has been determined that the rule would not have a significant impact on a substantial number of small entities.

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

#### *Executive Order 12372*

The NSLP, SMP, SBP, 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. Since the Child Nutrition Programs are State-administered, USDA’s Food and Nutrition Service (FNS) Regional Offices have formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operation. This provides FNS with the opportunity to receive regular input from program administrators which 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 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 interim final 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 interim final rule, all applicable administrative procedures must be exhausted.

#### *Civil Rights Impact Analysis*

FNS has reviewed this interim rule in accordance with USDA Regulation 4300–4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule’s intent and provisions, FNS has determined that this rule is not expected to limit or reduce the ability of protected classes of individuals to participate in the NSLP, SMP, SBP, and CACFP.

#### *Executive Order 13175*

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 Food and Nutrition Service (FNS) has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

#### *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. The provisions of this rule do not impose new 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, 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 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. In paragraph (c) introductory text, revise the table;
- b. In paragraph (c)(2)(iv)(A), add a sentence at the end of the paragraph; 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 afterschool snacks.

\* \* \* \* \*

(c) \* \* \*

Food components	Lunch meal pattern		
	Grades K–5	Grades 6–8	Grades 9–12
Amount of food <sup>a</sup> per week (minimum per day)			
Fruits (cups) <sup>b</sup>	2½ (½)	2½ (½)	5 (1)
Vegetables (cups) <sup>b</sup>	3¾ (¾)	3¾ (¾)	5 (1)
Dark green <sup>c</sup>	½	½	½
Red/Orange <sup>c</sup>	¾	¾	1¼
Beans and peas (legumes) <sup>c</sup>	½	½	½
Starchy <sup>c</sup>	½	½	¾
Other <sup>c,d</sup>	e 1	e 1	e 1½
Additional Vegetables to Reach Total <sup>e</sup>	8–9 (1)	8–10 (1)	10–12 (2)
Grains (oz eq) <sup>f</sup>	8–10 (1)	9–10 (1)	10–12 (2)
Meats/Meat Alternates (oz eq)	5 (1)	5 (1)	5 (1)
Fluid milk (cups) <sup>g</sup>			

#### Other Specifications: Daily Amount Based on the Average for a 5-Day Week

Min-max calories (kcal) <sup>h</sup>	550–650	600–700	750–850
Saturated fat (% of total calories) <sup>h</sup>	<10	<10	<10
Sodium Target 1 (mg) <sup>e</sup>	≤1,230	≤1,360	≤1,420
Nutrition label or manufacturer specifications must indicate zero grams of trans fat per serving.			
Trans fat <sup>h,i,j</sup>			

<sup>a</sup> Food items included in each group and subgroup and amount equivalents. Minimum creditable serving is ½ cup.

<sup>b</sup> 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.

<sup>c</sup> Larger amounts of these vegetables may be served.

<sup>d</sup> 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 sub-groups as defined in paragraph (c)(2)(iii) of this section.

<sup>e</sup> Any vegetable subgroup may be offered to meet the total weekly vegetable requirement.

<sup>f</sup> All grains must be whole grain-rich. Exemptions are allowed as specified in paragraph (c)(2)(iv)(B) of this section.

<sup>g</sup> All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk may be unflavored or flavored as specified in paragraph (d)(1)(i) of this section.

<sup>h</sup> 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.

<sup>i</sup> Sodium Target 1 (shown) is effective from July 1, 2014 (SY 2014–2015) through June 30, 2019 (SY 2018–2019). For sodium targets due to take effect beyond SY 2018–2019, see paragraph (f)(3) of this section.

<sup>j</sup> 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 ( $\frac{1}{5}$ ) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent ( $\frac{1}{5}$ ) for each day less than 5. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in FNS guidance. All grains offered must meet the whole grain-rich criteria specified in

FNS guidance. Exemptions are allowed at the discretion of the State agency from July 1, 2018 through June 30, 2019 (school year 2018–2019). If allowed by the State agency, a school food authority may submit an exemption request for one or more products. The exemption request must demonstrate hardship in meeting the requirement, address the criteria established in FNS guidance, and be submitted through the process established by the State agency. School food authorities granted an exemption from the whole grain-rich requirement, at a minimum, must offer half of the weekly grains as whole grain-rich.

\* \* \* \* \*

(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. All milk may be unflavored or flavored from July 1, 2018 through June 30, 2019 (school year 2018–2019).

\* \* \* \* \*

(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, 2019 SY 2019–2020 (mg)	Final target: July 1, 2022 SY 2022–2023 (mg)
K–5 .....	≤1,230	≤935	≤640
6–8 .....	≤1,360	≤1,035	≤710
9–12 .....	≤1,420	≤1,080	≤740

\* \* \* \* \*

#### **§ 210.11 [Amended]**

- 3. In § 210.11(m)(1)(ii), (m)(2)(ii), and (m)(3)(ii):
  - a. Add the words “or flavored” after the word “unflavored”; and
  - b. Add the words “from July 1, 2018 through June 30, 2019, school year 2018–2019” before the semicolon.

#### **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 from July 1, 2018 through June 30, 2019 (school year 2018–2019).

\* \* \* \* \*

#### **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:

- a. In paragraph (a) introductory text, remove the second and third sentences;
- b. In paragraph (b) introductory text, remove the words “, once fully implemented as specified in paragraphs (c), (d), (e), (f), (h), (i), and (j) of this section.”;
- c. In paragraph (c) introductory text, revise the table;
- d. In paragraphs (c)(1) and (c)(2)(i), remove the words “Effective July 1, 2013 (SY 2013–2014), schools” and add the word “Schools” in their place;
- e. In paragraph (c)(2)(ii), remove the words “Effective July 1, 2014 (SY 2014–2015), schools” and add the word “Schools” in their place;
- f. In paragraph (c)(2)(iii), remove the words “, effective July 1, 2014 (SY 2014–2015);”;
- g. In paragraph (c)(2)(iv)(A), add a sentence after the second sentence and remove the words “Effective July 1,

2013 (SY 2013–2014), schools” and add the word “Schools” in their place;

- h. Revise paragraphs (c)(2)(iv)(B) and (d);
- i. In paragraph (e), remove the words “beginning July 1, 2014 (SY 2014–2015);”;
- j. In paragraph (f)(1), remove the words “Effective July 1, 2013 (SY 2013–2014), school” and add the word “School” in their place and remove the words “—Effective SY 2013–2014” from the table heading;
- k. In paragraph (f)(2), remove the words “Effective July 1, 2012 (SY 2012–2013), school” and add the word “School” in their place;
- l. Revise paragraph (f)(3);
- m. In paragraph (f)(4), remove the words “Effective July 1, 2013 (SY 2013–2014), food” and add the word “Food” in their place; and
- n. In paragraph (h)(2), remove the words “Effective SY 2013–2014.”.

The revisions and addition 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 <sup>a</sup> per week (minimum per day)			
Fruits (cups) <sup>b,c</sup> .....	5 (1)	5 (1)	5 (1)

Food components	Breakfast meal pattern		
	Grades K–5	Grades 6–8	Grades 9–12
Amount of food <sup>a</sup> per week (minimum per day)			
Vegetables (cups) <sup>c</sup>	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) <sup>d</sup>	7–10 (1)	8–10 (1)	9–10 (1)
Meats/Meat Alternates (oz eq) <sup>e</sup>	0	0	0
Fluid milk <sup>f</sup> (cups)	5 (1)	5 (1)	5 (1)

**Other Specifications: Daily Amount Based on the Average for a 5-Day Week**

Min-max calories (kcal) <sup>g</sup>	350–500	400–550	450–600
Saturated fat (% of total calories) <sup>h</sup>	<10	<10	<10
Sodium Target 1 (mg) <sup>i</sup>	≤540	≤600	≤640
<i>Trans</i> fat <sup>h,j</sup>	Nutrition label or manufacturer specifications must indicate zero grams of <i>trans</i> fat per serving.		

<sup>a</sup> Food items included in each group and subgroup and amount equivalents. Minimum creditable serving is  $\frac{1}{8}$  cup.<sup>b</sup> One quarter cup of dried fruit counts as  $\frac{1}{2}$  cup of fruit; 1 cup of leafy greens counts as  $\frac{1}{2}$  cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.<sup>c</sup> 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.<sup>d</sup> All grains must be whole-grain-rich. Exemptions are allowed as specified in paragraph (c)(2)(iv)(B) of this section. Schools may substitute 1 oz. eq. of meat/meat alternate for 1 oz. eq. of grains after the minimum daily grains requirement is met.<sup>e</sup> There is no meat/meat alternate requirement.<sup>f</sup> All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk may be unflavored or flavored as specified in paragraph (d) of this section.<sup>g</sup> 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).<sup>h</sup> 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.<sup>i</sup> Sodium Target 1 (shown) is effective from July 1, 2014 (SY 2014–2015) through June 30, 2019 (SY 2018–2019). For sodium targets due to take effect beyond SY 2018–2019, see paragraph (f)(3) of this section.<sup>j</sup> 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 breakfast 6 or 7 days per week must increase the weekly grains quantity by approximately 20 percent ( $\frac{1}{5}$ ) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent ( $\frac{1}{5}$ ) for each day less than 5. The servings for biscuits, rolls, muffins, and other grain/

bread varieties are specified in FNS guidance. All grains offered must meet the whole grain-rich criteria specified in FNS guidance. Exemptions are allowed at the discretion of the State agency from July 1, 2018 through June 30, 2019 (school year 2018–2019). If allowed by the State agency, a school food authority may submit an exemption request for one or more products. The exemption requests must demonstrate hardship in meeting the requirement, address the criteria established in FNS guidance, and be submitted through the process established by the State agency. School food authorities that are granted an exemption from the current whole grain-rich requirement, at a minimum, must offer half of the weekly grains as whole grain-rich.  
\* \* \* \* \*

(d) *Fluid milk requirement.* A serving of fluid milk as a beverage or on cereal

or used in part for each purpose must be offered for breakfasts. 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 (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 from July 1, 2018 through June 30, 2019 (school year 2018–2019). Schools must also comply with other applicable fluid milk requirements in § 210.10(d)(1) through (4) 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, 2019 SY 2019–2020 (mg)	Final target: July 1, 2022 SY 2022–2023 (mg)
K–5 .....	≤540	≤485	≤430

## SCHOOL BREAKFAST PROGRAM SODIUM TIMELINE &amp; LIMITS—Continued

Age/grade group	Target 1: July 1, 2014 SY 2014–2015 (mg)	Target 2: July 1, 2019 SY 2019–2020 (mg)	Final target: July 1, 2022 SY 2022–2023 (mg)
6–8 .....	≤600	≤535	≤470
9–12 .....	≤640	≤570	≤500

\* \* \* \*

**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:
  - a. Revise paragraphs (a)(1)(iii) and (iv); and
  - b. Revise the tables in paragraphs (c)(1), (2), and (3).

The revisions read as follows:

**§ 226.20 Requirements for meals.**

(a) \* \* \*

(1) \* \* \*

(iii) *Children 6 years old and older.*

Children six years old and older must be served milk that is low-fat (1 percent fat or less) or fat-free (skim). Milk may be unflavored or flavored from July 1, 2018, through June 30, 2019 (school year 2018–2019).

(iv) *Adults.* Adults must be served milk that is low-fat (1 percent fat or less) or fat-free (skim). Milk may be

unflavored or flavored from July 1, 2018, through June 30, 2019 (school year 2018–2019). Six ounces (weight) or  $\frac{3}{4}$  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) \* \* \*

**BILLING CODE 3410-30-P**

**BREAKFAST MEAL PATTERN FOR CHILDREN AND ADULTS**

	Ages 1-2	Ages 3-5	Ages 6-12	Ages 13-18 <sup>1</sup> (at-risk afterschool programs and emergency shelters)	Adult
<b>Food Components and Food Items<sup>2</sup></b>	<b>Minimum Quantities</b>				
Fluid milk <sup>3</sup>	4 fl oz	6 fl oz	8 fl oz	8 fl oz	8 fl oz
Vegetables, fruits, or portions of both <sup>4</sup>	¼ cup	½ cup	½ cup	½ cup	½ cup
<b>Grains (oz eq)<sup>5,6,7</sup></b>					
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, muffin	½ serving	½ serving	1 serving	1 serving	2 servings
Whole grain-rich, enriched or fortified cooked breakfast cereal <sup>8</sup> , 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) <sup>8,9</sup>					
Flakes or rounds	½ cup	½ cup	1 cup	1 cup	2 cups
Puffed cereal	¾ cup	¾ cup	1 ¼ cups	1 ¼ cups	2 ½ cups
Granola	⅛ cup	⅛ cup	¼ cup	¼ cup	½ cup

<sup>1</sup> Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs.

<sup>2</sup> Must serve all three components for a reimbursable meal. Offer versus serve is an option for only adult and at-risk afterschool participants.

<sup>3</sup> 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 six years old and older and adults, and may be unflavored or flavored from July 1, 2018 through June 30, 2019 (school year 2018-2019). 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.

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

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> Beginning October 1, 2019, ounce equivalents are used to determine the quantity of creditable grains.

<sup>8</sup> 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).

<sup>9</sup> Beginning October 1, 2019, the minimum serving size specified in this section for ready-to-eat breakfast cereals must be served. Until October 1, 2019, the minimum serving size for any type of ready-to-eat breakfast cereals is  $\frac{1}{4}$  cup for children ages 1-2;  $\frac{1}{3}$  cup for children ages 3-5;  $\frac{3}{4}$  cup for children ages 6-12 and ages 13-18; and  $1\frac{1}{2}$  cups for adults.

(2) \* \* \*

**LUNCH AND SUPPER MEAL PATTERN FOR CHILDREN AND ADULTS**

	Ages 1-2	Ages 3-5	Ages 6-12	Ages 13-18 <sup>1</sup> (at-risk afterschool programs and emergency shelters)	Adult
<b>Food Components and Food Items<sup>2</sup></b>	<b>Minimum Quantities</b>				
Fluid milk <sup>3</sup>	4 fl oz	6 fl oz	8 fl oz	8 fl oz	8 fl oz <sup>4</sup>
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 <sup>5</sup>	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	⅓ 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 <sup>6</sup>	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 percent 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 <sup>7</sup>	⅛ cup	¼ cup	½ cup	½ cup	½ cup
Fruits <sup>7,8</sup>	⅛ cup	¼ cup	¼ cup	¼ cup	½ cup
Grains (oz eq) <sup>9,10</sup>					
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, muffin	½ serving	½ serving	1 serving	1 serving	2 servings
Whole grain-rich, enriched or fortified cooked breakfast cereal <sup>11</sup> , cereal grain, and/or pasta	¼ cup	¼ cup	½ cup	½ cup	1 cup

<sup>1</sup> Larger portion sizes than specified may need to be served to children 13 through 18 years old to

meet their nutritional needs.

<sup>2</sup> Must serve all five components for a reimbursable meal. Offer versus serve is an option for only adult and at-risk afterschool participants.

<sup>3</sup> 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 six years old and older and adults, and may be unflavored or flavored from July 1, 2018 through June 30, 2019 (school year 2018-2019). For adult participants, 6 ounces (weight) or  $\frac{3}{4}$  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.

<sup>4</sup> A serving of fluid milk is optional for suppers served to adult participants.

<sup>5</sup> Alternate protein products must meet the requirements in appendix A to part 226 of this chapter.

<sup>6</sup> Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

<sup>7</sup> Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> Beginning October 1, 2019, ounce equivalents are used to determine the quantity of the creditable grain.

<sup>11</sup> 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).

**SNACK MEAL PATTERN FOR CHILDREN AND ADULTS**

	Ages 1-2	Ages 3-5	Ages 6-12	Ages 13-18 <sup>1</sup> (at-risk afterschool programs and emergency shelters)	Adult
<b>Food Components and Food Items<sup>2</sup></b>	<b>Minimum Quantities</b>				
Fluid milk <sup>3</sup>	4 fl oz	4 fl oz	8 fl oz	8 fl oz	8 fl oz
Meats/meat alternates Edible portion as served <sup>4</sup>					
Lean meat, poultry, or fish	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce
Tofu, soy products, or alternate protein products <sup>4</sup>	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 <sup>5</sup>	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 <sup>6</sup>	½ cup	½ cup	¾ cup	¾ cup	½ cup
Fruits <sup>6</sup>	½ cup	½ cup	¾ cup	¾ cup	½ cup
Grains (oz eq) <sup>7,8</sup>					
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, muffin	½ serving	½ serving	1 serving	1 serving	1 serving
Whole grain-rich, enriched or fortified cooked breakfast cereal <sup>9</sup> , 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) <sup>9,10</sup>					
Flakes or rounds	½ cup	½ cup	1 cup	1 cup	1 cup
Puffed cereal	¾ cup	¾ cup	1 ¼ cup	1 ¼ cups	1 ¼ cups
Granola	⅛ cup	⅛ cup	¼ cup	¼ cup	¼ cup

<sup>1</sup> Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs.

<sup>2</sup> Select two of the five components for a reimbursable snack. Only one of the two components may be a beverage.

<sup>3</sup> 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 six years old and older and adults, and may be unflavored or flavored from July 1, 2018 through June 30, 2019 (school year 2018-2019). For adult participants, 6 ounces (weight) or  $\frac{3}{4}$  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.

<sup>4</sup> Alternate protein products must meet the requirements in appendix A to part 226 of this chapter.

<sup>5</sup> Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

<sup>6</sup> Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

<sup>7</sup> 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.

<sup>8</sup> Beginning October 1, 2019, ounce equivalents are used to determine the quantity of creditable grains.

<sup>9</sup> 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).

<sup>10</sup> Beginning October 1, 2019, the minimum serving sizes specified in this section for ready-to-eat breakfast cereals must be served. Until October 1, 2019, the minimum serving size for any type of ready-to-eat breakfast cereals is  $\frac{1}{4}$  cup for children ages 1-2;  $\frac{1}{3}$  cup for children ages 3-5;  $\frac{3}{4}$  cup for children ages 6-12, children ages 13-18, and adults.

\* \* \* \* \*

Dated: November 22, 2017.

**Brandon Lippis,**

*Acting Deputy Under Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. 2017-25799 Filed 11-29-17; 8:45 am]

BILLING CODE 3410-30-C

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA-2017-1044; Product Identifier 2017-NE-38-AD; Amendment 39-19110; AD 2017-24-06]**

**RIN 2120-AA64**

**Airworthiness Directives; CFM International S.A. Turbofan Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain CFM International S.A. (CFM) LEAP-1A turbofan engines. This AD requires removal, inspection, rework, and re-identification of the high-pressure turbine (HPT) stage 2 disk, part number (P/N) 2466M52G03. This AD was prompted by a quality escape at the manufacturer that resulted in cracks appearing during forging of the HPT stage 2 disks. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective December 15, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 15, 2017.

We must receive comments on this AD by January 16, 2018.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE.,

Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: 877-432-3272; fax: 877-432-3329; email: [aviation.fleetsupport@ge.com](mailto:aviation.fleetsupport@ge.com). You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

**Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-1044; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:**

Christopher McGuire, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7120; fax: 781-238-7199; email: [chris.mcguire@faa.gov](mailto:chris.mcguire@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We learned from CFM that there was a quality escape at the manufacturer that resulted in cracks appearing during forging of CFM LEAP-1A HPT stage 2 disks. This condition, if not corrected, could result in failure of the HPT stage 2 disk, uncontained release of the disk, damage to the engine, and damage to the airplane. We are issuing this AD to correct the unsafe condition on these products.

**Related Service Information Under 1 CFR Part 51**

We reviewed CFM Service Bulletin (SB) LEAP-1A-72-00-0167-01A-930A-D, Issue 001, dated September 28, 2017. The SB describes procedures for removal, inspection, rework, and re-identification of HPT stage 2 disk, P/N 2466M52G03. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination**

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

**AD Requirements**

This AD requires removal, inspection, rework, and re-identification of the HPT stage 2 disk, P/N 2466M52G03.

**FAA's Justification and Determination of the Effective Date**

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the compliance time for the required action is shorter than the time necessary for the public to comment and for us to publish the final rule. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA 2017-1044 and Product Identifier 2017-NE-38-AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this final rule.

**Costs of Compliance**

We estimate that this AD affects 7 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD: