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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Chapter I

Temporary Extension of Applicability of Regulations Governing Conduct on Federal Property

AGENCY: Office of the Secretary, DHS.
ACTION: Notification of temporary extension of the applicability of regulations.

SUMMARY: The Secretary of Homeland Security, pursuant to the Homeland Security Act of 2002, has temporarily extended the applicability and enforcement of certain regulations governing conduct on Federal property that is under the administrative jurisdiction and control of U.S. Customs and Border Protection (CBP) along the southwest border. This temporary administrative extension enables DHS to protect and secure Federal property along the southwest border within the control of CBP's San Diego Field Office, Tucson Field Office, Laredo Field Office and El Paso Field Office, and to carry out DHS's statutory obligations to protect and secure the nation's borders. The Federal property subject to this notice is limited to the specific geographic area within the administrative control of CBP along the length of the U.S. border with Mexico.

DATES: Pursuant to 40 U.S.C. 1315(d), the extension began on November 17, 2018 and will continue until May 31, 2019.

FOR FURTHER INFORMATION CONTACT: Joshua A. Vayer, 703-235-6082, joshua.s.vayer@hq.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 1706 of the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135 (Nov. 25, 2002), as codified at 40 U.S.C. 1315, the

Secretary of Homeland Security is responsible for protecting the buildings, grounds, and property owned, occupied, or secured by the Federal government (including any agency, instrumentality, or wholly owned or mixed ownership corporation thereof) and the persons on the property. To carry out this mandate, the Department is authorized to enforce the applicable Federal regulations for the protection of persons and property set forth in 41 CFR part 102-74, subpart C.¹ These regulations govern conduct on Federal property and set forth the relevant criminal penalties. Although these regulations apply to all property under the authority of the General Services Administration and to all person entering in or on such property,² the Secretary of Homeland Security is authorized pursuant to 40 U.S.C. 1315(d)(2)(A) to extend the applicability of these regulations to any property owned or occupied by the Federal government and to enforce them on such property.

Temporary Administrative Extension of Applicability of Regulations Governing Conduct on Federal Property Under the Administrative Jurisdiction and Control of U.S. Customs and Border Protection Along the Southwest Border

Throughout October and November 2018, a large group of Central American migrants is traveling as part of a caravan toward the Southwest Border of the United States. Acts of violence against immigration security services have been reported. As part of Department-wide efforts to mitigate security challenges which may arise as the migrants approach the Southwest Border of the United States, including the possibility of access to Federal property by unauthorized individuals, planning for an appropriate response is warranted. Specifically, this action will afford Federal law enforcement officers a wide range of enforcement tools to enforce Federal rules pertaining to individuals' conduct on the Federal property. The affected Federal property is along the Southwest Border of the United States and within the control of CBP's San Diego Field Office, Tucson Field Office,

¹ Although these regulations were issued prior to the Homeland Security Act, per section 1512 of the Act, these regulations remain the relevant regulations for purposes of the protection and administration of property owned or occupied by the Federal government.

² See 41 CFR 102-74.365.

Laredo Field Office, and El Paso Field Office including but not limited to ports of entry, access roads, barriers, parking structures, and buildings temporarily erected to support processing of the large group of migrants. The Federal property that is subject to this notice is limited to the specific geographic area within the U.S. Border with Mexico. Specifically, I temporarily extended the applicability, allowing the enforcement, of the regulations in 41 CFR part 102-74, subpart C, for the protection and administration of property owned or occupied by the Federal Government and persons on the above-specified property along the Southwest Border of the United States.

The regulations in 41 CFR part 102-74, subpart C, will remain applicable and enforceable at these locations along the Southwest Border of the United States for six months after the date of my signature of this notice.

Dated: November 17, 2018.

Kirstjen M. Nielsen,

Secretary of Homeland Security.

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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 (FNS), USDA.

ACTION: Final rule.

SUMMARY: This final rule will codify, with some extensions, three menu planning flexibilities temporarily established by the interim final rule of the same title published November 30, 2017. First, it will broaden the milk options in the National School Lunch Program and School Breakfast Program by allowing local operators to permanently offer flavored, low-fat milk. For consistency across nutrition programs, it will also allow flavored, low-fat milk in the Special Milk Program for Children and in the Child

and Adult Care Food Program for participants ages 6 and older. Second, this final rule will require that half of the weekly grains in the school lunch and breakfast menu be whole grain-rich, thus ending the need for the exemption process. Third, it will provide schools in the lunch and breakfast programs more time for gradual sodium reduction by retaining Sodium Target 1 through the end of school year (SY) 2023–2024, continuing to Target 2 in SY 2024–2025, and eliminating the Final Target that would have gone into effect in SY 2022–2023. By codifying these changes, USDA acknowledges the persistent menu planning challenges experienced by some schools, and affirms its commitment to give schools more control over food service decisions and greater ability to offer wholesome and appealing meals that reflect local preferences.

DATES: This rule is effective February 11, 2019.

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

SUPPLEMENTARY INFORMATION:

I. Background

This final rule will increase flexibility in the Child Nutrition Program requirements related to milk, grains, and sodium effective SY 2019–2020, which begins July 1, 2019. This rule is the culmination of the rulemaking process initiated by the Department of Agriculture (USDA) following the Secretary's May 1, 2017, Proclamation affirming USDA's commitment to assist schools in overcoming operational challenges related to the school meals regulations implemented in 2012.

In 2012, USDA updated the National School Lunch (NSLP) and School Breakfast Program (SBP) meal requirements to reflect the latest Dietary Guidelines for Americans, as required by the Richard B. Russell National School Lunch Act in Section 9(a)(4), 42 U.S.C. 1758(a)(4). The implementing regulations¹ increased the availability of fruits, vegetables, whole grains, and fat-free and low-fat milk in school meals; required sodium and saturated fat limits, and zero *trans*-fat in the weekly school menu; and established calorie ranges intended to meet part of the age-appropriate calorie needs of children. The updated requirements

were largely based on recommendations issued by the Health and Medicine Division of The National Academies of Sciences, Engineering, and Medicine (formerly, the Institute of Medicine).

With regard to the milk, grains, and sodium requirements, the regulations implemented in 2012:

- Allowed flavoring only in fat-free milk in the NSLP and SBP;
- Required that half of the grains offered in the NSLP be whole grain-rich in SY 2012–2013 and one year later in the SBP; and required that effective SY 2014–2015, all grains offered in both programs be whole grain-rich (meaning the grain product contains at least 50 percent whole grains and the remaining grain content of the product must be enriched); and
- Required schools participating in the NSLP and SBP to gradually reduce the sodium content of meals offered on average over the school week by meeting progressively lower sodium targets over a 10-year period.

Before and after the regulations were implemented in 2012, USDA offered guidance, technical assistance resources, and tailored training programs for Program operators in collaboration with the Institute for Child Nutrition (formerly, National Food Service Management Institute). Program advocates, the food industry, and other stakeholders also collaborated with USDA in different ways to assist operators with implementation. This enabled many operators to adopt most of the changes to the NSLP and SBP meal patterns. Child nutrition and public health advocates who submitted public comments noted that children's eating habits are improving and student participation in the school meal programs is increasing in many school districts. USDA acknowledges the significant efforts and progress these schools have achieved. However, the changes are only truly successful when all of America's school children eat and enjoy the school meals.

While some Program operators have had great success in implementing the updated nutrition standards in a way that encourages healthy eating and participation, some school meal programs require additional flexibility and support from USDA to meet this goal. USDA continues to hear from Program operators about persistent challenges with the milk, grains, and sodium requirements. The challenges identified by operators include decreased student participation and/or meal consumption, difficulties preparing whole grain-rich food items, and limited ability to offer appealing meals with lower sodium content.

The Secretary of Agriculture acknowledged these challenges in the May 1, 2017, Proclamation and committed to working with stakeholders to ensure that the milk, grains, and sodium requirements are practical and result in wholesome and appealing meals. Subsequently, and consistent with the Consolidated Appropriations Act, 2017 (Pub. L. 115–31), USDA issued policy guidance (SP 32–2017, May 22, 2017, *School Meal Flexibilities for School Year 2017–2018*) providing milk, whole grains, and sodium flexibilities for SY 2017–2018 while taking steps to formulate regulatory relief in these areas. USDA's policy guidance was followed by the interim final rule *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (82 FR 56703, November 30, 2017), which established regulations that extend school meal flexibilities through SY 2018–2019 and apply the flavored milk flexibility to the Special Milk Program for Children (SMP) and the Child and Adult Care Food Program (CACFP) for participants age 6 and older in SY 2018–2019 only. As a result, the regulations applicable in SY 2018–2019 provide relief in three specific areas while retaining other essential meal requirements (e.g., fruit and vegetable quantities, fat restrictions, and calorie ranges) that contribute to wholesome meals. In brief, for SY 2018–2019, the regulations:

- Provide NSLP and SBP operators the option to offer flavored low-fat (1 percent fat) milk with the meal and as a beverage for sale during the school day, and apply the flexibility in the SMP and CACFP for participants age 6 and older;
- Extend the State agencies' option to allow individual school food authorities to include grains that are not whole grain-rich in the weekly NSLP and SBP menus; and
- Retain Sodium Target 1 in the NSLP and SBP.

As discussed in the interim final rule preamble (82 FR 56703, November 30, 2017), there have been numerous administrative and legislative actions over the last few years to provide flexibility to schools with regard to the whole grain-rich and sodium requirements.² The interim final rule extended the flexibilities already allowed through policy guidance (SP 32–2017, May 22, 2017, *School Meal Flexibilities for School Year 2017–2018*) and previous appropriations legislation

¹ Final rule *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088, January 26, 2012).

² See discussion in the interim final rule *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (82 FR 56703, November 30, 2017).

(Pub. L. 112–55, Pub. L. 113–235, Pub. L. 114–113, Pub. L. 115–31, and Pub. L. 115–56). In addition, the interim final rule allowed milk flexibility, without the need to demonstrate hardship, in all Child Nutrition Programs. Furthermore, the rule asked the public to submit comments on the long-term availability of the three meal flexibilities.

As a key part of USDA’s regulatory reform agenda, this final rule seeks to ensure that school meals regulations work for all operators, while reflecting the recommendations of the Dietary Guidelines for Americans, as Section 9(a)(4), 42 U.S.C. 1758(a)(4) requires. All participating children will continue to have access to fruit, an array of vegetables, whole grains, and fat-free and low-fat milk, and school meals will continue to provide appropriate calorie ranges, limited saturated fat, and no added trans-fat. The targeted modifications in this final rule, effective July 1, 2019 (SY 2019–2020), apply only to the milk, whole grain-rich, and sodium requirements. This rule demonstrates USDA’s commitment to alleviate regulatory burdens, provides school nutrition professionals the flexibility and predictability they repeatedly request to successfully operate the Child Nutrition Programs, and ensures that Program regulations are practical for all local providers. This rule will help Program operators provide wholesome and appealing meals that reflect the Dietary Guidelines and meet the needs and preferences of their communities. It is important to note that schools are not required to change their menus and can choose whether or not to use the flexibilities this rule provides.

The public comments that helped inform this final rule are discussed next.

II. Overview of Public Comments and USDA Response

USDA appreciates the significant public interest in the interim final rule *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (82 FR 56703, November 30, 2017). During the 60-day comment period (November 30, 2017–January 29, 2018), USDA received a total of 86,247 comments, including 53 non-germane comments and 3 duplicates. All comments, except the non-germane and duplicate comments, are posted online at www.regulations.gov. See docket FNS–2017–0021, *Child Nutrition: Flexibilities for Milk, Whole Grains, and Sodium Requirements*.

USDA worked in collaboration with a data analysis company to code and analyze the public comments using a commercial web-based software product and obtained data showing support for or opposition to each meal flexibility. The Summary of Public Comments report is available under the Supporting Documentation tab in docket FNS–2017–0021.

The vast majority of the total public submissions were form letters. There were 16 form letter campaigns, which comprised 84,453 form letter copies. These comments were submitted by individuals participating in letter campaigns organized primarily by MomsRising, the American Heart Association Sodium Reduction Initiative, Salud America!, and the Union of Concerned Scientists. These form letters were mostly from parents and other individuals urging USDA to

retain strong nutrition requirements for school meals.

In addition to the form letter copies, there were 1,738 unique submissions that provided substantive comments on issues specific to the three menu planning flexibilities and were therefore very useful in informing the development of this final rule. These unique comments, which included the master letter for each of the form letter campaigns, reflected a wide range of opinions—support, opposition, and mixed comments on each of the flexibilities. These comments were submitted by individuals, school district personnel, students, healthcare professionals, parents/guardians, dietitians/nutritionists, policy advocacy organizations, professional associations, State agency directors, trade/industry associations, nutrition/anti-hunger advocates, school nutrition advocacy organizations, academics/researchers, and the food industry. For example, stakeholders that submitted unique comments include: the School Nutrition Association, State agencies, School Superintendents Association, Council of Great City Schools, American Public Health Association, American Heart Association, Center for Science in the Public Interest, MomsRising, Robert Wood Johnson Foundation, Pew Charitable Trusts, Food Research & Action Center, American Commodity Distribution Association, Grocery Manufacturers Association, General Mills, and Mars, Incorporated.

The following tables show tallies of the total and unique comments received for each of the meal flexibilities addressed in the interim final rule:

MILK FLEXIBILITY

Commenter position	Count of milk comments received	Percent of all comments received (86,247)	Count of unique milk comments	Percent of unique milk comments (181)
Support	36	Less than 1	36	19.9
Oppose	5,441	6	84	46.4
Mixed	69	Less than 1	61	33.7
Milk Submissions	5,546	6	181	100

WHOLE GRAIN-RICH FLEXIBILITY

Commenter position	Count of grains comments received	Percent of all comments received (86,247)	Count of unique grains comments	Percent of unique grain comments (217)
Support	43	Less than 1	43	19.8
Oppose	83,767	97	122	56.2
Mixed	523	Less than 1	52	24.0
Grains Submissions	84,333	98	217	100

SODIUM FLEXIBILITY

Commenter position	Count of sodium comments received	Percent of all comments received (86,247)	Count of unique sodium comments	Percent of unique sodium comments (229)
Support	550	Less than 1	79	34.5
Oppose	83,152	96	132	57.6
Mixed	18	Less than 1	18	7.9
Sodium Submissions	83,720	97	229	100

In general, commenters in favor of the flexibilities argued that these provide more menu planning options for schools and thus enhance their ability to offer wholesome and appealing meals. They stated that the flexibilities will lead to increased meal consumption and better health outcomes for students. The School Nutrition Association, representing 57,000 members, urged USDA to adopt a permanent solution to operational challenges rather than temporary rules and annual waivers.

Commenters opposed to the flexibilities argued that these are not needed because most schools report being in compliance with the meal patterns, and the flexibilities could restrain schools' progress in increasing whole grains and reducing sodium intake. Many expressed interest in retaining the meal patterns as implemented in 2012, and stated their concern about children's continued access to wholesome school meals and

the need to help children develop positive dietary habits for life. In addition to specific comments about the milk, whole grain-rich, and sodium flexibilities, commenters provided general feedback on the interim final rule. The following table shows tallies of the general comments received in support of and against the meal flexibilities addressed in the interim final rule. Many of the opposing comments were submitted as part of the form letter campaigns described above:

GENERAL FEEDBACK ON MILK, WHOLE GRAIN-RICH, AND SODIUM FLEXIBILITIES

Themes	Count of comments received	Percent of all comments received (86,247)
General Support		
Positive health impacts for children	20	Less than 1.
Increase meal consumption and decrease food waste	90	Less than 1.
Relieve industry of meal pattern compliance challenges (e.g. product development)	4	Less than 1.
Reduce compliance burden for Program operators	20	Less than 1.
Other general support	60	Less than 1.
General Opposition		
Negative health impacts for children	6,830	8.
Negative impacts on children's ability to access healthy meals	1,190	1.4.
Flexibilities are not needed (e.g. widespread compliance with existing standards)	83,080	96.
Inconsistent with Dietary Guidelines for Americans	260	Less than 1.
Other general opposition	290	Less than 1.

After careful consideration of all stakeholders' comments, USDA believes that school nutrition operators have made the case that this final rule's targeted regulatory flexibility is practical and necessary for efficient Program operation. The targeted regulatory flexibility will improve student participation without a detrimental effect on the overall quality of the meals offered to children. Some commenters opposed to the flexibilities voiced concerns about the potential impact of the flexibilities on various segments of the student population. USDA is addressing these concerns separately in the Civil Rights Impact Analysis, which is available under the

Supporting Documentation tab in docket FNS-2017-0021. The following is a high-level summary of the flexibilities as stated in the interim final rule (82 FR 56703, November 30, 2017), the key concerns and arguments expressed by commenters, and USDA's response. Miscellaneous comments regarding food quantities, meal costs, calorie limits, and other topics unrelated to the flexibilities in the interim final rule are not discussed in this preamble, but are included in the Summary of Public Comments report. Prior to publication of the interim final rule, USDA received 580 postcards expressing opposition to the flexibilities as stated in the Secretary's May 1, 2017, Proclamation. These postcards were not

submitted in response to the interim final rule and, therefore, were not included in the comment analysis or as part of the public record for this rulemaking. They would not, in any event, alter the agency's final conclusions herein.

Milk Flexibility

In SY 2018-2019, the interim final rule:

- Allows schools to offer flavored, low-fat milk in the NSLP (including as a beverage for sale during the school day) and the SBP (7 CFR 210.10(d)(1)(i); 7 CFR 210.11(m)(1)(ii), (m)(2)(ii) and (m)(3)(ii); and 7 CFR 220.8(d));
- Allows flavored, low-fat milk in the Special Milk Program for Children

(SMP) for children ages 6 and older (7 CFR 215.7a(a)(3)); and

- Allows flavored, low-fat milk in the Child and Adult Care Food Program (CACFP) for children ages 6 and older and adults (7 CFR 226.20(a)(1)(iii) and (iv); and 7 CFR 226.20(c)(1), (2) and (3)).

Comments in Support

Commenters in support of the milk flexibility included individuals, a school nutrition organization, State agencies, food manufacturers, and trade associations. Supporters generally expressed concern related to the decline in children's milk consumption. They argued that allowing flavored, low-fat milk will provide schools more menu planning options, promote students' milk consumption, and lead to better health outcomes.

A nutritionist, healthcare professional, and food manufacturer stated that allowing flavored, low-fat milk will increase milk consumption and result in greater intake of essential nutrients such as vitamin D, magnesium, and calcium. A healthcare professional and members of academia stated that the minor increase in calories from flavored, low-fat milk could be offset with appropriate menu planning. A dairy trade association asserted that the net increase in calories between fat-free and low-fat, flavored milk is small due to progress made by dairy processors in reducing the calories in flavored milk. According to the commenter, milk processors have reduced the calorie and added sugar content of flavored milk between SY 2006–2007 and SY 2015–2016 by more than 9 grams per serving (or 55 percent) in chocolate milk produced for the school market.

A State agency suggested that the flexibility should be offered across all Federal Child Nutrition Programs for consistency. A few commenters offered suggestions unrelated to the milk flexibility, such as allowing schools to offer non-dairy milk options, and eliminating all fat limits on fluid milk offered in schools.

Comments in Opposition

Commenters opposed to the milk flexibility included parents and individuals, public health practitioners, and nutrition advocates. These commenters generally expressed health concerns related to added sugar in flavored milk. They argued that offering flavored, low-fat milk contradicts expert nutrition recommendations and could lead to increased sugar, fat, and calorie intake by children in the near and long term. They argued that schools offering flavored, low-fat milk may have to offer

less food to offset the extra calories associated with this option, and said that school meals with flavored low-fat milk could exceed the weekly calorie ranges while offering no additional nutritional benefit. Others stated that the milk flexibility is unnecessary because students seem to accept unflavored, low-fat milk and unflavored/flavored, fat-free milk.

Several commenters argued that the milk flexibility as stated in the interim final rule is inconsistent with congressional intent because it does not require school districts to demonstrate a reduction in student milk consumption or an increase in school milk waste, which is specified in Section 747(c) of the Consolidated Appropriations Act, 2017.

A policy advocacy organization argued that, because milk is consumed so frequently by children, restricting flavor to fat-free milk helps decrease the amount of saturated fat in children's diets. The commenter also commended USDA for continuing to prohibit flavored milk for children under six years old.

A few individuals and public advocacy organizations also opposed allowing flavored, low-fat milk as a competitive beverage for sale in schools. They stated that, because schools are largely prohibited from selling most sugar-sweetened beverages on campus during the school day, there is no longer a need to offer flavored milk as an appealing option relative to other beverages with higher sugar content.

Mixed Response

A few commenters expressed conditional support or opposition, or offered suggestions for improving the interim final rule. For example, a State agency in favor of the milk flexibility recommended that USDA include a requirement that at least one type of unflavored milk be available at the meal service.

Several commenters opposed to the milk flexibility recommended that if USDA allows flavored, low-fat milk, a calorie limit of no more than 130 calories per 8 ounce serving should be established, consistent with the Robert Wood Johnson's Healthy Eating Research Healthier Beverage Guidelines. A few individuals and school district personnel suggested that USDA allow reduced fat (2%) milk or whole milk for health reasons rather than provide flexibility to offer flavored, low-fat or non-fat milk.

USDA Response

Beginning SY 2019–2020, this final rule will provide NSLP and SBP

operators with the option to offer flavored, low-fat milk and require that unflavored milk be offered at each meal service. For consistency, the flavored, low-fat milk option will be extended to beverages for sale during the school day, and will also apply in the SMP and CACFP for participants ages 6 and older. We recognize that regulatory consistency across programs, a long-time practice at USDA, facilitates program administration and operation at the State and local levels, fosters customer support, and meets customers' expectations. The Summer Food Service Program (SFSP) currently allows flavored, low-fat milk with summer meals so this rule makes no change to milk service in the SFSP.

By broadening the flavored milk choices in the Child Nutrition Programs, USDA seeks to remove regulatory restrictions that may hinder milk consumption. USDA's decision to expand the milk choices is based on stakeholders' concerns over decreasing milk consumption in the U.S. population. Data from USDA's Economic Research Service shows a decrease in fluid milk consumption from 197 pounds per person in 2000 to 154 pounds per person in 2016.³ Chobani, General Mills, and the Grocery Manufacturers Association cited this data in their comments. Commenters suggested that allowing flavored low-fat milk, a popular item among children, could help improve children's consumption of milk, an important source of calcium, vitamin D (for products fortified with vitamin D), and potassium. Further, commenters such as the National Milk Producers Federation and the International Dairy Foods Association noted that milk processors have significantly reduced the calorie and sugar content of flavored milk in recent years. Commenters noted that flavoring and a moderate amount of sweetener increases palatability, without compromising the positive nutritional impacts of milk consumption.

For operational efficiency, operators will be allowed to serve flavored low-fat milk without the need to demonstrate hardship. This will relieve schools from submitting written justification and evidence (e.g., meal count records, photos, etc.) to the State agency to demonstrate financial hardship, such as a drop in meal counts or an increase in food waste. USDA is removing this operational burden for State and local

³ U.S. Department of Agriculture Economic Research Service. Dairy products: Per capita consumption, United States (Annual). September 2017. Available at <https://www.ers.usda.gov/data-products/dairy-data/>.

operators to streamline procedures given the interest in this milk option. For SY 2017–2018, a total of 578 school food authorities (about 3 percent of all school food authorities operating the school meal programs) submitted flavored, low-fat milk exemption requests based on hardship, and State agencies approved 562 of those requests.

Eliminating the need to demonstrate hardship is consistent with the underlying statutory authority. The provision cited by commenters, Section 747(c) of the Consolidated Appropriations Act, 2017, expires with the 2017–2018 school year, whereas this rule is effective with the 2019–2020 school year. Further, under section 9(a)(2) of the National School Lunch Act, students must be provided with a variety of fluid milk and milk may be flavored or unflavored; there is no statutory requirement to demonstrate hardship in order to serve low-fat, flavored milk.

A comment from a State agency recommended that the milk flexibility include the requirement that operators offer unflavored milk at each meal service, in addition to any flavored milk offered. USDA agrees with this recommendation. Therefore, upon implementation of this rule, NSLP and SBP operators that choose to offer flavored milk must also offer unflavored milk (fat-free or low-fat) at the same meal service. This requirement will ensure that milk variety in the NSLP and SBP is not limited to flavored milk choices. It is expected to help schools that choose to offer flavored milk in their menus stay within the weekly dietary specifications. USDA believes that most schools would continue to offer unflavored milk at each meal service to meet parents' expectations, even if offering unflavored milk was not a requirement.

USDA recognizes the importance of having unflavored milk as a choice for students at each lunch and breakfast service. Many comments from parents, public health practitioners, and nutrition advocates voiced concerns over added sugars in the school meals and expressed a strong interest in retaining children's access to unflavored milk. We are aware that parents may want their children to drink unflavored milk at lunch and breakfast (e.g., with breakfast cereal). In addition, many State agencies have promoted unflavored milk in the NSLP and SBP as every edition of the Dietary Guidelines for Americans since 1980 has recommended reducing sugar intake. We note that the requirement to ensure that unflavored milk is available on the school menu will not apply in

the NSLP afterschool snack service, the SMP, or the CACFP consistent with existing Program requirements. These meal services do not have a requirement to offer a variety of fluid milk as they are smaller in size and resources than the lunch and breakfast services.

Some commenters recommended calorie limits for individual servings of flavored, low-fat milk (no more than 130 calories per 8 ounce serving). Since the NSLP and SBP calorie limits apply to the meals offered on average over the school week, this final rule will not set calorie limits for individual servings of flavored, low-fat milk. However, school food authorities that choose to offer flavored, low-fat milk are encouraged to obtain relevant information, such as the Robert Wood Johnson's Healthy Eating Research Healthier Beverage Guidelines, to inform procurement decisions. In addition, school food authorities that choose to offer flavored, low-fat milk should plan menus carefully to ensure that the weekly meals stay within the required calorie and saturated fat limits, and consult with their State agency as necessary to make proper menu adjustments.

Some commenters stated that the milk flexibility is unnecessary because most students seem to have accepted the 2012 provision that limits flavor to fat-free milk. While USDA acknowledges that many school food authorities have incorporated the 2012 meal patterns, USDA agrees with the Program operators who commented that expanding milk choices will likely improve student participation in the school meals programs and increase milk consumption. Offering flavored, low-fat milk expands the options available to schools to meet the milk requirement. Schools can choose to pursue this flavored milk option, or not, based on local preference. USDA encourages parents and students to provide feedback to their school food service operators regarding the menus and food products offered to students at lunch and breakfast (see existing provision at 7 CFR 210.12(a)).

The local school wellness policy, 7 CFR 210.31, also provides students, parents and interested community members an important opportunity to influence the school nutrition environment at large. In addition, as allowed in 7 CFR 210.19(e), State agencies have discretion to set stricter requirements that are not inconsistent with the minimum nutrition standards for school meals.

Accordingly, this final rule will amend the following milk provisions effective SY 2019–2020:

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

Whole Grain-Rich Flexibility

The interim final rule provides State agencies through SY 2018–2019 discretion to grant exemptions to the whole grain-rich requirement to school food authorities that demonstrate hardship. School food authorities receiving an exemption must offer at least half of the weekly grains as whole grain-rich. (7 CFR 210.10(c)(2)(iv)(B) and 7 CFR 220.8(c)(2)(iv)(B)).

Comments in Support

Several commenters, including a food industry association, school district personnel, and individual commenters, reasoned that whole grain-rich exemptions should be allowed because some products (e.g., pasta, bread, sushi rice, tortillas, and biscuits) and regional products (e.g., grits in the South), are not acceptable to students in a whole grain-rich form. Other commenters, including food industry commenters, a healthcare professional, and an individual from academia, stated that it is necessary to allow the food industry sufficient time to develop solutions to the whole grain-rich challenges and provide operators more time to address preparation issues and develop menus and recipes that are acceptable to students. Some school district personnel said that the “hot held for service” practices in the food service make using some whole grain-rich products (e.g., pasta) difficult. Other commenters noted that they found the exemption process too burdensome, and felt that a more flexible regulatory requirement would be simpler than extending the existing process. A number of commenters, including school district personnel, said the flexibility will result in lower costs and reduced food waste.

Comments in Opposition

Many commenters, including advocacy organizations, healthcare professionals, and form letters submitted by individuals, stated that the whole grain-rich flexibility should not be allowed because of the public health benefits associated with the consumption of whole grains. Commenters argued that schools should provide the healthiest foods possible, including whole grain-rich foods, because school meals may be the only wholesome meals available to some segments of the student population.

Several commenters expressed opposition to the whole grain-rich flexibility, reasoning that school meals help educate children about healthy eating for life.

Advocacy organizations, professional associations, healthcare professionals, and individuals said there is no need for the whole grain-rich flexibility because a significant percentage of schools are complying with the requirement and have not requested exemptions. Rather than exemptions, several commenters recommended that USDA provide additional training and technical assistance.

Mixed Response

Some commenters expressed conditional support or opposition, or offered suggestions for improving the interim final rule. A school nutrition organization, school district personnel, State agencies, professional associations, an advocacy organization, and individual commenters suggested that instead of extending the existing whole grain-rich flexibility, USDA should set a more flexible regulatory requirement for whole grains. Recommendations included the following:

- Requiring that at least half of the grains offered in the weekly menu be whole grain-rich;
- Requiring that at least 75 percent of the grains offered in the weekly menu be whole grain-rich; and
- Allowing one non-whole grain-rich menu item in the weekly menu.

In general, these commenters noted the exemption request process, which was legislatively required, is burdensome for school food authorities and State agencies.

USDA Response

Beginning SY 2019–2020, this final rule will require that at least half of the weekly grains offered in the NSLP and SBP meet the whole grain-rich criteria specified in FNS guidance, and that the remaining grain items offered must be enriched. This decision, recommended by the School Nutrition Association, representing 57,000 school nutrition professionals, is consistent with USDA's commitment to alleviate difficult regulatory requirements, simplify operational procedures, and provide school food authorities ample flexibility to address local preferences. By setting a more feasible whole grain-rich requirement in the NSLP and SBP, school districts nationwide are expected to incorporate whole grains easily while still providing menu items that meet local preferences. This change will remove the need for whole grain-rich

exemption requests based on hardship, which many commenters, including State and local Program operators, described as burdensome.

The requirement to offer exclusively whole grain-rich products proved impractical for many school districts and, due to a long history of administrative and legislative actions allowing exemptions, it was never fully implemented nationwide. Seeking to assist operators, USDA allowed enriched pasta exemptions for SYs 2014–2015 and 2015–2016, and Congress expanded the pasta flexibility to include other grain products. Through successive legislative action, Congress directed the USDA to allow State agencies to grant individual whole grain-rich exemptions (Section 751 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 whole grains 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, extended the flexibilities provided by section 747 of the Consolidated Appropriations Act, 2017 through December 8, 2017. The 2017 Appropriations Act provided authority for whole grain-rich exemptions through the end of SY 2017–2018, and the interim final rule (82 FR 56703) extends the availability of exemptions through SY 2018–2019. Despite all of these administrative and legislative actions, some school food authorities continue to experience challenges. Nevertheless, for SY 2017–2018, a total of 4,297 school food authorities (about 23 percent of school food authorities operating the school meal programs) submitted whole grain-rich exemption requests based on hardship, and nearly all (4,124) received exemption approval from their State agency.

USDA recognizes that it is not feasible to operate these nationwide programs in an ad hoc fashion, with recurrent exemptions, without giving operators and the food industry a workable regulatory solution that provides the long-term certainty they need for food procurement and product reformulation. At the same time, USDA is mindful of commenters' concerns about the health and dietary habits of children, and

agrees that schools should provide the healthiest foods possible. The whole grain-rich requirement in this final rule is a minimum standard, not a maximum, and reflects in a practical and feasible way the Dietary Guidelines' emphasis on whole grains consumption. Requiring that at least half of the weekly grains offered in the NSLP and SBP be whole grain-rich is a minimum standard that schools have already accomplished and is highly achievable, supported by the School Nutrition Association, and provides exceptional flexibility for local operators in planning wholesome and appealing school meals.

By re-implementing the whole grain-rich requirement that was in place from SY 2012–2013 through SY 2013–2014, USDA recognizes the nutritional benefits of whole grains as well as the need for gradual adjustments in school menu planning, procurement, and food service equipment. USDA expects that many schools will continue to provide a significant portion of their grain products each week in the form of whole grain-rich foods as they are currently required to do so. As noted above, at least half of the grains offered weekly must be whole grain-rich, and the other grain items offered must be enriched.

USDA encourages Program operators to incorporate whole grain-rich products in the school menu when possible, especially in popular menu items such as pizza. USDA will continue to provide training and technical assistance resources to assist in these efforts. In addition, USDA Foods will continue to make whole grain-rich products easily available to Program operators. For example, whole grain or whole grain-rich USDA Foods available to schools for SY 2018–2019 include flour, rolled oats, pancakes, tortillas, and several varieties of pasta and rice. Requiring that half of the weekly grains be whole grain-rich is intended to set a floor and not a ceiling. Schools already offering all grains as whole grain-rich do not have to change their menus as a result of this final rule.

As stated earlier, 7 CFR 210.19(e) allows State agencies discretion to set additional requirements that are not inconsistent with the minimum nutrition standards for school meals. For example, State agencies could require school food authorities to offer whole grain-rich products for four days in the school week (or approximately 80 percent of the weekly meals), thus allowing enriched grains one day each week, as suggested by a commenter. At the local level, 7 CFR 210.12(a) allows students, parents and community members to influence menu planning by

providing ideas on the use of whole grain-rich products in the weekly menu. The local school wellness policy (7 CFR 210.31) also provides an important opportunity to influence the school nutrition environment at large.

Accordingly, this final rule will amend the following grains provisions effective SY 2019–2020:

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

Sodium Flexibility

The interim final rule retained Sodium Target 1 in the NSLP and SBP through SY 2018–2019 (7 CFR 210.10(f)(3) and 7 CFR 220.8(f), respectively), and requested comments on the long-term availability of this flexibility. It also retained Target 2 and the final target as part of the sodium reduction timeline.

Comments in Support

School personnel and individual commenters spoke about the work done by school food service professionals, manufacturers, and vendors in striving to meet Sodium Target 1. These commenters also expressed concern about the acceptance of meals with lower sodium content by students, who are accustomed to eating foods with higher sodium content outside of school. Trade associations, a healthcare professional, and a nutritionist said that extending Sodium Target 1 through SY 2018–2019 is necessary as there are challenges in reducing sodium across the food supply.

Several commenters stated that schools not equipped for “scratch” cooking rely heavily on processed/manufactured foods; therefore, these commenters think it is appropriate to extend Target 1 until the food industry is able to develop palatable products with lower sodium content. Other commenters and a professional association argued that there is no conclusive scientific evidence to support the benefits of further sodium reduction in school meals, and there is uncertainty about the long-term effects on child or teen development and overall health.

Trade associations, a healthcare professional, and a nutritionist said extending Sodium Target 1 is important to accommodate the ongoing update of the current Dietary Reference Intakes (DRI) for sodium and potassium. The DRIs, a set of reference values used to plan and assess the diets of healthy individuals and groups, are updated periodically as needed. The commenters said USDA should wait for the DRI review currently underway by The

National Academies of Sciences, Engineering and Medicine (NASEM) before taking further action on sodium reduction. NASEM DRI review of sodium and potassium began in fall 2017 and a draft report is expected by spring 2019. See more information about the DRIs at <https://www.nal.usda.gov/fnic/dietary-reference-intakes>.

A State agency and trade associations supported extending Target 1 through at least the end of SY 2020–2021. A school nutrition organization and school district personnel supported retaining Target 1 as the final sodium target and eliminating the other sodium targets.

A professional association and policy advocacy organization stated that Target 3 (the final target) is fundamentally unattainable. They expressed concern that the final sodium target relies on changes to manufacturing processes that could use technologies or chemical substitutes that pose greater health risks than the sodium they would replace.

Comments in Opposition

Many individual commenters participating in form letter campaigns, a State agency, policy advocacy organizations, and professional associations expressed concern that the sodium flexibility will lead to negative health effects in children, such as increased risk of high blood pressure, heart disease, obesity, and stroke. A policy advocacy organization said lowering sodium consumption, and thereby reducing the risk of high blood pressure, can substantially reduce public health costs.

Commenters also asserted that there is no need for sodium flexibility because Sodium Target 2 is achievable and many school districts are working toward or already providing wholesome and appealing meals with less sodium. A policy advocacy association said that several food companies, such as Aramark, General Mills, Kraft-Heinz, Mars Food, Nestle, PepsiCo, Tyson Foods, Subway, Panera, and Unilever, have been leaders in voluntary sodium reduction and, therefore, there are more products with healthier levels of sodium readily available in the marketplace. A food manufacturer stated that its commitment to developing a range of lower sodium options demonstrates the industry’s ability to be a productive partner in addressing crucial public health problems. Other commenters expressed concern that extending the Target 1 flexibility could lead industry to halt reformulation and innovation efforts, and discourage school efforts to continue sodium reduction.

Some commenters expressed concern that extending Target 1 moves meal requirements away from evidenced-based dietary guidance. A policy advocacy organization stated that the Richard B. Russell National School Lunch Act requires that school meals be aligned with the Dietary Guidelines for Americans, and continuing to delay implementation of the sodium targets creates inconsistency with the law. In addition, policy advocacy associations, professional associations, and individuals participating in form letter campaigns opposed extending Target 1 until SY 2020–2021, stating it would harm children’s health. Many commenters stated that, rather than delaying the sodium targets, USDA should address remaining challenges by providing operators targeted training, technical assistance, and demonstrated strategies and best practices.

Mixed Response

Some commenters provided mixed feedback on the flexibility, including conditional support or opposition, or suggestions for improvement. A food bank supported the retention of Target 1 through the end of SY 2018–2019, but asserted that school districts should be encouraged to procure and introduce lower sodium foods in preparation for the implementation of Target 2. A school advocacy organization encouraged USDA to implement Target 2 “at a future date.” Two chapters of a school nutrition organization that supported the Target 1 flexibility also suggested eventual implementation of Target 2. A professional association and policy advocacy organization supported delaying Target 2 and recommended that Target 2 should be the final target. The commenters also recommended that USDA re-evaluate Target 2 in light of science-based research and the DRI for sodium.

USDA Response

This final rule will provide schools in the NSLP and SBP more time for gradual sodium reduction by retaining Sodium Target 1 through the end of SY 2023–2024, requiring compliance with Sodium Target 2 in SY 2024–2025 (which begins July 1, 2024; see charts), and eliminating the Final Target that would have gone into effect in SY 2022–2023.

**NATIONAL SCHOOL LUNCH PROGRAM—
SODIUM TIMELINE & LIMITS**

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

**SCHOOL BREAKFAST PROGRAM—
SODIUM TIMELINE & LIMITS**

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

In developing this final rule, USDA was mindful of the review of the DRIs for sodium and potassium intake currently underway by The National Academies of Sciences, Engineering, and Medicine. Some commenters said that USDA should extend Target 1 to accommodate the DRI review, which will inform the public on goals for long-term sodium reduction. In addition, the new Dietary Guidelines for Americans are expected to be released by the end of calendar year 2020. USDA agrees that it is reasonable to extend Target 1, delay Target 2 implementation, and refrain from setting sodium reduction goals beyond Target 2 until the DRI report and the 2020 Dietary Guidelines are published and USDA has the opportunity to assess their impact on school meals. In retaining Target 2, USDA is recognizing the need for further sodium reduction. However, delaying implementation of Target 2 until July 1, 2024, will ensure that USDA has the time necessary to make any regulatory adjustments based on the most current scientific recommendations, including providing adequate notice to stakeholders of any such adjustments. In the meantime, the sodium timeline established by this rule will provide schools and the food industry the regulatory certainty they need to conduct food procurement and product reformulation activities. We recognize that regulatory certainty is essential to incentivize the food industry’s efforts to support the service of wholesome and appealing school meals.

Extending Target 1 is also important for practical reasons. As noted by several commenters, many schools are not equipped for scratch cooking, which makes further sodium reduction

challenging. Setting a more flexible approach to sodium reduction allows more time for product reformulation, school menu adjustments, food service changes, personnel training, and changes in student preferences. State agencies that commented on the sodium timeline generally noted that school districts need more time for sodium reduction.

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

USDA remains committed to strong nutrition standards for school meals, consistent with the statutory requirement that school meals reflect the Dietary Guidelines for Americans. Our intention is to ensure that the sodium targets reflect the most current Dietary Guidelines for Americans and DRIs, are feasible for most schools, and allow them to plan appealing meals that encourage consumption and intake of key nutrients that are essential for children’s growth and development. USDA also shares commenter concerns that near-term implementation of further sodium reduction in schools could potentially lower the acceptance of meals with lower sodium content by students, who are currently accustomed to eating foods with higher sodium content outside of school. This could negatively impact program participation and contribute to food waste.

We acknowledge that since 2012 schools have made significant efforts to reduce the sodium content of meals. We encourage families and communities to support schools’ efforts by taking gradual steps to reduce the sodium content of meals offered to children outside of schools. Wholesome school meals are only a part of children’s daily food intake, and children will be more likely to eat them if the foods available to them at home and in the community are also lower in sodium. Helping students adjust their taste preferences requires collaboration between schools, parents, and communities. As stated earlier, student, parent, and community involvement in menu planning is allowed at 7 CFR 210.12(a). The local school wellness policy at 7 CFR 210.31 also provides an important opportunity to influence the school nutrition environment at large.

State agencies whose school food authorities are close to meeting Target 2 may wish to continue their trajectory

and implement Target 2 before the required timeline. As allowed in 7 CFR 210.19(e), State agencies have the ability to set stricter requirements that are not inconsistent with the minimum nutrition standards for school meals. USDA will continue to provide Program operators with technical assistance, training resources, and mentoring to help them offer the best possible meals. In addition, USDA Foods will continue to provide food products with no added salt and/or low sodium content for inclusion in school meals.

This final rule provides flexibility to address sodium challenges and sets a new timeline to build on the progress made. It is intended to address commenters’ concerns regarding student acceptability and consumption of meals with lower sodium content, food service operational issues, food industry’s reformulation and innovation challenges, and the important goal to safeguard the health of millions of school children. This final rule balances nutrition science, practical application of requirements, and the need to ensure that children receive wholesome and appealing meals.

Accordingly, this final rule will amend the following sodium provisions effective SY 2019–2020:

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

Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This 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.

Economic Summary

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year). USDA does not anticipate that this 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 an earlier final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088, January 26, 2012), 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 included a literature review to describe qualitatively the benefits of a nutritious diet to combat obesity and did not estimate individual health benefits or decreased medical costs that could be directly attributed to the changes in the final rule, due to the complex nature of factors that impact food consumption and obesity.⁴ USDA believes the specific flexibilities in this final rule are intended to ease Program operator burden while ensuring the majority of the changes resulting from the 2012 regulation remain intact.

The Secretary of Agriculture acknowledged the operational challenges in meeting the meal standards related to flavored milk, whole grain-rich products, and sodium targets in the May 1, 2017, Proclamation and committed to working with stakeholders to ensure that school meal requirements are practical and result in wholesome and appealing meals. The interim final rule *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (82 FR 56703, November 30, 2017), established regulations that extend the school meal flexibilities through SY 2018–2019. For SY 2018–2019, the regulations provide NSLP and SBP operators the option to offer flavored low-fat (1 percent fat) milk with the meal and as a beverage for sale during the school day, and apply the flexibility in the SMP and CACFP for participants age 6 years and older; extend the State agencies' option to allow individual school food authorities to include grains that are not whole grain-rich in the weekly NSLP and SBP menus; and

retain Sodium Target 1 in the NSLP and SBP.

This final rule makes specific modifications to the milk, grain, and sodium requirements beginning in SY 2019–2020. The purpose of this rule is to ease operational burden and provide school nutrition professionals the flexibility needed to successfully operate the Child Nutrition Programs. This final rule makes the following changes beginning in SY 2019–2020:

- Allow NSLP and SBP operators the option to offer flavored low-fat milk and require that unflavored milk be offered at each meal service. For consistency, the flavored milk flexibility will be extended to beverages for sale during the school day, and will also apply in the SMP and CACFP for participants ages 6 years and older. This flexibility will not apply to the Summer Food Service Program as flavored low-fat milk is already allowed in that Program.
- Require that at least half of the weekly grains offered in the NSLP and SBP be whole grain-rich.
- Retain Sodium Target 1 through the end of SY 2023–2024 and require compliance with Sodium Target 2 in SY 2024–2025, which begins July 1, 2024.

USDA expects the health benefits of the meal standards, which are mainly left intact, to be similar to the overall benefits of improving the diets of children cited in the RIA for the 2012 meal standards rule. While the changes in this final rule provide flexibilities to the 2012 regulations, the targeted nature of the three specific changes addresses persistent Program operator and stakeholder challenges with milk, grain, and sodium requirements. Program operators may exceed these minimum requirements and must continue to meet the same caloric and fat limits specified in the 2012 rule. The nation's students will continue to benefit from the suite of changes in the 2012 regulations and the health benefits qualitatively described in the 2012 RIA still apply.

As explained above, this final rule eases the operational challenges associated with these three requirements while balancing the nutrition science, as stated in the Dietary Guidelines for Americans, and the Program operator's ability to comply with the overall standards and the importance of ensuring children receive wholesome and appealing meals. These challenges were cited during a period of decreased meal consumption and Program participation, and some Program operators reported offering meals that did not appeal to children. The USDA Special Nutrition Program Operations Studies for SYs 2012–2013 and 2013–2014 suggested that, as with

any major change, there were some challenges. 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. For example, food costs, student acceptance, and the availability of products meeting the standards were the primary challenges anticipated in implementing the whole grain-rich requirement in full.⁵ According to USDA administrative data, the largest decrease in NSLP lunch participation occurred in FY 2013 (-3%) which was the first fiscal year the standards went into effect. This decrease was driven by a substantial decrease in the paid lunch category. While paid lunch participation had decreased since 2008, the drop in 2013 was the largest decrease in over 20 years. 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 new meal standards. Paid lunch participation continues to decline but at a slower rate in recent years. Total participation has remained relatively stable for the past 3 years. While there have been many successes in the implementation of the 2012 standards,⁶ some Program operators still face challenges with fully implementing the suite of changes. The flexibilities in this rule provide relief to these Program operators allowing them to successfully offer wholesome and appealing meals to students.

USDA is committed to nutrition science but also understands the importance of practical requirements for Program operators to successfully operate the Child Nutrition Programs. The changes set forth in this rule still show progress in school meal nutrition, and children will continue to be offered and exposed to wholesome school meals to facilitate nutritious choices in the future. Further, we do not anticipate

⁴ <https://www.gpo.gov/fdsys/pkg/FR-2012-01-26/pdf/2012-1010.pdf>: "Because of the complexity of factors that contribute both to overall food consumption and to obesity, we are not able to define a level of disease or cost reduction that is attributable to the changes in meals expected to result from implementation of the rule. As the rule is projected to make substantial improvements in meals served to more than half of all school-aged children on an average school day, we judge that the likelihood is reasonable that the benefits of the rule exceed the costs, and that the final rule thus represents a cost-effective means of conforming NSLP and SBP regulations to the statutory requirements for school meals."

⁵ Standing, Kim, Joe Gasper, Jamee Riley, Laurie May, Frank Bennici, Adam Chu, and Sujata Dixit-Joshi. Special Nutrition Program Operations Study: State and School Food Authority Policies and Practices for School Meals Programs School Year 2012–13. Project Officer: John R. Endahl. Prepared by Westat for the U.S. Department of Agriculture, Food and Nutrition Service, October 2016; 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: Tojja Riggins and John Endahl.

⁶ Robert Wood Johnson Foundation's Bridging the Gap Release on School Meals Perceptions in Childhood Obesity. September 2013. <http://www.rwjf.org/en/library/research/2014/06/bridging-the-gap-s-work-on-childhood-obesity.html>.

this final rule will deter the significant progress made to date⁷ by State and local operators, USDA, and industry manufacturers to achieve healthy, palatable meals for students. The certainty this rule provides around the changes to the standards will provide industry the ability to commit to reformulating products and work towards innovative solutions. These changes also provide relief to Program operators who may be meeting the standards but still facing the sustained challenges addressed in this final rule.

Cost Impact

Similar to the interim final rule, USDA anticipates minimal if any costs associated with the changes to the nutrition standards for milk, grains, and sodium. The overall meal components, macro nutrient, and calorie requirements for the lunch and breakfast programs remain unchanged, and it is the Program operators' option to use the milk flexibility or exceed the minimum whole grain-rich and sodium standards established in this final rule. These changes are also promulgated in the context of significant progress made to date by State and local operators, USDA, and food manufacturers to achieve healthy, appealing meals for students.

Local operators struggling with one or all of these requirements are expected to benefit from the more flexible nutrition standards and be better able to balance the service of wholesome meals with availability of current and future resources for preparing appealing meals. The added flexibility for the milk and grain requirements and the additional time to implement sodium Target 2 are expected to provide certainty for Program operators to effectively procure food to develop wholesome and appealing menus.

Milk Flexibility

As stated in the interim final rule, 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 in the 2012 meal standards rule, but any overall difference in cost is likely to be minimal. The requirement that unflavored milk be offered at each school meal service is not expected to impact cost. Unflavored milk was a popular offering prior to the updated meal standards. In SY 2009–2010, the

most commonly offered milks were unflavored, low-fat (73 percent of all daily NSLP menus) and flavored, low-fat (63 percent). Whole milk was offered in fewer than five percent of all daily menus.⁸ Given that unflavored milk was already a part of the majority of school meal menus prior to the new standards, the requirement to offer unflavored along with flavored milk is not anticipated to be an additional burden to Program operators and is likely a practice Program operators have already incorporated to satisfy the variety requirement.

Whole Grain-Rich Flexibility

The changes in this final rule provide Program operators the flexibility to offer some non-whole grain-rich products that are appealing to students without the administrative burden of the exemption process. The requirement that at least half of the weekly grains offered in NSLP and SBP be whole grain-rich may provide savings for some Program operators facing challenges procuring certain whole grain-rich products; however, we expect that as more products become available, any differential costs associated with whole grain-rich and non-whole grain-rich products will normalize in the market. The availability of whole grain-rich products through USDA Foods and the commercial market has increased significantly since the implementation of the 2012 meal standards and continues to progress, providing new and affordable options for local operators to integrate into menus. Finally, due to the wide variation in local adoption of this flexibility, any overall savings are likely minimal.

Sodium Flexibility

This final rule extends Sodium Target 1 through school year 2023–2024 and requires compliance with Sodium Target 2 in school year 2024–2025. This decision allows more time to develop products that meet the rule's standards and provides industry with the certainty needed to continue to develop new appealing products. This sodium reduction timeline allows for the opportunity for any potential impacts to the school meal programs from the updated DRI report and the 2020 Dietary Guidelines for Americans to be considered. The extension of Target 1

and the resulting delay of the implementation of Target 2 to SY 2024–2025 provide adequate time to accommodate any potential changes, including regulatory adjustments to incorporate updated scientific recommendations. USDA recognizes the need for sodium reduction in school meals and is still retaining Target 2. USDA anticipates that Program operators will continue their efforts to reduce sodium in school meals while industry will continue to work towards lower sodium formulations. We do not anticipate any additional costs associated with this change as it allows additional time for Program operators and industry to reduce sodium levels in meals.⁹

Overview of Public Comments and USDA Response

There were about 20 comment submissions that provided input on risks or benefits of the interim final rule. The American Public Health Association submitted a form letter representing 15 individuals who claimed the USDA underestimated the reduced health benefits. They expressed concern that the flexibilities could lower the estimated health benefits over time. They indicated that the Economic Summary does not provide a sufficiently thorough assessment of lost benefits and concluded that, in the final rule, USDA must calculate the reduced benefit to children for any changes it makes to the school nutrition standards related to sodium, whole grains, or flavored milk.

Similarly, the American Heart Association said USDA states in the interim final rule that the benefits would be similar as the original RIA conducted on the 2012 rule. They questioned how the impact could remain the same when children are served more sodium, fewer whole grain-rich foods, and milk with higher calories and saturated fat. They stated

⁹In the RIA for the final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088), meeting the first sodium target was not estimated as a separate cost due to the fact that the first target was meant to be met using food currently available when the target went into effect in SY 2014–2015 (or by making minimal changes to the foods offered). While the regulatory impact analyses did not estimate a separate cost to implement Sodium Target 1, it did factor in higher labor costs for producing meals that meet all the meal standards at full implementation to factor in the costs of schools replacing packaged goods to food prepared from scratch. Over 5 years, the final rule estimated that total SFAs costs would increase by \$1.6 billion to meet all standards. The cost estimate extended only through FY 2016, two years before the final rule's second sodium target would have taken effect. The second sodium target was designed to be met with the help of industry changing food processing technology.

⁷FNS National Data Bank Administrative Data: 99.8% of lunches served in fiscal year (FY) 2017 received the performance based reimbursement for compliance with the meal standards. This includes lunches served in SFAs granted whole grain exemptions.

⁸U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, School Nutrition Dietary Assessment Study IV, Vol. I: School Foodservice Operations, School Environments, and Meals Offered and Served, by Mary Kay Fox, Elizabeth Condon, Mary Kay Crepinsek, et al. Project Officer, Fred Lesnett Alexandria, VA: November 2012.

that USDA should recalculate the RIA and indicate the reduced health benefit caused by these changes to the school nutrition standards.

USDA Response

The following sections review the changes and provide additional information regarding potential nutritional impacts.

Milk Flexibility

In this final rule, USDA will allow NSLP and SBP operators the option to offer flavored, low-fat milk and require that unflavored milk be offered at each meal service. The flavored milk flexibility will be extended to beverages for sale during the school day, and will also apply in the SMP and CACFP for participants ages 6 years and older.

As noted in the interim final rule, the regulatory impact analyses for the final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088), did not estimate the health benefits associated with specific changes in meal components such as the exclusion of flavored, low-fat milk. USDA's decision to allow flavored low-fat milk reflects the concerns of declining milk consumption and the importance of the key nutrients provided by milk.¹⁰ Menu planners must make necessary adjustments in the weekly menu to account for the additional calories and fat content associated with offering flavored low-fat milk because this final rule does not change the upper caloric and fat limits specified in the 2012 regulations. In addition, the requirement to offer unflavored milk at each meal service ensures students will have access to a choice in milk types and also prevents schools from only offering different flavored milk types to satisfy the milk variety requirement. USDA estimates the nutritional impact of allowing flavored, low-fat milk to be minimal with the added calories and fat to be managed within the upper caloric and fat limits. Further, student intake of key nutrients provided through milk will increase if milk consumption increases.

Whole Grain-Rich Flexibility

The interim final rule retains through SY 2018–2019 the State agency's discretion to grant whole grain-rich exemptions to school food authorities that demonstrate hardship. School food authorities receiving an exemption must offer at least half of the weekly grains as whole grain-rich.

Starting in SY 2019–2020, this final rule will require that at least half of the weekly grains offered in the NSLP and SBP meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched. This decision was made to reduce Program operator burden while still providing children access to whole grain-rich items. The requirement to offer all whole grain-rich items was never fully implemented due to the exemption process, and about 20 percent of school food authorities still face challenges and apply for exemptions (over 4,000 school food authorities for SY 2017–2018).¹¹ The most commonly requested items for exemption were pasta, tortillas, biscuits, and grits. While it is important to recognize the existing challenges with some whole grain-rich items, the vast majority (80 percent) of school food authorities strived to meet the requirement and did not request exemptions in SY 2017–2018. The impact of reducing the requirement from all grains offered to half the grains offered as whole grain-rich recognizes the importance of including whole grains in children's diets without increasing operational burden.

The exemption process has been in place since the requirement for all grains to be whole grain-rich went into effect in SY 2014–2015. This exemption process placed a burden on Program operators and created uncertainty for stakeholders. As noted above, the majority of the exemption requests were for a few items and the process to apply for an exemption varied by State. Retaining the requirement that at least half the grains are whole grain-rich is a familiar requirement for Program operators as it was in place for two years before the requirement shifted to all grains offered be whole grain-rich. USDA believes that the requirement for half the grains to be whole grain-rich is to be viewed as a minimum amount and Program operators will likely continue to serve whole grain-rich items that have been successfully integrated into menus while allowing for the few items that are not as successful to still be offered.

USDA does not anticipate Program operators will reduce the amount of whole grain-rich offerings if they already exceed the retained standard, although that is a possibility. Rather, USDA believes that this change will allow the time necessary for more palatable and widely available whole grain-rich items to continue to be integrated into menus. USDA does not

have evidence that setting the whole grain-rich requirement to a percentage greater than half and less than all grains will successfully address Program operator concerns. Reinstating the requirement that half of grains must be whole grain-rich is familiar to Program operators and provides the flexibility for some Program operators to integrate palatable whole grain-rich items into their menus while still serving items that are appealing to the students.

USDA recognizes that re-implementing the whole grain-rich requirement in place from SY 2012–2013 through SY 2013–2014 will result in some offered grain items not transitioning to whole grain-rich, and that children may not receive some key nutrients associated with whole grain-rich items. However, this rule will retain the requirement that the grains that are not whole must be enriched.

As discussed above, the vast majority of schools are expected to meet the whole-grain-rich requirements in SY 2017–2018 and did not request exemptions, demonstrating that the majority of schools are moving toward meeting the whole grain-rich standard. This rule, by continuing to require that at least half of the offered grains items be whole grain-rich, will continue to ensure that children receive whole grain-rich products as part of their school meals. The specific flexibilities in this final rule will ease Program operator burden while ensuring the majority of the changes resulting from the 2012 regulation remain intact. There are select products that are difficult to prepare, procure, or do not appeal to students that make it challenging to meet the requirement that all weekly grains offered must be whole grain-rich. Industry has worked and continues to work diligently to increase the number of products reformulated to be whole grain-rich while still appealing to students. While this shows significant progress, the continued use of waivers and challenges faced by Program operators to serve all whole grain-rich items persisted. Moving back to the requirement that at least half of the grains offered be whole grain-rich provides the stability for Program operators to add slowly and successfully more whole grain-rich items into menus without undergoing a burdensome exemption process. The requirement for at least half of the grain offered to be whole grain rich is familiar to Program operators and USDA does not have any evidence that setting the standard at a higher percentage would successfully alleviate the challenges. Finally, this requirement is the minimum limit, providing Program operators the choice

¹⁰ <https://www.gpo.gov/fdsys/pkg/FR-2017-11-30/pdf/2017-25799.pdf>.

¹¹ USDA informal State reported data.

to exceed this and offer more whole grain-rich items as they develop wholesome and appealing menus.

USDA believes this change will allow more time for industry to develop appealing whole grain-rich items as well as provide more opportunities for training and technical assistance to better incorporate whole grain-rich items. Additionally, USDA Foods, which makes up about 15 to 20 percent of the food items offered on an average school day, continues to develop new whole grain-rich products each year.

Re-instating the requirement that at least half of the grains offered be whole grain-rich will provide Program

operators the local control necessary to continue to serve items that meet local preferences while still exposing students to nutritious whole grain-rich products.

Sodium Flexibility

The interim final rule retained Sodium Target 1 in the NSLP and SBP through SY 2018–2019 (7 CFR 210.10(f)(3) and 7 CFR 220.8(f), respectively), and requested comments on the long-term availability of this flexibility. It also retained Target 2 and the final target as part of the sodium reduction timeline. This final rule will extend Target 1 through the end of SY

2023–2024, require compliance with Sodium Target 2 starting in SY 2024–2025, and eliminate the Final Target that would have gone into effect in SY 2022–2023. USDA is responding to the challenges associated with reducing the sodium level in school meals.

The impact of extending Sodium Target 1 through SY 2023–2024 increases the average daily sodium level permitted by about 55–70mg for breakfast and 300–340mg for lunch depending on the age/grade group compared to Sodium Target 2. Sodium Target 1 is about 90 to 93 percent of the daily upper intake level for both lunch and breakfast.

TABLE 1—BASELINE SODIUM AND TARGET LEVELS FOR SBP AND NSLP COMBINED COMPARED TO RECOMMENDED DAILY INTAKE LEVEL

Age/grade group	Baseline average sodium level as offered before 2012 regulations (mg)	Total school meals (breakfast + lunch sodium target) (mg)			Recommended daily sodium intake level (mg)	
		Target 1	Target 2	Final target ¹	Child age	Tolerable upper level
K–5	1,950	1,770	1,420	1,070	4 to 8	1,900
6–8	2,149	1,960	1,570	1,180	9 to 13	2,200
9–12	2,274	2,060	1,650	1,240	14–18	2,300
Percent of Daily Tolerable Upper Level						
K–5	102.6%	93.2%	74.7%	56.3%		
6–8	97.7%	89.1%	71.4%	53.6%		
9–12	98.9%	89.6%	71.7%	53.9%		

¹ The Final Target is presented for analysis purposes only as this rule will remove the Final Target that would have gone into effect in school year 2022–2023.

The average baseline sodium levels for school meals prior to the updated standards made up 98 percent to over 100 percent of the tolerable upper level of daily sodium intake. This extension of Target 1 and delay in Target 2 provides time for the DRI report and the 2020 Dietary Guidelines to be published, and for USDA to consider the updated information and potential impact on school meals. This timeline allows for any adjustments to be made, including regulatory changes, if needed, to incorporate any updated scientific information regarding sodium. USDA is retaining Target 2 recognizing the need for further sodium reduction beyond Target 1. The additional time also allows for Program operators to slowly introduce lower sodium foods to students and for industry to develop consistent lower sodium products that are palatable for students.

School children are consuming a considerable amount of sodium, and school meals contribute to their daily total. On average, most students consume 14 percent of their daily sodium intake at breakfast, 31 percent at lunch, 39 percent at dinner, and the

remaining 16 percent through snacks. More than 9 in 10 U.S. school children eat more sodium than the age-specific Tolerable Upper Intake Level established by the Food and Nutrition Board, NASEM (over 130 to 150 percent of the daily recommended amount).¹²

It is important that the sodium level in school meals is gradually reduced to assist in introducing children to lower sodium foods. Delaying the implementation of Sodium Target 1 provides the certainty for industry members to continue to develop and test lower sodium foods for both the school meal programs and the general public.

Sodium Target 2 makes up about 71 to 75 percent of total upper intake level. This continued reduction balances the need for strong nutrition standards with the operational concerns and student acceptance of school meals. The elimination of the Final Target will allow 55–70mg more sodium for breakfast and 300–340mg for lunch. The

Final Target would have made up about 54 to 56 percent of the total upper intake level.

The extension of Target 1 and delay in Target 2 provide the additional time needed for USDA to assess the DRI report and the 2020 Dietary Guidelines for Americans, which are scheduled for release at the end for 2020. Extending the Sodium Target 1 through SY 2023–2024 allows USDA to incorporate the latest scientific evidence into the school meal standards, including time needed for potential regulatory changes.

As noted earlier, we understand that there has been significant progress to date with sodium reduction in school meals. The additional time this rule provides will also enable Program operators to continue to progress, while allowing industry partners to continue to develop innovative solutions to lower sodium foods that can be served in the school meal programs.

Other Comments

An individual commenter said strict nutrition standards without reimbursement from the USDA impose high costs to feed children healthy

¹² Sodium Intake among US School-Aged Children: National Health and Nutrition Examination Survey, 2011–2012 Quader, Zerleen S. et al. Journal of the Academy of Nutrition and Dietetics, Volume 117, Issue 1, 39–47.e5.

meals in small schools, and some participating schools are considering leaving the program due to a low frequency of low-income children buying school lunch, resulting in a significant loss of revenue. The commenter concluded that this rule will increase student participation in purchasing school meals and thus help schools compensate for loss of revenue and high cost expenditures.

USDA believes that adding flexibility to the nutrition standards will allow Program operators additional time to work with available products to provide wholesome and appealing meals to students within available resources. This will help increase student consumption of meals and reduce waste and revenue loss. While the changes resulting from the 2012 regulations may not have resulted in long-term impacts for participation in some schools,¹³ USDA understands there is a wide variation in school food authorities and challenges encountered by Program operators. The changes in this final rule will provide the local level control necessary to successfully operate the school meal programs.

Executive Order 13771

This final rule is an E.O. 13771 deregulatory action. It alleviates the milk, whole grain-rich, and sodium requirements in the Child Nutrition Program and provides flexibilities similar to those currently available as a result only of appropriations 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 this final rule adds flexibility to current Child Nutrition Program regulations, the changes implemented through this final rule are expected to benefit small entities operating meal programs under 7 CFR parts 210, 215, 220, and 226. The impacts are not expected to be significant.

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

Federalism Summary Impact Statement

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

The Department has considered the impact of this final rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section

6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This 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 final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this final 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 or have a disproportionate adverse impact on the protected classes. The Civil Rights Impact Analysis is available for public inspection under the Supporting Documentation tab in docket FNS–2017–0021.

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.

FNS has assessed the impact of this final rule on Indian tribes and determined that this rule does not, to the best of its knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is

¹³ Impact of the 2010 U.S. Healthy, Hunger-Free Kids Act on School Breakfast and Lunch Participation Rates Between 2008 and 2015 Nicole Vaudrin MS, RD, Kristen Lloyd MPH, Michael J. Yedidia Ph.D., MPH, Michael Todd Ph.D., and Punam Ohri-Vachaspati Ph.D., RD.

provided where changes, additions, and modifications identified herein are not expressly mandated by Congress. Tribal representatives were informed about this rulemaking on March 14, 2018.

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 final 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 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)(i)(A), second sentence, remove “ppendix A” and add in its place “appendix A”; and

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

The revisions read as follows:

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

* * * * *
(c) * * *

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

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

Min-max calories (kcal) ^h	550–650	600–700	750–850
Saturated fat (% of total calories) ^h	<10	<10	<10
Sodium Target 2 (mg) ^{h,i}	≤935	≤1,035	≤1,080
Trans fat ^{h,j}	Nutrition label or manufacturer specifications must indicate zero grams of <i>trans</i> fat per serving.		

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

^b One quarter-cup of dried fruit counts as 1/2 cup of fruit; 1 cup of leafy greens counts as 1/2 cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.

^c Larger amounts of these vegetables may be served.

^d This category consists of “Other vegetables” as defined in paragraph (c)(2)(iii)(E) of this section. For the purposes of the NSLP, the “Other vegetables” requirement may be met with any additional amounts from the dark green, red/orange, and beans/peas (legumes) vegetable subgroups as defined in paragraph (c)(2)(iii) of this section.

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

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

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

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

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

¹ Food products and ingredients must contain zero grams of *trans* fat (less than 0.5 grams) per serving.

- * * * * *
- (2) * * *
- (iv) * * *

(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 (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 (1/5) for each day less than 5. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in FNS guidance. At least half of the grains offered weekly must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched.

- * * * * *
- (d) * * *
- (1) * * *

(i) Schools must offer students a variety (at least two different options) of fluid milk. All milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk with higher fat content is not allowed. Low-fat or fat-free lactose-free

and reduced-lactose fluid milk may also be offered. Milk may be unflavored or flavored provided that unflavored milk is offered at each meal service.

- * * * * *
- (f) * * *

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

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

- * * * * *

§ 210.11 [Amended]

■ 3. In § 210.11, in paragraphs (m)(1)(ii), (m)(2)(ii), and (m)(3)(ii), remove 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 citation for part 215 continues to read as follows:

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

§ 215.7a [Amended]

■ 5. In § 215.7a, in paragraph (a)(3), remove the words “from July 1, 2018 through June 30, 2019 (school year 2018–2019)”.

PART 220—SCHOOL BREAKFAST PROGRAM

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

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

■ 7. In § 220.8:

- a. In paragraph (c) introductory text, revise the table; and
- b. Revise paragraphs (c)(2)(iv)(B), (d), and (f)(3).

The revisions read as follows:

§ 220.8 Meal requirements for breakfasts.

- * * * * *
- (c) * * *

Food Components	Breakfast meal pattern		
	Grades K–5	Grades 6–8	Grades 9–12
	Amount of Food ^a per Week (minimum per day)		
Fruits (cups) ^{b,c}	5 (1)	5 (1)	5 (1)
Vegetables (cups) ^{b,c}	0	0	0
Dark green	0	0	0
Red/Orange	0	0	0
Beans and peas (legumes)	0	0	0
Starchy	0	0	0
Other	0	0	0
Grains (oz eq) ^d	7–10 (1)	8–10 (1)	9–10 (1)
Meats/Meat Alternates (oz eq) ^e	0	0	0
Fluid milk (cups) ^f	5 (1)	5 (1)	5 (1)

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

Min-max calories (kcal) ^{g,h}	350–500	400–550	450–600
Saturated fat (% of total calories) ^h	<10	<10	<10
Sodium Target 2 (mg) ^{h,i}	≤485	≤535	≤570
<i>Trans</i> fat ^{h,j}	Nutrition label or manufacturer specifications must indicate zero grams of <i>trans</i> fat per serving.		

^a Food items included in each group and subgroup and amount equivalents. Minimum creditable serving is 1/8 cup.
^b One quarter cup of dried fruit counts as 1/2 cup of fruit; 1 cup of leafy greens counts as 1/2 cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.
^c Schools must offer 1 cup of fruit daily and 5 cups of fruit weekly. Vegetables may be substituted for fruits, but the first two cups per week of any such substitution must be from the dark green, red/orange, beans and peas (legumes) or “Other vegetables” subgroups, as defined in § 210.10(c)(2)(iii) of this chapter.
^d At least half of the grains offered weekly must be whole grain-rich as specified in FNS guidance, and the remaining grain items offered must be enriched. Schools may substitute 1 oz. eq. of meat/meat alternate for 1 oz. eq. of grains after the minimum daily grains requirement is met.
^e There is no meat/meat alternate requirement.
^f All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk may be unflavored or flavored provided that unflavored milk is offered at each meal service.
^g The average daily calories for a 5-day school week menu must be within the range (at least the minimum and no more than the maximum values).

^h Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, *trans* fat, and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent milk fat are not allowed.
ⁱ Sodium Target 1 is effective from July 1, 2014 (SY 2014–2015) through June 30, 2024 (SY 2023–2024). Sodium Target 2 (shown) is effective July 1, 2024 (SY 2024–2025).
^j Food products and ingredients must contain zero grams of *trans* fat (less than 0.5 grams) per serving.

* * * * *
 (2) * * *
 (iv) * * *
 (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 (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 (1/5) for each day less than 5. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in FNS guidance. At least half of the grains offered weekly must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched.

* * * * *
 (d) *Fluid milk requirement.* Breakfast must include a serving of fluid milk as a beverage or on cereal or used in part for each purpose. Schools must offer students a variety (at least two different options) of fluid milk. All fluid milk

must be fat-free (skim) or low-fat (1 percent fat or less). Milk with higher fat content is not allowed. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered. Milk may be unflavored or flavored provided that unflavored milk is offered at each meal service. Schools must also comply with other applicable fluid milk requirements in § 210.10(d)(1) through (4) of this part.

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

* * * * *
PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 8. The authority citation for 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. In paragraphs (a)(1)(iii) and (iv), remove the words “from July 1, 2018, through June 30, 2019 (school year 2018–2019)”;

■ b. Revise the tables in paragraphs (c)(1) through (3).

The revisions read as follows:

§ 226.20 Requirements for meals.

* * * * *
 (c) * * *
 (1) * * *

CHILD AND ADULT CARE FOOD PROGRAM—BREAKFAST

Food components and food items ¹	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 ² (at-risk afterschool programs and emergency shelters)	Adult participants

Select the Appropriate Components for a Reimbursable Meal

Fluid Milk ³	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces.
Vegetables, fruits, or portions of both ⁴ .	1/4 cup	1/2 cup	1/2 cup	1/2 cup	1/2 cup.
Grains (oz eq): ^{5 6 7}					
Whole grain-rich or enriched bread.	1/2 slice	1/2 slice	1 slice	1 slice	2 slices.
Whole grain-rich or enriched bread product, such as biscuit, roll, or muffin.	1/2 serving	1/2 serving	1 serving	1 serving	2 servings.
Whole grain-rich, enriched, or fortified cooked breakfast cereal ⁸ , cereal grain, and/or pasta.	1/4 cup	1/4 cup	1/2 cup	1/2 cup	1 cup.
Whole grain-rich, enriched or fortified ready-to-eat breakfast cereal (dry, cold) ^{8 9} .					
Flakes or rounds	1/2 cup	1/2 cup	1 cup	1 cup	2 cups.
Puffed cereal	3/4 cup	3/4 cup	1 1/4 cup	1 1/4 cup	2 1/2 cup.
Granola	1/8 cup	1/8 cup	1/4 cup	1/4 cup	1/2 cup.

Endnotes:

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

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

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

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

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

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

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

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

⁹ 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 cereal is ¼ cup for children ages 1–2; ½ cup for children ages 3–5; ¾ cup for children ages 6–12, and 1 ½ cups for adult participants.

(2) * * *

CHILD AND ADULT CARE FOOD PROGRAM—LUNCH AND SUPPER

Food components and food items ¹	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 ² (at-risk afterschool programs and emergency shelters)	Adult participants
Select the Appropriate Components for a Reimbursable Meal					
Fluid Milk ³	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces. ⁴
Meat/meat alternates (edible portion as served):					
Lean meat, poultry, or fish	1 ounce	1½ ounces	2 ounces	2 ounces	2 ounces.
Tofu, soy products, or alternate protein products ⁵ .	1 ounce	1½ ounces	2 ounces	2 ounces	2 ounces.
Cheese	1 ounce	1½ ounces	2 ounces	2 ounces	2 ounces.
Large egg	½	¾	1	1	1.
Cooked dry beans or peas	¼ cup	⅜ cup	½ cup	½ cup	½ cup.
Peanut butter or soy nut butter or other nut or seed butters.	2 Tbsp	3 Tbsp	4 Tbsp	4 Tbsp	4 Tbsp.
Yogurt, plain or flavored unsweetened or sweetened ⁶ .	4 ounces or ½ cup.	6 ounces or ¾ cup.	8 ounces or 1 cup	8 ounces or 1 cup	8 ounces or 1 cup.
The following may be used to meet no more than 50% of the requirement:					
Peanuts, soy nuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternates (1 ounce of nuts/seeds = 1 ounce of cooked lean meat, poultry, or fish).	½ ounce = 50% ..	¾ ounce = 50% ..	1 ounce = 50%	1 ounce = 50% ...	1 ounce = 50%.
Vegetables ⁷	⅓ cup	¼ cup	½ cup	½ cup	½ cup.
Fruits ^{7 8}	⅓ cup	¼ cup	½ cup	½ cup	½ cup.
Grains (oz eq): ^{9 10}					
Whole grain-rich or enriched bread.	½ slice	½ slice	1 slice	1 slice	2 slices.
Whole grain-rich or enriched bread product, such as biscuit, roll, or muffin.	½ serving	½ serving	1 serving	1 serving	2 servings.
Whole grain-rich, enriched, or fortified cooked breakfast cereal ¹¹ , cereal grain, and/or pasta.	¼ cup	¼ cup	½ cup	½ cup	1 cup.

Endnotes:

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

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

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

⁴ A serving of fluid milk is optional for suppers served to adult participants.

⁵ Alternate protein products must meet the requirements in Appendix A to part 226 of this chapter.

- ⁶Yogurt must contain no more than 23 grams of total sugars per 6 ounces.
- ⁷Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.
- ⁸A 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.
- ⁹At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards the grains requirement.
- ¹⁰Beginning October 1, 2019, ounce equivalents are used to determine the quantity of the creditable grain.
- ¹¹Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

(3) * * *

CHILD AND ADULT CARE FOOD PROGRAM—SNACK

Food components and food items ¹	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 ² (at-risk afterschool programs and emergency shelters)	Adult participants
Select Two of the Five Components for a Reimbursable Meal					
Fluid Milk ³	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces.
Meat/meat alternates (edible portion as served):					
Lean meat, poultry, or fish	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Tofu, soy products, or alternate protein products ⁴ .	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Cheese	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Large egg	½	½	½	½	½.
Cooked dry beans or peas	⅓ cup	⅓ cup	¼ cup	¼ cup	¼ cup.
Peanut butter or soy nut butter or other nut or seed butters.	1 Tbsp	1 Tbsp	2 Tbsp	2 Tbsp	2 Tbsp.
Yogurt, plain or flavored unsweetened or sweetened ⁵ .	2 ounces or ¼ cup.	2 ounces or ¼ cup.	4 ounces or ½ cup.	4 ounces or ½ cup.	4 ounces or ½ cup.
Peanuts, soy nuts, tree nuts, or seeds.	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Vegetables ⁶	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Fruits ⁶	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Grains (oz eq): ^{7 8}					
Whole grain-rich or enriched bread.	½ slice	½ slice	1 slice	1 slice	1 slice.
Whole grain-rich or enriched bread product, such as biscuit, roll, or muffin.	½ serving	½ serving	1 serving	1 serving	1 serving.
Whole grain-rich, enriched, or fortified cooked breakfast cereal ⁹ , cereal grain, and/or pasta.	¼ cup	¼ cup	½ cup	½ cup	½ cup.
Whole grain-rich, enriched, or fortified ready-to-eat breakfast cereal (dry, cold) ^{9 10} .					
Flakes or rounds	½ cup	½ cup	1 cup	1 cup	1 cup.
Puffed cereal	¾ cup	¾ cup	1¼ cup	1¼ cup	1¼ cup.
Granola	⅓ cup	⅓ cup	¼ cup	¼ cup	¼ cup.

ENDNOTES:

- ¹Select two of the five components for a reimbursable snack. Only one of the two components may be a beverage.
- ²Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs.
- ³Must 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. 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.
- ⁴Alternate protein products must meet the requirements in Appendix A to Part 226 of this chapter.
- ⁵Yogurt must contain no more than 23 grams of total sugars per 6 ounces.
- ⁶Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.
- ⁷At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards the grains requirement.
- ⁸Beginning October 1, 2019, ounce equivalents are used to determine the quantity of the creditable grains.
- ⁹Breakfast 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).
- ¹⁰Beginning 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 cereal is ¼ cup for children ages 1–2; ⅓ cup for children ages 3–5; and ¾ cup for children ages 6–12, children ages 13–18, and adult participants.

* * * * *

Dated: December 6, 2018.

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

[FR Doc. 2018-26762 Filed 12-11-18; 8:45 am]

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NUCLEAR REGULATORY COMMISSION**10 CFR Part 72**

[NRC-2018-0221]

RIN 3150-AK18

List of Approved Spent Fuel Storage Casks: Holtec International HI-STORM 100 Multipurpose Canister Cask System, Certificate of Compliance No. 1014, Amendment Nos. 11 and 12**AGENCY:** Nuclear Regulatory Commission.**ACTION:** Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the Holtec International HI-STORM 100 Multipurpose Canister Cask System (HI-STORM 100 System) listing within the “List of approved spent fuel storage casks” to include Amendment Nos. 11 and 12 to Certificate of Compliance No. 1014. Amendment Nos. 11 and 12 revise multiple items in the Technical Specifications for multipurpose canister models listed under Certificate of Compliance No. 1014; most of these revisions involve changes to the authorized contents. In addition, Amendment No. 11 makes several other editorial changes.

DATES: This direct final rule is effective February 25, 2019, unless significant adverse comments are received by January 11, 2019. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register** (FR). Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the FR.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2018-0221. Address

questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:*

Rulemaking.Comments@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Yen-Ju Chen, Office of Nuclear Material Safety and Safeguards; telephone: 301-415-1018; email: Yen-Ju.Chen@nrc.gov or Vanessa Cox, Office of Nuclear Material Safety and Safeguards; telephone: 301-415-8342; email: Vanessa.Cox@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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I. Obtaining Information and Submitting Comments*A. Obtaining Information*

Please refer to Docket ID NRC-2018-0221 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2018-0221.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

- *NRC’s PDR:* You may examine and purchase copies of public documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC-2018-0221 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

This rule is limited to the changes contained in Amendment Nos. 11 and No. 12 to Certificate of Compliance No. 1014 and does not include other aspects of the Holtec International HI-STORM 100 System design. The NRC is using the “direct final rule procedure” to issue this amendment because it represents a limited and routine change to an existing Certificate of Compliance that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendments to the rule will become