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Child and Adult Care Food Program: Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010; Final Rule

DEPARTMENT OF AGRICULTURE**Food and Nutrition Service****7 CFR Parts 210, 215, 220, and 226**

[FNS–2011–0029]

RIN 0584–AE18

Child and Adult Care Food Program: Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010**AGENCY:** Food and Nutrition Service, USDA.**ACTION:** Final rule.

SUMMARY: This final rule updates the meal pattern requirements for the Child and Adult Care Food Program to better align them with the Dietary Guidelines for Americans, as required by the Healthy, Hunger-Free Kids Act of 2010. This rule requires centers and day care homes participating in the Child and Adult Care Food Program to serve more whole grains and a greater variety of vegetables and fruit, and reduces the amount of added sugars and solid fats in meals. In addition, this final rule supports mothers who breastfeed and improves consistency with the Special Supplemental Nutrition Program for Women, Infants, and Children and with other Child Nutrition Programs. Several of the changes are extended to the National School Lunch Program, School Breakfast Program, and Special Milk Program. These changes are based on the Dietary Guidelines for Americans, science-based recommendations made by the National Academy of Medicine (formerly the Institute of Medicine of the National Academies), cost and practical considerations, and stakeholder's input. This is the first major revision of the Child and Adult Care Food Program meal patterns since the Program's inception in 1968. These improvements to the meals served in the Child and Adult Care Food Program are expected to safeguard the health of young children by ensuring healthy eating habits are developed early, and improve the wellness of adult participants.

DATES: *Effective Date:* This rule is effective June 24, 2016.*Implementation Date:* Compliance with the provisions of this rule must begin October 1, 2017, except as otherwise noted in the preamble under **SUPPLEMENTARY INFORMATION.****FOR FURTHER INFORMATION CONTACT:**

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SUPPLEMENTARY INFORMATION:**I. Background**

The Healthy, Hungry-Free Kids Act of 2010 (HHFKA), Public Law 111–96, amended section 17 of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1766, to require the U.S. Department of Agriculture (USDA), through the Child and Adult Care Food Program (CACFP), to promote health and wellness in child care settings via guidance and technical assistance that focuses on nutrition, physical activity, and limiting electronic media use. Specifically, it required USDA's Food and Nutrition Service (FNS) to review the CACFP meal patterns and make them more consistent with: (a) The most recent version of the Dietary Guidelines for Americans (Dietary Guidelines), (b) the most recent and relevant nutrition science, and (c) appropriate authoritative scientific agency and organization recommendations. Revisions to the CACFP meal patterns are to occur no less frequently than every 10 years. As the Dietary Guidelines and nutrition science evolve, FNS will continue to provide guidance to support CACFP's nutrition and wellness goals.

FNS commissioned the National Academy of Medicine (NAM), formerly the Institute of Medicine of National Academies, to review the CACFP meal patterns and provide recommendations that would improve the nutritional quality of the meals and align them with the most recent version of the Dietary Guidelines. When making recommendations pertaining to infants, the NAM considered recommendations from the American Academy of Pediatrics (AAP), the leading authority for children's developmental and nutritional needs from birth through 23 months, because the Dietary Guidelines does not currently provide recommendations for children under the age of two. In November 2010, the NAM issued the report "Child and Adult Care Food Program: Aligning Dietary Guidance for All" (<http://www.iom.edu/Reports/2010/Child-and-Adult-Care-Food-Program-Aligning-Dietary-Guidance-for-All.aspx>). In developing a proposed rule, FNS relied primarily on the recommendations in the NAM's report and the 2010 Dietary Guidelines. FNS also took into consideration stakeholder input and recognized that changes to the meal patterns must be sensitive to cost and practical application.

On January 15, 2015, FNS published a proposed rule in the **Federal Register**

(80 FR 2037) to update and align the CACFP meal patterns. The rule proposed changes that would support mothers who breastfeed, increase the availability and variety of vegetables and fruits, offer more whole grains, and lower the consumption of added sugar and solid fats. Additionally, the rule included best practices that center and day care home providers may choose to adopt to further improve the nutritional quality of meals served. To better align the Child Nutrition Programs (CNP), the rule also proposed revising the School Breakfast Program (SBP) and the National School Lunch Program (NSLP) meal patterns for infants and children under 5 years of age to reflect the respective proposed meal patterns for CACFP, as well as revising the fluid milk requirements and approved non-dairy milk substitutes for the Special Milk Program (SMP). The proposed meal pattern revisions were designed to be cost neutral as no additional meal reimbursement was provided by the HHFKA to implement the changes.

FNS provided an extensive public comment period, from January 15, 2015 through May 27, 2015, to obtain public comments on the impact and effectiveness of the proposed changes to the CACFP meal patterns. FNS received 7,755 public comments on the proposed rule. Of those, 6,508 comments were copies of form letters related to 32 different mass mail campaigns. The remaining comments included 1,231 unique submissions and 16 duplicate submissions. The comments were analyzed using computer software that facilitated the identification of the key issues addressed by the commenters.

Although FNS considered all timely comments, this preamble focuses on the most frequent comments and those that influenced revisions to the proposed rule. To view all public comments on the proposed rule go to www.regulations.gov and search for public submissions under docket FNS–2011–0029. A Summary of Public Comments is available as supporting material under the docket folder summary. FNS greatly appreciates the valuable comments provided. These comments have been essential to developing a final rule that is expected to enhance the quality of meals served in CACFP that will help children build healthy habits, and improve the wellness of adult participants.

Along with consideration of the comments, the development of the meal pattern requirements in this final rule was informed by the 2010 Dietary Guidelines. The recent publication of the 2015–2020 Dietary Guidelines necessitated a review of these

requirements to ensure the requirements remain consistent with the updated Dietary Guidelines. Based upon FNS' thorough review of the 2015–2020 Dietary Guidelines, the requirements set forth in this final rule remain consistent with the updated Dietary Guidelines.

II. Public Comments and FNS Response

FNS received comments representing diverse national, State, and local stakeholders, including advocacy organizations; health care associations; food industry representatives; trade associations; CACFP sponsoring organizations and their associations; CACFP providers (throughout this preamble, the term “providers” refers to centers and day care homes that operate the Program); State administering agencies; local government agencies; dietitians and nutritionists; parents and guardians; and many other interested groups and individuals. Overall, commenters were generally more supportive of the proposed rule than opposed.

Comments from advocacy organizations, health care associations, State agencies, and sponsor associations generally favored the proposed rule. These commenters recognized the need to update the CACFP meal patterns to address the nutrition gaps in children’s diets, including a lack of vegetables and fruits, and issues of hunger and obesity. Many commenters supported the rule’s support of breastfeeding, emphasis on vegetables and fruit, increase in whole grains, and decrease in added sugars.

Additionally, many of these commenters suggested ways to strengthen the proposed rule, citing CACFP’s role in promoting healthy eating and providing nutritious meals and snacks to children.

While many sponsoring organizations and their associations and providers generally agreed with the proposed changes to the meal patterns, these commenters expressed strong concerns regarding cost, increased recordkeeping burden, and the period of time afforded for implementation. Program operators emphasized that implementation of the final rule will require lead time, phased-in changes, advanced training from FNS, and grace periods.

Comments from food industry representatives and trade associations also supported improving meals served in CACFP, but voiced concerns that some aspects of the proposed rule would limit food choices, increase costs, and prohibit serving nutritious foods that may be more palatable to children. The proposed provisions related to the prohibition on frying, sugar limits on flavored milk and yogurt, and best practices regarding processed meats and juice prompted most of these concerns.

FNS took into consideration the different views expressed by commenters, especially those responsible for the oversight and day to day operation of CACFP, and seeks to be responsive to the concerns they raised. At the same time, and as discussed below, FNS is mindful that the 2008 Feeding Infants and Toddlers Study

(FITS),¹ a comprehensive assessment of food and nutrient intakes of infants and toddlers, and additional research^{2 3} shows taste preferences and dietary habits are formed early in life. This makes CACFP a unique and critical setting for establishing healthy practices at an early age that will protect children’s health into adulthood. Therefore, this final rule makes significant improvements to the nutritional quality of meals served in the CACFP, and ensures successful implementation without increasing net costs to CACFP centers and day care homes.

FNS recognizes that there may be times when a provider would like to serve foods or beverages that are not reimbursable, such as on a child’s birthday or another special occasion. Providers still have the flexibility to serve non-reimbursable foods and beverages of their choosing. However, FNS encourages providers to use their discretion when serving non-reimbursable foods and beverages, which may be higher in added sugar, solid fats, and sodium, to ensure children and adult participants’ nutritional needs are met.

The tables below outline the requirements established by this final rule, as compared to the proposed requirements. A complete comparison of the proposed rule and the final rule can be found in the supporting documents of the rule docket, FNS–2011–0029, at www.regulations.gov.

INFANT MEAL PATTERN

[Comparison of proposed rule to final rule changes in requirements]

Provision	Proposed rule	Final rule
Solid foods	Solid foods are introduced to infants at 6 months of age	Solid foods are introduced at 6 months of age with the flexibility to introduce solid foods before and after 6 months when requested by a parent or guardian.
Meat and Meat Alternates ...	Eliminates the option to serve cheese, cottage cheese, cheese food, or spread.	Allows cheese, cottage cheese, and yogurt.

CHILD AND ADULT MEAL PATTERN

[Comparison of Proposed Rule to Final Rule Changes in Requirements]

Provision	Proposed Rule	Final Rule
Fruit and Vegetable Juice	Allows 100% juice to comprise the entire vegetable or fruit component at all meals.	Limits service of juice to once per day.
Grains	Breakfast cereals must conform to the WIC breakfast cereal nutrient requirements.	Requires breakfast cereals to contain no more than 6 grams of sugar per dry ounce. Starting October 1, 2019, ounce equivalents are used to determine the quantity of creditable grains.

¹ Siega-Riz, A.M., Deming, D.M., Reidy, K.C., Fox, M.K., Condon, E., Briefel, R.R. (2010) Food consumption patterns of infants and toddlers. *Journal of the Academy of Nutrition and Dietetics*, 110 (12), pages S38–S51. <http://dx.doi.org/10.1016/j.jada.2010.09.001>.

² Liem, D.G., Graaf, C. (2004). Sweet and sour preferences in young children and adults: Role of repeated exposure. *Physiology & Behavior*, 83 (3), pages 421–429. doi:10.1016/j.physbeh.2004.08.028.

³ Skinner, J.D., Carruth, B.R., Bounds, W., Ziegler, P.J. (2002). Children’s food preferences. *Journal of the Academy of Nutrition and Dietetics*, 102 (11), pages 1638–1647. [http://dx.doi.org/10.1016/S0002-8223\(02\)90349-4](http://dx.doi.org/10.1016/S0002-8223(02)90349-4).

CHILD AND ADULT MEAL PATTERN—Continued
 [Comparison of Proposed Rule to Final Rule Changes in Requirements]

Provision	Proposed Rule	Final Rule
Meat and Meat Alternates ...	Allows a meat or meat alternate to be served in place of up to one-half of the grains requirement at breakfast.	Allows meat and meat alternates to be served in place of the entire grains requirement at breakfast a maximum of three times per week.
Yogurt Sugar Limit	C1: requires yogurt to contain no more than 30 grams of sugar per 6 ounces; or C2: recommend as a best practice that yogurt contain no more than 30 grams of sugar per 6 ounces.	Requires yogurt to contain no more than 23 grams of sugar per 6 ounces.
Flavored Milk Sugar Limit	Children 2 through 4 <ul style="list-style-type: none"> A1: flavored milk is prohibited; or A2: requires flavored milk to contain no more than 22 grams of sugar per 8 fluid ounces. Children 5 years old and older, and adults <ul style="list-style-type: none"> B1: requires flavored milk to contain no more than 22 grams of sugar per 8 fluid ounces; or B2: recommend as a best practice that flavored milk contain no more than 22 grams of sugar per 8 fluid ounces. 	(A1) Prohibits flavored milk for children 2 through 5. Recommends as a best practice that flavored milk contain no more than 22 grams of sugar per 8 fluid ounces for children 6 years old and older, and adults (B2).
Water	Requires potable drinking water to be available to children upon their request throughout the day.	Requires potable drinking water to be offered to children throughout the day and available to children upon their request throughout the day.

Along with updating the meal pattern requirements, the proposed rule addressed optional best practices. While the best practices are not mandatory, they are guidelines to further assist centers and day care homes wishing to take the initiative to improve the

nutritional value of meals even more than required by this final rule. In the proposed rule FNS would have added the best practices to the regulatory text. However, in response to comments, FNS will address the best practices via policy guidance instead. Below is a table that

summarizes the proposed rule's and the final rule's recommended best practices. The recommended best practices outlined in this final rule will be concretized in policy guidance. As nutrition science evolves, FNS will revisit the best practice guidance.

BEST PRACTICES
 [Optional]

	Proposed rule	Final rule
	Part of codified text	To be addressed through policy guidance, not through rulemaking.
Infants	Support mothers who choose to breastfeed their infants by encouraging mothers to supply breastmilk for their infants while in day care and providing a quiet, private area in which mothers who come to the day care facility can breastfeed.	Support mothers who choose to breastfeed their infants by encouraging mothers to supply breastmilk for their infants while in day care and offering a quiet, private area that is comfortable and sanitary in which mothers who come to the center or day care home can breastfeed.
Vegetables and Fruit	<ul style="list-style-type: none"> Limit the consumption of fruit juice to no more than one serving per day for children one and older. Make at least one of the two required components of snack a fruit or vegetable. Provide at least one serving each of dark green vegetables, red and orange vegetables, and legumes once per week. 	<ul style="list-style-type: none"> Make at least one of the two required components of snack a vegetable or fruit. Serve a variety of fruits and choose whole fruits (fresh, canned, frozen, or dried) more often than juice. Provide at least one serving each of dark green vegetables, red and orange vegetables, beans and peas (legumes), starchy vegetables, and other vegetables once per week.
Grains	Provide at least two servings of whole grain-rich grains per day.	Provide at least two servings of whole grain-rich grains per day.
Meat and Meat Alternates ...	<ul style="list-style-type: none"> Serve only lean meats, nuts, and legumes Limit the service of processed meats to no more than once per week, across all eating occasions. Serve only natural cheeses 	<ul style="list-style-type: none"> Serve only lean meats, nuts, and legumes. Limit the service of processed meats to no more than one serving per week. Serve only natural cheeses and choose low-fat or reduced-fat cheeses.
Milk	Serve only unflavored milk to all participants	<ul style="list-style-type: none"> Serve only unflavored milk to all participants. If flavored milk is served to children 6 years old and older or to adults, use the Nutrition Facts Label to select and serve flavored milk that contains no more than 22 grams of sugar per 8 fluid ounces, or the flavored milk with the lowest amount of sugar if flavored milk within the sugar limit is not available. Serve water as a beverage when serving yogurt in place of milk for adults.

BEST PRACTICES—Continued
[Optional]

	Proposed rule	Final rule
Additional Best Practices	Limit serving fried and pre-fried foods to no more than one serving per week, across all eating occasions.	<ul style="list-style-type: none"> • Incorporate seasonal and locally produced foods into meals. • Limit serving purchased pre-fried foods to no more than one serving per week. • Avoid serving non-creditable foods that are sources of added sugars, such as sweet toppings (e.g., honey, jam, syrup), mix-in ingredients sold with yogurt (e.g., honey, candy or cookie pieces), and sugar-sweetened beverages (e.g., fruit drinks or sodas). • In adult day care centers, offer and make water available to adults upon their request throughout the day.

The following is a summary of the key public comments on the proposed rule and FNS's response. Additional comments that are unrelated to the specific provisions of the rule (*e.g.*, nutrition standards in the NSLP and SBP, physical activity, and electronic media use) are addressed in the Summary of Public Comments. For a more detailed discussion of the public comments see the Summary of Public Comments, docket FNS–2011–0029, posted online at www.regulations.gov.

A. Infant Meal Pattern

1. Infant Age Groups and Introduction of Solid Foods

Proposed Rule: Under 7 CFR 226.20(b), the infant age groups would be consolidated from three into two age groups, (birth through the end of 5 months and the beginning of 6 through the end of 11 months) and the introduction of solid foods would begin at 6 months of age.

Comments: Many commenters, including health care associations, nutritionists, advocacy organizations, State agencies, a Federal agency, a professional association, a pediatric health care provider, sponsoring organizations, and providers, supported the revised infant age groups because they align with the infant age groups in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and with recommendations from the AAP to exclusively breastfeed for the first six months of life. Several other commenters stated that having two age groups instead of three would simplify the recordkeeping process for providers.

However, some commenters provided alternative infant age groups. A State and a local government agency, an advocacy organization, dietitians and nutritionists, sponsoring organizations, and providers expressed a preference for

the current age groups. These commenters expressed concern that the proposed age groups do not allow for solid foods to be gradually introduced to infants when they are developmentally ready, which may be before or after 6 months of age. Because the proposed minimum serving sizes for 6 through 11 month olds required some amount of solid foods to be served, advocacy organizations, a health care association, State agencies, and sponsoring organizations recommended allowing for the gradual introduction of solid foods by revising the minimum required serving size ranges of the solid food components in the infant meal patterns be revised to start at zero tablespoons or ounces (*e.g.*, “0–X tablespoons” or “0–X ounces”), to reflect that some infants will not yet be ready to consume solid foods at 6 months of age.

While some commenters supported the introduction of solid foods at 6 months stating that it will encourage and support breastfeeding, most commenters addressing the issue, including providers, dietitians and nutritionists, sponsoring organizations, State agencies, advocacy organizations, health care organizations, and individuals, stated that the proposal was inconsistent with AAP's recommendation to introduce solid foods at approximately 6 months of age, not exactly at 6 months of age. These commenters asserted that requiring solid foods be introduced at 6 months of age may be burdensome and onerous for providers and, therefore, urged FNS to provide flexibility to account for the unique development of each individual infant.

While it was not proposed, many commenters that discussed the introduction of solid foods recommended that providers not be required to obtain a medical statement if a parent chooses to introduce solid

food to their infant prior to 6 months of age. Rather, commenters felt that solid foods should be introduced based on the request of the parent or guardian, or based on recommendations from the infant's pediatrician. Commenters suggested that parents or guardians currently tell providers when the introduction of solid foods has begun.

FNS Response: This final rule establishes the infant age groups as 0 through the end of 5 months and the beginning of 6 through the end of 11 months, as proposed. FNS agrees that the new age groups will encourage exclusive breastfeeding for the first six months of life. It is important to delay the introduction of solid foods until around 6 months of age to meet the energy and nutritional needs of infants, and because infants are typically not physiologically developed to consume solid foods until midway through the first year of life. In addition, the AAP found that the introduction of solid foods prior to 4 months of age is consistently identified as contributing to later overweight status and obesity. Therefore, having two infant age groups, instead of the current three age groups, is consistent with AAP's recommendations and with the WIC program, and is simpler for providers.

FNS recognizes commenters' concerns regarding the individual dietary needs and developmental readiness for solid foods of each infant and that the AAP recommends introducing solid foods around 6 months of age, not directly at 6 months of age. Therefore, this final rule allows for the introduction of solid foods before or after 6 months of age if it is determined developmentally appropriate for the infant. FNS recommends as best practices that CACFP providers be in constant communication with infants' parents or guardians about when and what solid foods should be introduced, and that

parents or guardians request in writing when solid foods should be introduced. This process will be further articulated in forthcoming FNS guidance. In addition, FNS recommends that parents and guardians consult with the infant's physician when considering introducing solid foods. FNS agrees that this flexibility is needed to better accommodate infants' varying developmental readiness and to be more consistent with the AAP's recommendation to introduce appropriate solid foods around 6 months of age.

Along with providing flexibility in the timing of introducing solid foods, FNS understands that solid foods need to be introduced gradually to follow infants' oral motor skills development and acceptance of new tastes and textures. Consequently, the serving size ranges for the required solid food components for infants 6 through 11 months of age in this final rule start at zero (e.g., "0-X" ounces or tablespoons), as suggested by commenters. All the serving sizes for solid foods in the current infant meal pattern and this final rule are ranges to address infants' varying dietary needs. However, solid food components are required for infants 6 through 11 months old only when they are developmentally ready to accept them. FNS will provide additional guidance on the introduction of solid foods. Accordingly, this final rule codifies the proposed infant age groups under 7 CFR 226.20(b)(4) and the timing of introducing solid foods, with some modifications, under 7 CFR 226.20(b)(3) through (5).

2. Breastfeeding

Proposed Rule: The proposed rule at 7 CFR 226.20(b)(2) would allow for reimbursement of meals when the mother directly breastfeeds her infant at the child care center or home.

Comments: The majority of commenters (1,050 form letters) supported allowing reimbursement when a mother directly breastfeeds her infant at the center or day care home. These commenters recognized the health benefits of breastfeeding, and believed that the provision will encourage centers and day care homes to accommodate breastfeeding. Some commenters requested clarification that the provision applies to meals for infants 6 months old and older. A few commenters stated that the allowance should be expanded to include reimbursement for expressed breastmilk because mothers may not be able to come to the center or day care home throughout the day. The few commenters that opposed the provision

expressed concern that it would create integrity issues related to meal counting and would be difficult to monitor.

FNS Response: There are numerous benefits to breastfeeding and the AAP recommends breastmilk as the optimal source of nutrients through the first year of life. Infants who are breastfed have a lower risk of respiratory infections, diarrhea, pneumonia, and ear infections, as well as later asthma, sudden infant death syndrome, and obesity. To strengthen CACFP's support and encouragement of breastfeeding, this final rule allows providers to be reimbursed for meals when the mother directly breastfeeds her infant at the center or day care home, for infants birth through 11 months of age. This is consistent with other FNS efforts, such as in WIC, which has historically promoted breastfeeding to all pregnant women as the optimal infant feeding choice. FNS wishes to clarify that providers already may be reimbursed when parents or guardians choose to decline the offered infant formula and supply expressed breastmilk. In addition, expressed breastmilk is considered an acceptable fluid milk substitute for children of at any age in CACFP. Accordingly, this final rule adopts the proposed rule breastfeeding allowances and codifies them under 7 CFR 226.20(b)(2).

3. Vegetables and Fruits

Proposed Rule: The proposed rule at 7 CFR 226.20(b)(4)(ii)(B) would require a whole vegetable or fruit be served at snack for infants 6 through 11 months old and would eliminate fruit juice from being served.

Comments: Advocacy organizations, health care associations, a professional association, State and local government agencies, and providers welcomed the addition of vegetables and fruit at snack for infants 6 through 11 months of age. They asserted that introducing vegetables and fruits to infants is an important step towards creating healthy eating habits in the future and will increase exposure to vegetables and fruit, as well as the consumption and acceptance of new foods.

Many other commenters requested FNS provide some flexibility around serving vegetables and fruits at infant snack to promote increased exposure to and consumption of vegetables and fruits without encouraging over-feeding by requiring multiple components. A State agency, sponsoring organizations, and providers suggested vegetables and fruit be gradually introduced to infants as they become developmentally ready. Other commenters, including advocacy organizations, recommended requiring

either a vegetable or a fruit, or bread or cracker or ready-to-eat cereal, or both.

The majority of commenters, including advocacy organizations, a professional association, nutritionists, State agencies, a pediatric health care provider, sponsoring organizations, and providers, expressed support to disallow the service of fruit juice to infants. Commenters explained that this elimination would improve infant nutrition, decrease the risk of dental caries and malnutrition, and is consistent with the NAM's recommendation to increase access to whole vegetables and fruits.

Those opposing the elimination of fruit juice from the infant meal pattern included trade associations, a member of the food industry, and some providers. These commenters described that AAP's current guideline allows 100 percent juice for infants that are able to hold a cup (approximately 6 months old or older). Along those lines, a trade association asserted that no research or current expert guidance supports the elimination of juice from the diets of infants 6 months old and older, and that 100 percent fruit juice provides valuable and beneficial nutrients.

FNS Response: While commenters had different opinions on whether vegetables and fruits should be required at snack for infants 6 through 11 months of age, a goal of this meal pattern revision is to help young children establish healthy eating habits, and the earlier the start the better. The 2008 FITS found that dietary habits are fairly established by 2 years of age and that a substantial proportion of infants do not consume any vegetables or fruit in a given day. Offering a variety of nutrient dense foods, including whole vegetables and fruits, helps promote good nutritional status in infants. FNS understands that introducing whole vegetables and fruits early on in a child's life is essential to building healthy habits and that the AAP recommends serving infants a variety of foods, including an increased amount of vegetables and fruits. Therefore, this final rule requires whole vegetables and fruits to be served at snack for infants 6 through 11 months of age. FNS wants to emphasize, though, that, as discussed above, solid food components for infants 6 through 11 months of age are only required when the infant is developmentally ready to accept them.

Similarly, this final rule maintains the proposal to eliminate fruit juice from the infant meal pattern. This is consistent with the NAM's recommendation and with the American Heart Association's Healthy Way to Grow Program's recommendation of no

juice before age one. Accordingly, this final rule implements the proposed vegetable and fruit requirements and codifies them under 7 CFR 226.20(b)(4)(ii).

4. Grains

Proposed Rule: The proposed rule at 7 CFR 226.20(b)(4)(ii)(B) would allow ready-to-eat cereals as a grain at snack for 6 through 11 month old infants.

Comments: Most commenters that discussed allowing ready-to-eat cereal for infants, including State agencies, a nutritionist, and a sponsoring organization, and providers, expressed support for allowing ready-to-eat cereals as a grain option for older infants at snack. A provider stated that the additional grain option offers needed flexibility, especially for special diets. To help reduce infants' consumption of added sugars, some commenters, including a State agency and nutritionist, noted that the sugar content of ready-to-eat cereals served to infants should be limited to 6 grams of sugar or less per serving, similar to ready-to-eat cereals served to children and adults. Others commented that ready-to-eat cereals served to infants should meet all the WIC breakfast cereal requirements and be whole grain-rich. An advocacy organization recommended that only iron-fortified infant cereals should be served to infants. In contrast, some providers cautioned that ready-to-eat cereals may be a choking hazard.

FNS Response: This final rule allows ready-to-eat cereals to be served as a grain at snack for infants 6 through 11 months of age. While the AAP and NAM recommend infant cereals, FNS recognizes that ready-to-eat cereals are already being served and many CACFP stakeholders support allowing ready-to-eat cereals to be part of the infant meal pattern. However, FNS understands that some ready-to-eat cereals may be a choking hazard and wants to remind CACFP providers that foods served to infants must be of a texture and a consistency that are appropriate for the age and development of the infant being fed. In response to commenters' concern regarding the sugar content in ready-to-eat cereals, FNS wants to clarify that ready-to-eat cereals served to infants are subject to the same sugar limit (no more than 6 grams of sugar per dry ounce) as ready-to-eat cereals served to other age groups. See the section *WIC breakfast cereal nutrient requirements* below for more information on the breakfast cereal sugar limit. Accordingly, this final rule implements the proposed rule's grains allowance at infant snack and codifies it under 7 CFR 226.20(b)(4)(ii)(B).

5. Meat and Meat Alternates

Proposed Rule: The proposed rule at 7 CFR 226.20(b)(4)(ii)(A) would eliminate the option to serve cheese, cottage cheese, or cheese food or spread to infants and would continue to prohibit serving yogurt to infants.

Comments: A couple of State agencies, several advocacy organizations, a health care association, a professional association, a pediatric health care provider, and providers expressed support for eliminating the option to serve cheese and other cow's milk products to infants. An individual observed that this restriction was consistent with the NAM's recommendation to delay the introduction of cow's milk products until after one year of age.

A larger portion of commenters, including State agencies, advocacy organizations, health care associations, a professional association, sponsoring organizations and their associations, and providers, voiced opposition to restricting cow's milk products for older infants. Several commenters highlighted that the AAP's recommendation to restrict cow's milk until one year of age does not discuss cow's milk products, such as cheese. A health care association affirmed that infants should eat foods from all food groups by 7 or 8 months of age and saw no reason to not allow small quantities of non-liquid milk-based foods, such as cheese and cottage cheese, for older infants. A State agency cited guidance from WIC and sample menus from the AAP that support introducing low-lactose foods, such as yogurt, to infants that are developmentally ready for those foods. An advocacy organization and sponsoring organizations and their associations suggested cheese, cottage cheese, and yogurt be allowed, and cheese foods and cheese spreads be prohibited because they are highly processed and high in sodium.

FNS Response: This final rule modifies the proposed rule to allow cheese, cottage cheese, and yogurt as allowable meat alternates for infants 6 through 11 months of age. FNS acknowledges that cheese, cottage cheese, and yogurt are good sources of protein and are often served to infants, as developmentally appropriate. In addition, FNS agrees that the AAP's policy recommendation to restrict cow's milk prior to one year of age does not extend to cow's milk products. Rather, the AAP encourages infants to consume foods from all food groups to meet infants' nutritional needs and allowing cheese, cottage cheese, and yogurt is consistent with the WIC food packages

for infants. FNS believes it is important to follow the AAP's recommendation because they are the leading authority for children's developmental and nutritional needs from birth through 23 months. In addition, USDA's Nutrient Data Laboratory shows cheese food and cheese spreads are generally higher in sodium than regular cheeses or cottage cheese, as commenters mentioned. Because eating patterns are developed very young, and to better align with the AAP's recommendations, which advises caregivers to choose products lower in sodium, this final rule does not allow the service of cheese foods or cheese spreads under the infant meal pattern.

This final rule also allows whole eggs to credit towards the meat alternate component of the infant meal pattern. Previously, only egg yolks were allowed due to concerns with developing food allergies when infants are exposed to the protein in the egg white. However, AAP recently concluded that there is no convincing evidence to delay the introduction of foods that are considered to be major food allergens, including eggs. Therefore, this final rule allows whole eggs as a meat alternate for infants 6 through 11 months of age. Allowing the whole egg is consistent with the NSLP and SBP. Accordingly, this final rule implements the allowance of cheese, cottage cheese, yogurt, and whole eggs as meat alternates in the infant meal pattern and codifies it under 7 CFR 226.20(b)(4)(ii)(A) and (b)(5).

B. Child and Adult Meal Patterns

1. Age Groups

Proposed Rule: The proposed rule would add a fourth age group for older children (13 through 18 year olds) at 7 CFR 226.20(c).

Comments: Various commenters (120 comments), including State agencies, a pediatric health care provider, providers, nutritionists, and other individuals, supported the addition of a fourth age group. These commenters agreed that the fourth age group appropriately recognizes the nutritional needs of adolescents and is more consistent with the NSLP and SBP age groups. Many other commenters, including a professional association, a State agency, and providers, supported the fourth age group if it applied only to at-risk afterschool programs. Some of these commenters asked if the fourth age group would allow providers to be reimbursed for meals served to their own children 12 years old and older.

In opposition to the proposed meal patterns for this age group (400 comments; 340 form letters), State agencies, a union, advocacy groups,

sponsoring organizations, and providers commented that the fourth age group would be confusing to providers and unnecessary because it follows the same meal pattern requirements as the 6 through 12 year old age group. They pointed out that the nutritional needs of an 18 year old vary greatly from those of a 6 year old. Consequently, some commenters felt that a separate meal pattern and an increase in reimbursement for the larger portion sizes are needed for a 13 through 18 year old age group. A few commenters added that including a fourth age group could be an administrative burden and require changes to databases and reporting systems.

FNS Response: This final rule establishes the child and adult age groups as 1 through 2 year olds, 3 through 5 year olds, 6 through 12 year olds, 13 through 18 year olds, (for at-risk afterschool programs and emergency shelters), and adults. The addition of the fourth age group (13 through 18 year olds) reflects the characteristics of the population served in CACFP, and in particular, those participating in at-risk afterschool programs and emergency shelters.

FNS recognizes that the 13 through 18 year old age group may cause some confusion. To help clarify, the meal pattern charts clearly indicate that the 13 through 18 year old age group applies to at-risk afterschool programs and emergency shelters participating in CACFP. For example, a child care provider may not claim reimbursement for meals served to his or her own children that are over the age of 12. FNS understands that the addition of the 13 through 18 year old age group may create some administrative burdens. However, FNS expects these to be small and temporary because there are no Federal administrative requirements to keep records of which age groups are served meals.

Meal reimbursements are based on the type of meal served (breakfast, lunch, supper, or snack) and not on the age groups served.

As proposed, this final rule does not require larger serving sizes to be served to 13 through 18 year olds because meal reimbursements remain unchanged. FNS appreciates the importance of serving meals that meet the nutritional needs of all children participating in CACFP. Therefore, through guidance, FNS will make recommendations for serving meals to children 13 through 18 years of age that build on the meal pattern requirements to ensure that this age group's nutritional needs are met. Accordingly, this final rule implements

the proposed rule age groups and codifies them under 7 CFR 226.20(c).

2. Vegetables and Fruits

Proposed Rule: The proposed rule separates the combined fruit and vegetable component into a separate vegetable component and separate fruit component at lunch and supper meals, as well as at snack. Additionally, the proposed rule would allow fruit juice or vegetable juice to comprise the entire vegetable or fruit component for all meals, prohibit fruit juice and vegetable juice from being served at the same meal, and only allow one beverage (fluid milk, fruit juice, or vegetable juice) to be served at snack. These changes were proposed under 7 CFR 226.20(a)(2) for the vegetable component and under 7 CFR 226.20(a)(3) for the fruit component.

Separate vegetable and fruit component:

Comments: Commenters were divided on whether the fruit and vegetable component should be separated into a vegetable component and a fruit component. State agencies, advocacy organizations, a trade association, health care associations, a pediatric health care provider, and individuals (1,270 comments; 1,100 form letters) expressed support for dividing the fruit and vegetable component, stating that it is consistent with the Dietary Guidelines and NSLP, and will allow providers to offer a greater variety of vegetables and fruits. These commenters further believed the proposal would increase the consumption of vegetables and fruits and allow providers to serve a healthy snack comprised of a vegetable and a fruit.

Some sponsor associations, State agencies, a professional association, a trade association, an advocacy organization, and individuals (2,320 comments; 2,040 form letters) generally opposed separating the fruit and vegetable component. These commenters felt that it will increase consumption of less-nutritious foods, decrease the consumption of vegetables, would undo existing menus and recipes, and will increase burden in terms of increased costs, plate waste, tracking, and decreased flexibility. Some commenters expressed concern that it will be difficult to determine which foods are considered vegetables and fruits, such as avocados and tomatoes, and asked FNS to provide technical assistance and to take into consideration cultural foods.

Many commenters (540 comments; 370 form letters), including those that supported and opposed a separate vegetable and fruit component, urged

FNS to allow two vegetables to be served at lunch and supper meals instead of a vegetable and a fruit. These commenters expressed that such an allowance would give providers greater flexibility in menu planning as two vegetables may be more appealing for some meals, further encourage the consumption of vegetables, reduce the amount of fruit juice offered, and recognize the seasonality of local produce. In addition, health care associations, advocacy organizations, and a sponsor association believed that this allowance would bring vegetable consumption closer to the amount recommended by the Dietary Guidelines, as many children do not currently consume enough vegetables.

FNS Response: After careful consideration, FNS is establishing a separate vegetable component and a separate fruit component at lunch, supper, and snack through this final rule. The intent of this new requirement is to promote the consumption of vegetables and fruits, as recommended by the Dietary Guidelines, and to better align with the NSLP. The Dietary Guidelines found that vegetables and fruits prepared without added solid fats, added sugars, refined starches, and sodium are nutrient-dense foods and are under consumed by Americans. FNS does not expect a separate vegetable component and fruit component to be overly complicated or increase costs because providers are already required to serve two different kinds of vegetables or fruit, or a combination of both.

FNS acknowledges that what is considered a vegetable or fruit may be slightly confusing, especially as various cultures may identify vegetables and fruits differently. To ensure CACFP operators understand and are able to comply with the new separate vegetable and fruit components, FNS will work closely with State agencies and provide additional guidance, including how to credit traditional foods. FNS wants to emphasize that while "The Food Buying Guide for Child Nutrition Programs" (<http://www.fns.usda.gov/tn/food-buying-guide-for-child-nutrition-programs>) presents crediting information for vegetables and fruits, it is not an exhaustive list of all creditable vegetables and fruits.

In response to commenters' request, this final rule permits the option to serve two vegetables at lunch and supper, instead of one vegetable and one fruit. The NAM report and the 2015–2020 Dietary Guidelines found that very few children (1 through 8 years old) consume the recommended amount of vegetables, while the majority of

children meet the recommended intake for fruits. With this in mind, FNS agrees with commenters that allowing two vegetables at lunch and supper will help bring children's vegetable consumption closer to the amount recommended by the Dietary Guidelines. This modification grants providers greater latitude when menu planning. In addition, based on the time of the year, it may be more appropriate to serve two vegetables than a serving of vegetable and fruit. Therefore, it also allows providers to take advantage of the local and seasonal availability of produce, which may improve freshness and food quality.

To be consistent with the Dietary Guidelines' recommendation that all Americans should consume a variety of vegetables, this final rule requires that two different kinds of vegetables be served when a provider chooses to serve two vegetables at lunch and supper. For example, a reimbursable lunch may consist of milk, a chicken sandwich, broccoli, and carrots. However, a lunch menu with milk, a chicken sandwich, and two servings of broccoli would not be reimbursable. Please note, the vegetables do not need to be from different vegetable subgroups (e.g., dark green vegetables, red and orange vegetables, starchy vegetables, beans and peas (legumes), or other vegetables). A lunch or dinner meal with a serving of carrots and a serving of tomatoes (both red and orange vegetables) is allowable. Accordingly, this final rule implements the proposal to establish separate vegetable and fruit components and codifies it under 7 CFR 226.20(a)(2) and (3), respectively.

Juice:

Comments: Two trade associations, two State agencies, an advocacy organization, and individuals (20 comments) supported allowing fruit juice and vegetable juice to comprise the entire fruit component and vegetable component. A trade association asserted that juice provides important nutrients, such as potassium and vitamin C, and cited the Dietary Guidelines indication that 1 cup of 100 percent fruit juice is equivalent to 1 cup of whole fruit. These same commenters voiced concern that prohibiting fruit juice and vegetable juice from being served at the same meal would eliminate the option of serving 100 percent fruit and vegetable juice blends.

However, more commenters (120 comments) opposed allowing fruit juice or vegetable juice to comprise the entire meal component. Health care associations, advocacy organizations, State agencies, and numerous individuals expressed great concern that

the proposed rule would allow juice to be served multiple times per day. These commenters stated that juice is not equal to whole fruit because it has less fiber, more sugar and calories, is less satiating than calories consumed from solid foods, which can lead to weight gain, and that children do not consume the recommended amounts or variety of vegetables and fruits.

The overwhelming majority of comments (3,460 comments; 3,350 form letters) from a range of stakeholders, including health care associations, advocacy organizations, State agencies, sponsoring organizations and their associations, and providers, strongly urged FNS to limit the amount of juice served to children listing the health concerns above. These commenters suggested limiting juice to no more than one age-appropriate serving (e.g., 4–6 ounces for young children) per day, which is consistent with the AAP's and NAM's recommendations. Health care associations, advocacy organizations, and a sponsoring organization said it is common practice for State agencies to recommend or require child care centers or day care homes to limit the service of juice to no more than once per day. In particular, several commenters referenced the Florida Bureau of Child Nutrition Program's policy to limit juice to one serving per day, which resulted in whole fruit being offered 30 percent more often. A professional association suggested some intermediate approaches, such as juice cannot comprise more than 50 percent of the vegetable or fruit servings per week, similar to the NSLP, or juice could only be allowed at snack.

FNS Response: FNS acknowledges that 100 percent juice can be part of a healthful diet. However, it lacks dietary fiber found in other forms of fruit and when consumed in excess can contribute to extra calories. The Dietary Guidelines recommends that at least half of fruits should come from whole fruits and found that children age 1 to 3 years old consume the highest proportion of juice to whole fruits. As commenters keenly pointed out, the proposed rule would allow an unlimited amount of juice, which may lead to a variety of adverse health consequences mentioned in the comments. FNS recognizes the benefits of consuming whole vegetables and fruits and was persuaded by commenters' suggestion to limit juice. Therefore, with strong support from commenters, this final rule limits the service of fruit juice or vegetable juice to one serving per day for children 1 year old and older and adults. This change is consistent with WIC, which provides only enough juice

for one serving per day per child, and is expected to help increase children's consumption of whole vegetables and fruits.

Moreover, FNS notes that CACFP providers, on average, already serve juice once per day or less. Additionally, several States, including California, Texas, North Carolina, and Colorado, currently limit the service of juice via licensing requirements and experience high compliance rates. While FNS is aware that whole vegetables and fruits generally cost more than juice, FNS expects this limitation to be feasible and to not raise costs given these realities.

FNS wishes to clarify that 100 percent fruit and vegetable juice blends are creditable in CACFP. Similar to the NSLP and SBP, a 100 percent fruit and vegetable juice blend may contribute to the fruit requirement when fruit juice or puree is the most prominent ingredient; and a 100 percent fruit and vegetable juice blend may contribute to the vegetable requirement when vegetable juice or puree is the most prominent ingredient. Accordingly, this final rule implements the proposed vegetable juice and fruit juice requirements, with modifications, and codifies them under 7 CFR 226.20(a)(2) and (3), respectively.

3. Grains

Proposed Rule: Under the proposed rule at 7 CFR 226.20(a)(4), at least one grain serving per day, would be required to be whole grain-rich; grain-based desserts would be prohibited from counting towards the grain component; and breakfast cereals would be required to meet WIC's breakfast cereal nutrient requirements. In addition, the proposed rule maintained the method for crediting grains.

Whole grain-rich:

Comments: The vast majority of commenters (2,130 comments; 1,930 form letters) generally supported the requirement that at least one serving of grains per day be whole grain-rich. Health care associations, advocacy groups, professional associations, State agencies, sponsoring organizations, and numerous individuals noted the value of increasing the consumption of healthy whole grains, as well as aligning with Dietary Guideline recommendations, and with the NSLP, SBP, and WIC requirements. Several commenters encouraged FNS to further increase the required amount of whole grains.

Those in opposition (50 comments), mostly individuals and providers, voiced concern regarding the ability to find whole grain products and the cost of whole grains compared to other enriched breads. These commenters

suggested that the proposed requirement necessitates an increase in reimbursement. Several commenters asked for a definition of whole grain-rich.

In addition, several commenters requested clarification on when the whole grain-rich requirement would be required. For example, commenters wondered if programs, such as at-risk afterschool programs, that only serve snack and no other meals over the course of the entire day, would be required to serve a whole grain-rich item even though a grain item is not required at snack. Additionally, State agencies, sponsoring organizations, and providers asked for clarification on how the whole grain-rich requirement would be monitored and what would happen if a whole grain-rich food is not served on a given day. Concerned that the procurement of whole grain products may be confusing or difficult for some providers, several commenters suggested FNS offer technical assistance and a transitional implementation period for training and resource development.

FNS Response: The Dietary Guidelines state that Americans currently consume too many refined grains and recommends that half of the total grains consumed should be whole grains. Whole grains offer a variety of vitamins and minerals, including magnesium, selenium, iron, zinc, B vitamins, and dietary fiber. Therefore, this final rule adopts the proposed requirement that at least one serving of grains per day be whole grain-rich. This requirement will help children and adults increase their intake of whole grains and benefit from the important nutrients they provide.

Foods that qualify as whole grain-rich are foods that contain a blend of whole-grain meal and/or whole grain flour and enriched meal and/or enriched flour of which at least 50 percent is whole grain and the remaining grains in the food, if any, are enriched; or foods that contain 100 percent whole grain. To maintain consistency across CNPs, this final rule adopts the criterion used in the NSLP and SBP to determine the whole grain content of grain products outlined in FNS memorandum SP 30–2012 (“Grain Requirements for the National School Lunch Program and School Breakfast Program,” <http://www.fns.usda.gov/sites/default/files/SP30-2012os.pdf>).

Formative research conducted by FNS (<http://www.fns.usda.gov/cacfp/formative-research-nutrition-physical-activity-and-electronic-media-use-cacfp>) demonstrates that 54 percent of surveyed child care centers and day care homes already serve whole grains at

most or all meals. In light of this research, FNS does not expect this requirement to be overly burdensome for providers. However, FNS acknowledges that there are challenges associated with identifying whole grain-rich foods. FNS will provide technical assistance to ensure successful implementation, including tips for menu planning within budget and how to identify whole grain-rich foods.

FNS wants to clarify that a whole grain-rich item is only required when grain items are served. If a center or day care home only serves breakfast, the grain item served at breakfast must be whole grain-rich. If an at-risk afterschool program serves only snacks, they are not required to serve any grain item because grains is not a required component of a snack. However, if an at-risk afterschool program that only serves snack chooses to serve a grain item at snack, such as crackers with apples, the grain item must be whole grain-rich. FNS also wishes to clarify that the requirement applies to the center or day care home, not to each child or adult participant. For example, if a center or day care home serves breakfast and lunch and two different groups of children or adults are at each meal, only one meal must contain a whole grain-rich food.

In the situation when a center or day care home serves grain items but none of the grains served on that given day are whole grain-rich, then the meal with the lowest reimbursement rate where a grain item was served would be disallowed. For example, if a center or day care home serves breakfast and snack and a grain item is served at both breakfast and snack, but neither of the grain items are whole grain-rich, then the snack would be disallowed because it has the lowest-reimbursement rate and it contained a grain item. Conversely, if a grain is not served at snack and the grain item served at breakfast is not whole grain-rich, then the breakfast meal would be disallowed. This is because it is the breakfast meal is the meal with the lowest reimbursement rate that contained a grain item.

Accordingly, this final rule implements the proposed rule’s whole grain-rich requirement without change and codifies it under 7 CFR 226.20(a)(4)(i).

Grain-based desserts:

Comments: The majority of commenters (1,210 comments; 1,070 form letters) addressing grain-based desserts supported prohibiting them from counting towards the grains requirement. Many of these commenters, including advocacy

organizations, a professional organization, State agencies, and sponsor associations, said grain-based desserts are not a necessary dietary component, that this provision would help reduce consumption of added sugars, and implementing the requirement appears to be feasible.

The proposed prohibition on grain-based desserts was primarily opposed by some sponsoring organizations, providers, and State agencies (160 comments). Providers suggested that grain-based desserts be limited (e.g. once or twice a week, once per month, special occasions) instead of completely disallowed. A couple of trade associations and a food industry member recommended that CACFP follow the NSLP and SBP and allow up to two ounce equivalents of grains per week to be in the form of a grain-based dessert. In addition, several commenters, mainly providers and a professional association, encouraged FNS to allow homemade or “healthier” grain-based desserts. These commenters argued that certain homemade desserts made from whole grains, nuts, fruits, or vegetables, and sweetened with honey or fruits, such as muffins, breads, granola bars, oatmeal cookies, should be allowed.

In many of the comments about grain-based desserts, commenters asked for clarification on what would count as a grain-based dessert and many other commenters offered a definition for grain-based desserts. Numerous commenters, including sponsoring organizations and their associations, State agencies, and advocacy organizations, recommended defining grain-based desserts using Exhibit A in USDA’s “Food Buying Guide for Child Nutrition Programs,” which denotes desserts with superscripts 3 and 4. Other advocacy organizations, a few State agencies, and a pediatric health care provider suggested the term grain-based desserts should include grain-based foods with added sugars or fats, such as cakes, cookies, pies, sweet rolls, donuts, brownies, candy, fruit pies, turnovers, and cereals with more than 6 grams of sugar per serving. FNS was cautioned by a health care association and advocacy organization not to use the NSLP and SBP’s definition of grain-based desserts because it is difficult to interpret and apply.

FNS Response: This final rule adopts the proposal to disallow grain-based desserts from counting towards the grains requirement. The NAM report and the Dietary Guidelines identify grain-based desserts as sources of added sugars and saturated fats. The Dietary Guidelines cites that added sugar

consumption, as a percent of calories, is particularly high in children and recommends reducing consumption of added sugars and saturated fats. This recommendation is particularly pertinent to CACFP as the majority of participants are very young children whose taste preferences are being developed. FNS also took into consideration cost implications when developing this final rule and, according to Nielsen price data (nationally representative retail food data collected by the Nielsen Company), grain-based desserts are generally more expensive than other grain items meaning this disallowance actually reduces costs for providers.

Commenters requested a definition of grain-based desserts and in this final rule FNS adopts a definition provided by several commenters: Grain-based desserts are those items in USDA's "Food Buying Guide for Child Nutrition Programs" Exhibit A, which are denoted as desserts with superscripts 3 and 4. This definition of grain-based desserts includes cakes, cookies, sweet pie crusts, fruit turnovers, doughnuts, granola bars, toaster pastries, sweet rolls, and brownies. CACFP operators are familiar with Exhibit A and this definition is consistent with the NSLP's and SBP's definition of grain-based desserts. As a reminder, providers may choose to serve grain-based desserts, such as for celebrations or other special occasions, as an additional food item that is not reimbursable.

Accordingly, this final rule does not allow grain-based desserts to count towards the grain requirement and codifies the prohibition under 7 CFR 226.20(a)(4)(iii).

Breakfast Cereal Nutrient

Requirements:

Comments: Commenters had varying opinions on the proposal to require breakfast cereals to conform to the WIC breakfast cereal nutrient requirements. Those in support (1,340 comments; 1,080 form letters), including advocacy organizations, health care associations, sponsoring organizations, and State agencies, said conformance to the WIC breakfast cereal nutrient requirements would align with the NAM's recommendations, enhance consistency across nutrition programs, and help providers easily identify allowable cereals.

Those in opposition (960 comments; 830 form letters), including advocacy organizations, a professional association, sponsor associations, and a local government agency, felt that the adoption of all the WIC breakfast cereal nutrient requirements would be very complicated for providers to implement.

These commenters explained that all eligible cereals are not on WIC-approved State agency lists, lists vary among States, and that it would be extremely difficult to determine which cereals meet all the requirements when only using the Nutrition Facts Label. However, the majority of commenters in opposition to conformance with the full WIC breakfast cereal nutrient requirements supported some sort of sugar limit on breakfast cereals. Many commenters recommended FNS adopt WIC's sugar limit only (no more than 6 grams of sugar per dry ounce).

FNS Response: Breakfast cereals include ready-to-eat and instant and regular hot cereals. In response to commenters' concerns regarding the WIC breakfast cereal nutrient requirements, this final rule requires breakfast cereals to contain no more than 6 grams of sugar per dry ounce, only. This modification from the proposed rule is easier for CACFP operators to understand and implement. As commenters stated, State agency lists of WIC-approved cereals vary and it would be difficult to use the Nutrition Facts Label to determine whether a cereal meets the full WIC breakfast cereal nutrient requirements. Maintaining a sugar limit on breakfast cereals is consistent with the NAM's and Dietary Guidelines' recommendations to decrease the consumption of added sugars.

Accordingly, this final rule requires breakfast cereals to contain no more than 6 grams of sugar per dry ounce and codifies the requirement under 7 CFR 226.20(a)(4)(ii).

Ounce Equivalents:

Comments: A few commenters addressed the crediting of grains. A trade association and food industry member recommended CACFP follow the NSLP's and SBP's guidance for grains (SP 30-2012, "Grain Requirements for the National School Lunch Program and School Breakfast Program," <http://www.fns.usda.gov/sites/default/files/SP30-2012os.pdf>). According to the guidance, all grains offered are counted towards meeting the minimum grains requirements using ounce equivalent criteria. An ounce equivalent is the amount of food product that is considered equal to one ounce from the grain or protein food groups. An ounce equivalent for some foods may be less than a measured ounce if the food is concentrated or low in water content (e.g., nuts, peanut butter, dried meats, flour) or more than an ounce if the food contains a large amount of water (tofu, cooked beans, cooked rice, or cooked pasta).

Similarly, an advocacy organization, a State agency employee, and an individual suggested the CACFP adopt the ounce equivalency requirements in the NSLP and SBP. Along with being consistent with other CNPs, commenters noted that by using ounce equivalents to determine the quantity of creditable grains FNS can ensure that the CACFP grains component requirement reflects current nutrition science.

FNS Response: FNS agrees that using ounce equivalents to credit the quantity of grains needed to meet the grains component requirement would increase consistency between CACFP and other CNPs, and that it is cumbersome to maintain two different grain serving size requirements. Furthermore, the Dietary Guidelines, USDA MyPlate Food Guidance System, and the NAM report use ounce equivalents to determine the recommended intake for grains. To ensure children and adults are served the recommended amount of grains, this final rule uses ounce equivalents to determine the minimum serving sizes for the grains requirement. FNS is mindful that this requires an operational change, including increasing the minimum serving size for ready-to-eat breakfast cereals, and CACFP operators will need time to become familiar with ounce equivalents and successfully comply with the new grains serving size requirements. Therefore, this final rule delays the implementation of the use of ounce equivalents to credit grains, and consequently the adjusted grain serving sizes, until October 1, 2019, two years after all other meal pattern requirements must be implemented.

4. Meat and Meat Alternates

Proposed Rule: The proposed rule at 7 CFR 226.2 and 226.20(a)(5) and (c)(1) would allow a meat or meat alternate to be served in place of up to one-half of the grains requirement at breakfast, and would allow tofu and soy products to be used to meet all or part of the meat and meat alternates component.

Meat and meat alternates at breakfast:

Comments: Some commenters (310 comments; 120 form letters), including a sponsor association, a sponsoring organization, health care associations, and a trade association, supported allowing a meat or meat alternate to substitute for one-half of the required grains component at breakfast. Commenters said this allowance would be beneficial because protein at breakfast will help sustain participants' energy throughout the day, providers will have greater flexibility in menu planning, and diabetic participants will be better served.

However, the majority of commenters (2,170 comments; 2,090 form letters) opposed allowing one-half of the breakfast grains requirement to be substituted with a meat or meat alternate. Many commenters, including sponsoring organizations, a State agency, providers, and individuals, believed the provision would be too complicated to implement and monitor, and would increase costs. Specifically, these commenters expressed concerns about the practicality of serving very small quantities of meat or meat alternates for children 1 through 5 years of age, because those age groups' grains component serving sizes are already very small.

Several commenters offered modifications to the provision. Sponsoring organizations and their associations suggested maintaining the current option to allow meat or meat alternates as additional foods at breakfast. Other suggested modifications included allowing a meat or meat alternate to replace the entire grains requirement at breakfast or requiring a meat or meat alternate at breakfast.

FNS Response: Meat and meat alternates are good sources of protein as well as a host of vitamins and minerals, including B vitamins, vitamin E, zinc, magnesium, and iron. In recognition of the value of a meat or meat alternate at breakfast and to address commenters' concerns, this final rule allows meat and meat alternates to substitute for the entire grains component at breakfast a maximum of three times per week. This is consistent with the NAM's recommendation to require a meat or meat alternate at breakfast a minimum of three times per week. However, by making this substitution optional, this modification to the proposal will not be burdensome, avoids increasing costs to the provider, and grants providers greater choices when planning breakfasts. Accordingly, this final rule implements the proposed rule's allowance to serve meat and meat alternates at breakfast, with modifications, and codifies it under 7 CFR 226.20(a)(c)(1).

Tofu and other Soy Products:

Comments: Most comments on tofu, from an array of stakeholders, expressed strong support for allowing tofu to credit as a meat alternate. These commenters explained that it would allow vegetarians to be better served, it gives providers greater flexibility when menu planning, it allows for more diverse cultural foods, it aligns with the NSLP, and tofu is a nutritious meat alternative that is low in fat and high in protein and vitamins. A few commenters opposed the proposal to

allow tofu as a meat alternate due to potential negative health impacts or because they believed children and adults will not eat tofu.

While commenters welcomed tofu as a meat alternate, a variety of commenters (250 comments; 230 form letters) expressed concern regarding how tofu would be credited. Multiple sponsoring organizations and their associations, advocacy organizations, a health care association, and a trade association strongly advocated that guidance should allow tofu to be used in culturally appropriate ways, such as in soups and stews.

FNS Response: To better align with other CNPs, better serve vegetarian diets, and offer greater flexibility to the menu planner, this final rule allows tofu as a meat alternate. Commenters generally endorsed this addition while requesting that tofu be allowable in culturally appropriate ways. FNS will adopt the NSLP and SBP's criteria for crediting tofu (FNS memorandum SP 16-2012 "Crediting of Tofu and Soy Yogurt Products," <http://www.fns.usda.gov/sites/default/files/SP16-12012os.pdf>) for the CACFP and would like to emphasize that the crediting of tofu in the NSLP and SBP allows for tofu to be served in culturally appropriate ways and in traditional dishes. For example, firm tofu in stir-fries, omelets, and miso soup may credit towards the meat alternate component. Soft tofu that is incorporated into drinks, such as smoothies, or other dishes to add texture, such as baked desserts, is not allowable. This is consistent with FNS' policy to not allow milk to credit when used in a recipe. Meals served in CACFP are a nutrition education opportunity to help children learn how to build a healthy plate so it is important for young children to be able to identify components of a healthy meal.

Accordingly, this final rule implements the proposal to allow tofu and other soy products to be used to meet all or part of the meat and meat alternates component, and codifies it under 7 CFR 226.2, 226.20(a)(5)(iv).

5. Yogurt Sugar Limit

Proposed Rule: The proposed rule at 7 CFR 226.20(r)(3) presented two alternatives for public comment: Alternative C1, require that yogurt contain no more than 30 grams of sugar per 6 ounces; or, alternative C2, recommend as a best practice that yogurt contain no more than 30 grams of sugar per 6 ounces.

Comments: The vast majority of commenters discussing yogurt favored requiring a sugar limit, alternative C1

(1,320 comments; 1,190 form letters). A very large number of commenters, including State agencies, a Federal agency, advocacy groups, a pediatric health care provider, sponsoring organizations, dietitians and nutritionists, and providers, expressed that a sugar limit on yogurt would not be burdensome because the majority of yogurts meet the proposed sugar limit and it supports the goal of optimizing the nutritional quality of the meals served in CACFP. Fewer commenters (570 form letters) favored having the sugar limit on yogurt as a best practice, alternative C2. Some advocacy groups, State agencies, sponsoring organizations, dietitians and nutritionists, and providers argued that a sugar limit would be burdensome and difficult to monitor. A State agency and a provider added that best practices should be encouraged because it may not be possible for some providers to comply with a sugar limit due to limited food availability.

Along with supporting a required sugar limit on yogurt, many commenters recommended that FNS lower the sugar limit to either 20 grams or 23 grams of sugar per 6 ounces. These commenters, including multiple health care associations and advocacy organizations, and a State agency, emphasized the importance of reducing added sugars in yogurt served in CACFP and expressed concern that the proposed sugar limit may be too liberal as very few products on the market (including those with candy and cookies) would be disallowed by this standard. Food industry members and trade associations asserted that yogurt companies are continuing to develop low-sugar yogurts.

FNS Response: After careful consideration of the comments submitted, this final rule requires all yogurts served to contain no more than 23 grams of sugar per 6 ounces. Yogurt provides nutrients that are vital for health, growth, and maintenance of the body, including calcium, potassium, protein, and vitamin D (when fortified). These beneficial nutrients can be "diluted" by the addition of calories from added sugars. In addition, food preferences, including a preference for sweet foods, are established at a young age (see more on this in the *Flavored Milk* section). Requiring a sugar limit on yogurt reinforces that yogurt can be part of healthful diet with less sugar.

FNS believes this lower sugar limit is attainable and maintains product palatability while reducing the intake of added sugar. FNS conducted extensive market research on the availability of yogurts below the sugar limit

recommended by the NAM (30 grams per 6 ounces) and by commenters (23 grams per 6 ounces). Yogurts containing no more than 23 grams of sugar per 6 ounces are widely available in the current marketplace and all yogurts available through USDA Foods currently contain significantly less than 23 grams of sugar per 6 ounces. These yogurts do not cost more than those with higher amounts of sugar and there are many in the retail market that do not contain artificial sweeteners.

This sugar limit is lower than the NAM's recommendation and WIC's yogurt sugar limit, but it is consistent with the Dietary Guidelines and the NAM's overarching goal of lowering the amount of added sugars in meals served in CACFP. In addition, this lower sugar limit is consistent with the current market trend highlighted by commenters of the greater availability of lower-sugar yogurts. For instance, Dannon, a yogurt producer whose products are available nationwide, pledged to reduce the amount of total sugar in all of their yogurt products for children to 23 grams of sugar or less per 6 ounces by 2016.

FNS is mindful of commenters' concerns regarding a yogurt sugar limit. FNS is committed to helping CACFP operators comply with all the new meal pattern requirements and will provide technical assistance and guidance to ensure CACFP operators understand the sugar limit on yogurt for successful implementation.

Accordingly, this final rule implements the proposed rule's alternative C1, with modifications, and codifies it under 7 CFR 226.20(a)(5)(iii).

6. Fluid Milk

Proposed Rule: The proposed rule at 7 CFR 226.20(a)(1) would require unflavored whole milk to be served to children 1 year of age, and low-fat (1 percent) or fat-free (skim) milk to be served to children 2 years old and older and adults. It would allow yogurt to be used to meet the fluid milk requirement once per day for adults only. And, the proposed rule at 7 CFR 226.20(i)(1) would allow non-dairy beverages that are nutritionally equivalent to milk to be served in place of fluid milk for children or adults with medical or special dietary needs.

One year old children:

Comments: Some commenters (75 comments) supported requiring unflavored whole milk to be served to children 1 year old. Commenters, including State agencies, advocacy organizations, a pediatric health care provider, dietitians and nutritionists, and providers, said children age 1 need

the fat in whole milk for brain development and do not need the added sugars in flavored milk. These commenters also said the provision is consistent with the AAP's recommendations.

More commenters (460 commenters; 290 form letters) opposed requiring unflavored whole milk to be served to children 1 year old. State agencies, sponsors, and providers voiced concern that the provision would be restrictive and intrusive, that some children will not drink whole milk, and that the provider or parent should be able to decide whether the child is served whole or reduced-fat milk. Some sponsoring organizations and their associations and providers stated that the provision would require most providers to purchase and buy more than one kind of milk. Additionally, a professional association and a health care association stated that the AAP recommends that low-fat milk may be considered for 1 year old children if growth and weight gain are appropriate, or especially if weight gain is excessive or family history is positive for obesity, dyslipidemia, or cardiovascular disease. Several commenters brought up the challenge of switching children from whole milk to low-fat or fat-free milk when children turn 2 years old, and requested a transition period as a solution.

FNS Response: This final rule requires unflavored whole milk to be served to children 1 year old, which is consistent with the NAM's recommendation. In response to commenters' concern regarding the AAP's milk recommendation, FNS would like to clarify that meal accommodations may be made for children with medical or special dietary needs. If it is appropriate for a 1 year old child to consume low-fat milk instead of whole milk due to a medical or special dietary need, including the health issues noted by commenters, a meal accommodation may be made by following the substitution requirements outlined in 7 CFR 226.20(g) of this final rule. Additionally, FNS recognizes that switching immediately from whole milk to low-fat or fat-free milk when a child turns 2 may be challenging. Therefore, as recommended by commenters, this final rule allows for a one-month transition period to switch from whole milk to low-fat or fat-free milk when a child turns 2 years old. Accordingly, this final rule implements the proposal to require that unflavored whole milk be served to children 1 year of age and codifies it under 7 CFR 226.20(a)(1)(i).

Children 2 years old and older:

Comments: For children 2 years old and older, and adults, more commenters (120 comments) expressed general support to require low-fat or fat-free milk to be served to this age group than those who opposed this requirement. Those in support, including State agencies, advocacy organizations, sponsor associations, a pediatric health care provider, dietitians and nutritionists, and providers, believed that children 2 years old and older and adults do not need the fat from whole milk, that requiring low-fat or fat-free milk avoids excess consumption of calories and saturated fat, and the change to low-fat or fat-free milk is cost neutral and easy to accomplish. In opposition (40 comments), primarily sponsors and providers, expressed concern that the requirement would be too restrictive, two year olds need the fat in whole milk for brain development, and that providers should have the discretion to choose which type of milk to serve. Additionally, some commenters cited research demonstrating that higher-fat milk consumption is linked with lower rates of obesity, that the saturated fat in whole milk is not of valid concern, and that whole milk is nutritionally superior for children.

FNS Response: The HHFKA requires that milk served in CACFP be consistent with the most recent version of the Dietary Guidelines. Subsequent to the enactment of HHFKA, in September 2011, FNS issued a memorandum (CACFP 21-2011 REVISED "Child Nutrition Reauthorization 2010: Nutrition Requirements for Fluid Milk and Fluid Milk Substitutions in the Child and Adult Care Food Program, Questions and Answers," <http://www.fns.usda.gov/sites/default/files/CACFP-21-2011.pdf>) requiring milk served to children 2 years old and older and adults be low-fat or fat-free. This final rule codifies the September 2011 policy. This is consistent with the Dietary Guidelines, the NSLA as amended by the HHFKA, and the NSLP and SBP. Accordingly, this final rule implements the proposal to require that low-fat (1 percent) or fat-free (skim) milk be served to children 2 years old and older and codifies it under 7 CFR 226.20(a)(1).

Yogurt as a substitute for fluid milk:

Comments: The majority of stakeholders (85 comments) that commented on allowing yogurt to substitute for fluid milk once per day, for adults only, supported it. State agencies, advocacy organizations, dietitians and nutritionists, and providers supported the allowance because it would encourage

consumption of a calcium rich food among adult participants. According to commenters, many adult participants currently decline milk at meals. Only a few commenters (10 comments) opposed the proposed provision. A handful of commenters (15 comments), including some trade and industry associations, suggested that FNS allow the substitution of yogurt for fluid milk to be extended to children. A health care association, however, affirmed that the allowance should not be extended to children because milk provides nutrients such as vitamins A and D, and comparable quantities of these nutrients are not found in many commercially available yogurts.

FNS Response: This final rule allows yogurt to meet the fluid milk requirement once per day for adults only, as recommended by the NAM. FNS does not agree that this allowance should be extended to children. As noted by a commenter, milk provides a wealth of nutrients growing children need, such as vitamin A and D, and comparable quantities of these nutrients are not currently found in commercially available yogurts. In addition, the Dietary Guidelines emphasizes it is important to establish in young children the habit of drinking milk, as those who consume milk at an early age are more likely to drink milk when they are older. Accordingly, this final rule implements the proposal to allow yogurt to be used to meet the fluid milk requirement once per day for adults only, and codifies it under 7 CFR 226.20(a)(1)(iv).

Non-dairy beverages:

Comments: Commenters supported (120 comments) allowing non-dairy beverages that are nutritionally equivalent to milk to be served in lieu of fluid milk for children and adults with medical or special dietary needs. Numerous commenters, including State agencies, advocacy organizations, dietitians and nutritionists, and providers, asserted that this provision makes it easier for child and adult participants with medical or special dietary needs to receive a substitution. Many of these commenters stated that requiring non-dairy beverages be nutritionally equivalent to cow's milk will ensure that participants receive the beneficial nutrients they need, including calcium, protein, vitamin A, and vitamin D. Very few commenters (4 comments) opposed the provision. One provider asserted that parents should be able to choose what their child drinks as a milk substitute. Additionally, some providers urged that non-dairy beverages that are not nutritionally equivalent to cow's milk (e.g., almond

milk, rice milk) be allowed without a medical statement.

FNS Response: This final rule allows non-dairy beverages that are nutritionally equivalent to milk and meet the nutritional standards for fortification of calcium, protein, vitamin A, vitamin D, and other nutrients to levels found in cow's milk, as outlined in the NSLP regulations at 7 CFR 210.10(m)(3), to be served in place of fluid milk for children or adults who cannot consume fluid milk due to a medical or special dietary need. This allowance was first provided via the September 2011 memorandum discussed under the section below titled *Children 2 years old and older*, and requires a parent or guardian, or by, or on behalf of, an adult participant to request the substitution in writing, without a medical statement. Requiring non-dairy beverages to be nutritionally equivalent to cow's milk ensures children receive vital nutrients needed for growth and development. Similarly, FNS maintains that a medical statement is required for non-dairy beverages that do not meet the nutrient requirements listed above because it provides the assurance that the substitute beverage is meeting the nutritional needs of the child or adult participant. Accordingly, this final rule implements the proposed rule's non-dairy beverage substitution requirements and codifies them under 7 CFR 226.20(g)(3).

7. Flavored Milk

Proposed Rule: The proposed rule at 7 CFR 226.20(a)(1) would require flavored milk to be fat-free only. Additionally, at 7 CFR 226.20(r) the proposed rule presented alternatives for public comment on the service of flavored milk:

- Children 2 through 4 years old: Alternative A1, flavored milk would be prohibited; or, Alternative A2, require flavored milk to contain no more than 22 grams of sugar per 8 fluid ounces.
- Children 5 years old and older and adults: Alternative B1, require flavored milk to contain no more than 22 grams of sugar per 8 fluid ounces; or, Alternative B2, recommend as a best practice that flavored milk contain no more than 22 grams of sugar per 8 fluid ounces.

Comments: Most commenters (60 comments) that addressed the fat content of flavored milk supported requiring flavored milk to be fat-free because it is consistent with the NSLP and SBP. Several commenters (25 comments), including dietitians and nutritionists, providers, and industry associations, opposed the provision

primarily because of the unavailability of fat-free flavored milk.

In regards to a sugar limit, more commenters (4,400 comments; 4,190 form letters) favored prohibiting flavored milk (A1) over requiring flavored milk to meet a sugar limit for children 2 through 4 years old (A2). State agencies, a Federal agency, a pediatric health care provider, advocacy groups, sponsoring organizations, dietitians and nutritionists, and providers supported A1 because flavored milk has no nutritional benefit over unflavored milk, contributes to increased sugar consumption, obesity, and tooth decay, and is not appropriate for this age group when taste preferences are being formed. Some of these commenters recommended FNS modify the age group to 2 through 5 year olds as some 5 year olds are still in child care. A State agency and a health care association asserted that flavored milk is rarely served, which would suggest that compliance with A1 would have minimal burden on providers.

Those in support (55 comments) of setting a sugar limit on flavored milk for children 2 through 4 years old (A2), including professional associations, advocacy groups, State agencies, sponsoring organizations, dietitians and nutritionists, and providers, did not want to prohibit flavored milk and expressed concern that requiring unflavored milk would promote food waste as some children will not drink unflavored milk. These commenters argued that it is better for children to drink chocolate milk, rather than no milk at all. Similarly, two professional associations asserted that flavored milk is an effective tool in encouraging milk consumption for school-age children.

For children 5 years old and older, and adults, many more commenters favored requiring a sugar limit on flavored milk (B1) than establishing a best practice (B2). Those in support of alternative B1 (3,440 comments; 3,330 form letters), including State agencies, a Federal agency, advocacy groups, sponsoring organizations, dietitians and nutritionists, and providers, cited concerns around flavored milk contributing to increased sugar intake and felt that the requirement would not be burdensome. Those in support of alternative B2 (290 comments; 240 form letters) favored a best practice because it would reduce the monitoring and compliance burden while a requirement would increase complexity of the Program. A dairy association added that it may be difficult to find flavored milks within the sugar limit in retailer stores. In addition, commenters stated that allowing flavored milk with no required

sugar limit will increase milk consumption overall and is consistent with the NSLP and SBP, which allows flavored milk with no sugar limits.

FNS Response: This rule is intended to address the importance of children and adults eating nutritious meals while in day care to foster healthy habits, prevent the development of obesity, and improve wellness. The 2008 FITS found that unhealthy dietary patterns, such as those high in added sugars, are fairly defined by 2 years of age and mimic unhealthy eating patterns in older children and adults. Some research also shows that flavor and food preferences are shaped early in life, and that the more sweet foods children consume, the more they prefer sweet foods. This illustrates the need to ensure children develop healthy eating habits from a young age, including avoiding the consumption of added sugars. The need to reduce added sugar consumption was solidified in the 2015–2020 Dietary Guidelines, which, for the first time, made a recommendation regarding the consumption of added sugars: Consume less than 10 percent of calories from added sugar. With all this in mind and with commenters' support, this final rule prohibits flavored milk for children 2 through 5 years of age (A1). This is consistent with the Dietary Guidelines, and with the NAM's recommendation, which identifies flavored milk as a source of added sugars.

Some commenters expressed concern that prohibiting flavored milk for younger children would be burdensome. However, FNS expects this requirement to be minimally burdensome because commenters asserted that flavored milk is rarely served in CACFP and multiple States currently prohibit flavored milk in child care via licensing requirements. FNS agrees that it would be more challenging to monitor and implement a sugar limit on flavored milk, especially because milk is a required meal component at breakfast, lunch, and supper, and some providers make flavored milk with syrup so the sugar content could vary from batch to batch. Additionally, market research indicates that in the retailer setting there is, in general, a limited selection of fat-free flavored milks within the proposed sugar limit. While the amount of sugar in flavored milk has decreased over the past few years, only about half of fat-free flavored milks available in the retail setting contain no more than 22 grams of sugar per 8 fluid ounces. While providers may serve only unflavored milk, complying with a sugar limit on flavored milk when choosing to serve flavored milk may be particularly difficult or infeasible for providers

living in rural areas with limited options.

In recognition of these challenges, this final rule establishes a best practice on the sugar content of flavored milk for children 6 years old and older, and adults (B2). Allowing flavored milk without a sugar limit for school-age children is consistent with the NSLP and SBP and may aid in this age group's consumption of milk. Some research shows that flavored milk consumption among children is associated with improved diet quality and increased nutrient intakes, such as calcium, folate, and iron. Further, these studies found that flavored milk consumption is not associated with weight gain or higher total daily sugar intake in children. However, these studies do not clearly look at the different impacts between children that drank flavored milk and children that drank unflavored milk and, in general, show that children that drank any type of milk had significantly higher consumption of key nutrients compared to children that drank no milk. Overall, further research is needed to examine the impact of flavored milk on energy and added sugar consumption.

Due to this limited research and with the new Dietary Guidelines' added sugar recommendation, as well as knowing that added sugar consumption, as a percent of calories, is particularly high for children, FNS is aware there is more work to be done. FNS will continue to assess the flavored milk sugar limit best practice and will actively engage in conversations with stakeholders to learn more about how often flavored milk is served in CACFP and the feasibility of increasing the market availability of lower-sugar flavored milk. In addition, FNS is about to launch a study to assess the quality of meals served to children in child care that will provide insightful data on the trends of flavored milk service in the CACFP. FNS will revise the best practice based on this information and as nutrition science evolves and the market availability of lower-sugar flavored milks improves. Depending on the revision of the Nutrition Facts Label, FNS may be able to directly address added sugars in the future if the new Nutrition Facts Label clearly delineates added sugars from natural sugars. Further, FNS will provide ample technical assistance to support and encourage CACFP providers that serve flavored milk to adopt the sugar limit best practice.

As visible above, this final rule adjusts the age groups for the flavored milk requirements based on commenters' suggestion and to better align with the meal pattern age groups

(1 through 2 year olds; 3 through 5 year olds; 6 through 12 year olds; adults). Finally, to maintain consistency with the NSLP and SBP, this final rule establishes that if flavored milk is served, it must be fat-free. Accordingly, this final rule implements the proposed rule's requirement that flavored milk be fat-free and alternatives A1 and B2, with modifications, and codifies them under 7 CFR 226.20(a)(1).

8. Food Preparation

Proposed Rule: The proposed rule at 7 CFR 226.20(d) would prohibit centers and day care homes from frying food as a way of preparing food on-site. Purchased foods that are pre-fried, flash-fried, or par-fried by the manufacturer would still be allowed, but must be reheated using a method other than frying.

Comments: Most commenters (1,650 comments; 1,470 form letters) that addressed frying supported prohibiting frying foods on-site. However, many commenters' support was contingent on the definition of frying. State and local agencies, a pediatric health care system, advocacy organizations, sponsoring organizations and their associations, and individuals, supported banning deep-fat frying and urged FNS to allow sautéing, stir-frying, and pan-frying, particularly for ground beef, vegetables, and eggs.

Those opposing (140 comments) the proposal to prohibit frying on-site offered a variety of reasons for not completely disallowing frying foods on-site. An advocacy organization, some providers, a sponsoring organization, and a trade association expressed concern that the prohibition would limit providers' food choices when menu planning and may lead providers to serve more processed foods. A professional association, a State agency, and individuals stated that there are cultural reasons for allowing certain foods to be fried, such as fish and holiday treats. In place of a complete prohibition, various commenters offered alternative ways to limit frying, either through a requirement or a best practice.

Many commenters, including health care associations, advocacy organizations, State agencies, and a pediatric health care provider, opposed allowing foods prepared off-site to be fried. These commenters reasoned that purchasing fried foods negates the nutritional rationale for the ban on frying on-site. Many of these commenters urged FNS to extend the prohibition to all pre-fried foods and foods fried off-site, including fried foods prepared by vendors, caterers, and carry-out facilities. However, some

commenters supported the allowance of pre-fried foods and those fried off-site due to food access issues in some areas.

A variety of commenters (2,580 comments; and 2,240 form letters) discussed the definition of frying, including sponsoring organizations and their associations, providers, health care associations, State and local agencies, advocacy organizations, professional associations, and a trade association. Many of these commenters urged FNS to provide a clear definition and clarify whether frying is deep-fat frying or if it includes sautéing, pan-frying, and stir-frying. Some commenters offered specific definitions of frying. Advocacy organizations, sponsoring organizations and their associations suggested frying be defined as deep-fat frying, *i.e.* cooking by submerging food in hot oil or other fat. A professional association recommended that the definition include a fat content test. Some commenters warned that an overly restrictive definition of frying that eliminates sautéing and stir-frying would have negative health impacts.

FNS Response: This final rule prohibits frying as a way a preparing food on-site. Frying is defined as deep-fat frying (*i.e.* cooking by submerging food in hot oil or other fat). This definition of frying was recommended by commenters and continues to allow providers to sauté, pan-fry, and stir-fry. Cooking with some oil, such as olive oil or vegetable oil, is part of a healthy eating pattern because oils contribute essential fatty acids and vitamin E. As requested by commenters, FNS will provide guidance and technical assistance to promote healthy cooking techniques, such as sautéing, baking, or broiling.

By defining frying as deep-fat frying, providers have great flexibility in how they choose to prepare meals and are not prevented from preparing culturally appropriate foods. For example, fish may be allowable in a reimbursable meal if it is pan-fried or prepared another way, as long as it is not cooked by submerging the bread into hot oil or other fat.

While many commenters urged FNS to expand the prohibition to all purchased foods that are pre-fried, FNS believes that expanding the prohibition at this point in time would be too restrictive because it would greatly limit providers' flexibility and menu choices. This would likely lead to increased costs for providers, particularly in areas where affordable alternatives are not yet available. In addition, this final rule focuses on incremental changes as CACFP operates in diverse settings with varying skills, resources, and facilities

devoted to food preparation. FNS recognizes that store-bought, catered, or pre-fried foods can still contribute large amounts of calories and saturated fat to a meal and that there is more work to be done on this issue. Therefore, this final rule maintains the proposed rule's best practice encouraging providers to limit all purchased pre-fried foods to once per week (see *Best Practices* section below). This approach balances the nutritional needs of CACFP child and adult participants with the practical and financial abilities of centers and day care homes to implement such a change. Accordingly, this final rule implements the proposed rule's prohibition on frying food as a way of preparing food on-site and codifies it under 7 CFR 226.20(d).

C. Additional Changes

1. Prohibition on Using Food as a Reward or Punishment

Proposed Rule: The proposed rule at 7 CFR 226.20(q) would require providers to ensure that the reimbursable meal service contributes to the development and socialization of enrolled children by providing foods that are not used as a punishment or reward.

Comments: Nearly all commenters that addressed this proposal favored it. A few health care associations, a community organization, and an advocacy organization argued that a wide variety of alternative rewards other than food can be used to provide positive reinforcement. A few of these commenters also stated that providing food based on performance or behavior links food to mood, which can establish a life-long habit of rewarding or comforting oneself with food. A State agency and local government agency recommended modifying the language of the provision to include beverages.

FNS Response: Section 17(g)(3) of the NSLA, 42 U.S.C. 176(g)(3), as amended by HHFKA, requires providers to ensure that the reimbursable meal service contributes to the development and socialization of enrolled children by restricting the use of food as a punishment or reward. In this final rule, in addition to codifying this long standing FNS policy, FNS clarifies that the prohibition includes beverages, as fluid milk is part of the reimbursable meal. Accordingly, this final rule implements the proposed rule's prohibition on using food as punishment or reward, with a modification, and codifies it under 7 CFR 226.20(p).

2. Water

Proposed Rule: Consistent with amendments made to Section 17(u)(2) of the NSLA, 42 U.S.C. 1766(u)(2), by section 221 of the HHFKA, the proposed rule at 7 CFR 226.25(i) would require that potable drinking water must be available to children upon their request throughout the day.

Comments: Sponsoring organizations and their associations, health care associations, professional associations, advocacy organizations, State and local government agencies, providers, and others (460 comments; 360 form letters) favored requiring water be available to children. Commenters remarked on the health benefits of water, particularly as an alternative to sugar-sweetened beverages. Several commenters, including a pediatric health care provider, health care associations, and local government agencies, suggested that water be available for self-service throughout the day. Similarly, some commenters expressed concern that young children will not be able to request water due to a lack of ability to verbally communicate or not knowing how to ask for water. In opposition (3 comments), a few individuals argued that serving water could decrease milk consumption.

FNS Response: This final rule requires, per the amendments made by the HHFKA, that child care centers and day care homes make potable water available to children upon their request, throughout the day. The majority of CACFP participants are very young children and FNS recognizes that very young children may not be able request water on their own for the reasons cited in the comments above. Therefore, this final rule also requires that water be offered throughout the day to children. This will particularly accommodate younger children who may not be able to or know how to request it. These requirements do not apply to adult day care centers, although FNS encourages adult day care centers to also offer and make water available to adult participants. This recommendation is reflected as a best practice. Accordingly, this final rule implements the proposed rule's water requirement, with modifications, and codifies it under 7 CFR 226.25(i).

3. Meal Accommodations and Food Substitutions Supplied by Parents or Guardians

Proposed Rule: The proposed rule at 7 CFR 226.7(m) and 226.20(i) would allow reimbursement of meals that contain one component that is provided by a parent or guardian for children

with non-disability medical or special dietary needs.

Comments: More commenters (65 comments) supported allowing parents or guardians to provide a meal component for children with non-disability medical or special dietary needs than those that opposed it (40 comments). Several commenters, including an advocacy organization, sponsoring organizations and their associations, and a local government agency, affirmed that allowing food substitutions provided by a parent or guardian will better accommodate children with non-disability special dietary needs. A few commenters asked for various clarifications, including whether the substituted foods must meet the meal pattern requirements.

Some of those in opposition, including a professional association, a State agency, and several individuals, asserted that parents or guardians should only be permitted to substitute foods when a child has a documented dietary need or disability and when the food or beverage item in question creates a financial or access hardship for the provider. Other commenters expressed concern regarding parents and guardians ability to follow food safety standards, that it will impose a burden on child care facilities, and that it will be confusing and difficult to monitor.

FNS Response: To better accommodate children and adults with special dietary needs that do not rise to the level of a medical disability, this final rule allows reimbursement for meals that contain one component that is provided by a parent or guardian, or by, or on behalf of, an adult participant. While the proposed rule did not specifically mention adult participants, this flexibility was intended to apply to all CACFP participants, including adults. The final rule clarifies this intention. FNS wants to further clarify that meal components provided by parents or guardians, or by, or on behalf, of adult participants must meet the meal pattern requirements. This is consistent with CACFP's current policy regarding meal substitutions and with other CNPs.

Some commenters addressed allowing parents or guardians to provide meal components for children with disabilities. FNS Instruction 784-3, "Reimbursement for Meals Provided by Parents in the Child Care Food Program" (October 14, 1982), already allows centers or day care homes to claim reimbursement when parents and guardians supply one or more meal components for children with disabilities as long as the provider supplies at least one required meal

component. In response to comments, this final rule codifies the policy guidance outlined in FNS Instruction 784-3 and clarifies that this policy also applies to adult participants. Additionally, this final rule reflects the recently published FNS policy memorandum SP 32-2015, SFSP 15-2015, CACFP 13-2015 ("Statements Supporting Accommodations for Children with Disabilities in the Child Nutrition Programs," http://www.fns.usda.gov/sites/default/files/cn/SP32_CACFP13_SFSP15-2015os.pdf), which expands the list of acceptable medical professionals that may sign a medical statement for meal accommodations in the CNPs to include licensed health care professionals who are authorized by State law to write medical prescriptions. Accordingly, this final rule implements the proposed rule meal accommodations and food substitution requirements, with some modifications, and codifies them under 7 CFR 226.7(m) and 226.20(g).

4. Family Style Meals

Proposed Rule: The proposed rule at 7 CFR 226.20(o) would codify existing practices that must be followed when a center or day care home chooses to serve meals family style.

Comments: Many commenters that addressed family style meals, including professional associations, advocacy organizations, State agencies, a pediatric health care provider, and sponsors, generally supported codifying the existing family style meal practices. Multiple commenters highlighted the social benefits of family style meal service and others suggested at least some meals should be served family style. However, other commenters opposed serving meals family style because they believed it would increase food waste, increase costs, or is unrealistic for certain settings due to space constraints.

A professional association, a couple of health care associations and advocacy organizations, a pediatric health care provider, a few sponsoring organizations and their associations, and a State agency asked for clarification on the distinction between family style meal service and offer versus serve (OVS). Some of these commenters suggested FNS provide a definition of family style meal service.

FNS Response: This final rule codifies the proposed practices that must be followed when a center or day care home chooses to serve meals family style. In line with the nutritional goals of CACFP, family style meal service encourages a pleasant eating environment, promotes mealtime as a

learning experience by allowing children to serve themselves from common platters of food (with assistance from supervising adults) and provides educational activities that are centered around food. While serving meals family style is highly encouraged, FNS recognizes that family style meal service may not be appropriate for all CACFP settings and FNS wants to emphasize that serving meals family style is optional for CACFP providers and not a requirement.

In order to help clarify the difference between family style meal service and OVS, this final rule defines family style as a type of meal service which allows participants to serve themselves from common platters of food with the assistance of supervising adults, if needed. In OVS, all the required meal components must be offered to each child or adult participant, and each child or adult participant may decline to take one or two of the meal components, depending on the meal being served. The key difference between the two is that food components in family style meals are self-served while food components in OVS are pre-portioned or served directly by a provider. FNS will work closely with State agencies and provide additional technical assistance and guidance on family style meal service and OVS as needed. Accordingly, this final rule implements the proposed rule's family style meal service practices and codifies them under 7 CFR 226.20(n).

5. Offer Versus Serve

Proposed Rule: Under the proposed rule at 7 CFR 226.20(p) the option to utilize offer versus serve (OVS) would be extended to at-risk afterschool programs.

Comments: Advocacy organizations, professional associations, health care associations, State agencies, and others welcomed the extension of OVS to at-risk afterschool programs. These commenters asserted that OVS will increase options and reduce food waste and costs. Only a few commenters opposed the proposed extension. An advocacy organization argued that OVS in at-risk afterschool programs will allow children to refuse to eat food on a regular basis.

FNS Response: The goals of OVS are to reduce food waste and allow children and adults to choose foods they want to eat while maintaining the nutritional value of the meal. This final rule extends the option to use OVS to at-risk afterschool programs. This allowance gives providers another option when menu planning and improves consistency across CNPs as OVS is

already instituted in the NSLP, SBP, and the Summer Food Service Program. Accordingly, this final rule implements the proposed rule's extension of OVS to at-risk afterschool programs and codifies it under 7 CFR 226.20(o).

D. Best Practices

1. Optional Best Practices

Proposed Rule: The proposed rule at 7 CFR 226.20(e) presents optional best practices that providers may choose to implement to make further nutritional improvements to the meals they serve. The proposed best practices were:

Infants

- Support mothers who choose to breastfeed their infants by encouraging mothers to supply breastmilk for their infants while in day care and providing a quiet, private area for mothers who come to the day care facility to breastfeed.

Fruits and Vegetables

- Limit the consumption of fruit juice to no more than one serving per day for children one and older.
- Make at least one of the two required components of snack a fruit or vegetable.
- Provide at least one serving each of dark green vegetables, red and orange vegetables, and legumes once per week.

Grains

- Provide at least two servings of whole grain-rich grains per day.

Meat and Meat Alternates

- Serve only lean meats, nuts, and legumes.
- Limit the service of processed meats to no more than once per week, across all eating occasions.
- Serve only natural cheeses.

Milk

- Serve only unflavored milk to all participants.

Additional Best Practices

- Limit the service of fried and pre-fried foods to no more than one serving per week, across all eating occasions.

Comments: Most commenters (150 comments; 130 form letters) that discussed the proposed best practices supported them. Commenters, including a pediatric health care provider, advocacy groups, and sponsoring organizations, viewed the best practices as an innovative way to implement nutrition standards beyond the meal pattern requirements. A handful of commenters (6 comments) generally opposed the best practices and warned that it would be too confusing to include the best practices in the regulatory text when they are not mandatory requirements.

A variety of commenters requested that some of the best practices be made requirements, including the best practices regarding fruit juice, processed meats, unflavored milk, and whole grains. Other commenters suggested additions and modifications to the best practices or elimination of some best practices. For example, two advocacy groups suggested that FNS add guidance for providers to not consume sugar-sweetened beverages in front of children.

FNS Response: The best practices are a vital tool to encourage providers to further strengthen the nutritional quality of the meals they serve beyond the regulatory requirements as no additional meal reimbursement is available at this time, and they provide a roadmap for doing so. Many of the best practices identified in this preamble are recommendations from the NAM and the Dietary Guidelines to help increase the consumption of whole vegetables and fruits, and whole grains, and reduce the consumption of added sugars and solid fats that FNS did not adopt as requirements for reasons of cost or complexity. Child care providers have the unique ability to influence positive development early in a child's life making it particularly important for FNS to recommend best practices and for providers to share strategies to serve even healthier meals. This two pronged approach with meal pattern requirements and best practices emphasizes the need to ensure children develop healthy eating patterns and improve the wellness of adults by offering nutritious meals while taking into consideration the cost and practical abilities of CACFP centers and day care homes.

FNS agrees with commenters that including the best practices in the regulatory text may cause some confusion and lead CACFP operators to think they are required rather than encouraged to comply with them. Therefore, this final rule does not include the best practices in the regulatory text. Instead, FNS will issue guidance to further expand and outline the best practices. Implementing the best practices through policy guidance will also provide FNS greater flexibility to update the best practices as needed, particularly to adapt to evolving nutrition scientific.

FNS made minor modifications to the best practices based on comments and added a few best practices, as appropriate, due to the changes made in this final rule. In particular, FNS added some "Additional Best Practices" that address food preparation (frying), use of seasonal and local foods in CACFP

meals, and non-reimbursable foods high in added sugars.

Local foods: Local foods can play an important role in creating and promoting a healthy environment. A growing body of research demonstrates several positive impacts of serving local foods and providing food education through CNPs, including increased participation and engagement in meal programs; consumption of healthier options, such as whole foods; and support of local economies. There is also well-established public interest in supporting local and regional food systems, and a growing interest in aligning local food sources with CACFP. In light of this, FNS is adding a best practice to encourage centers and day care homes to incorporate seasonal and local products into meals, when possible, as a way of enhancing CACFP operations.

Added sugar: A significant number of commenters (1,880 form letters) urged FNS to prohibit sugar-sweetened beverages in child care settings expressing concern that sugar-sweetened beverages are the largest source of added sugars and calories in children's diets, lead to weight gain, and are associated with cardiovascular disease and type 2 diabetes. FNS considers these comments to be out of the scope of the statutory authority in Section 17 of the NSLA, 42 U.S.C. 1766. This section provides USDA with statutory authority to limit and shape the nutritional requirements of reimbursable meals in the CACFP. The provision does not authorize USDA to regulate the nutritional content of other foods available or served to children and adults by institutions and family or group day care homes, and sponsored centers participating in CACFP.

In contrast, new statutory authority enacted in HHFKA, which amended Section 10(b)(1)(B) of the Child Nutrition Act of 1996, 42 U.S.C. 179(b)(1)(B), specifically authorized USDA to regulate foods sold in schools other than foods served as part of the reimbursable meals in the NSLP and SBP. The provision further empowered USDA to regulate the nutritional requirements of foods sold on campus in participating schools at any time of day. Prior to that specific, expansive amendment, USDA was constrained to regulate the nutritional requirements of only those foods sold as part of the reimbursable NSLP and SBP during the meal service and in the meal service area. To provide similar authority to USDA in CACFP, Congressional action would be required.

However, FNS strongly supports reducing the consumption of foods high

in added sugars, such as sugar-sweetened beverages. The Dietary Guidelines explains that a healthy eating pattern is partly characterized by a relatively low intake of added sugars. Yet, added sugars are consumed in excessive amounts and contribute a substantial portion of the calories consumed by Americans without contributing importantly to the overall nutritional adequacy of the diet. Specifically, the Dietary Guidelines identifies sugar-sweetened beverages as a main source of added sugars and recommends reducing the consumption of them. Because added sugar consumption, as a percent of calories, is particularly high for children and in recognition of the important need to reduce added sugar consumption to improve the health and wellness of Americans, this final rule adds a best practice to avoid serving non-creditable foods that are sources of added sugars.

FNS highly encourages centers and day care homes to implement the best practices listed below in order to ensure children and adults are getting the optimal benefit from the meals they receive while in care:

Infants

- Support mothers who choose to breastfeed their infants by encouraging mothers to supply breastmilk for their infants while in day care and offering a quiet, private area that is comfortable and sanitary for mothers who come to the center or day care home to breastfeed. (Modified)

Vegetables and Fruit

- Make at least one of the two required components of snack a vegetable or a fruit.
- Serve a variety of fruits and choose whole fruits (fresh, canned, frozen, or dried) more often than juice. (New)
- Provide at least one serving each of dark green vegetables, red and orange vegetables, beans and peas (legumes), starchy vegetables, and other vegetables once per week. (Modified)

Grains

- Provide at least two servings of whole grain-rich grains per day.

Meat and Meat Alternates

- Serve only lean meats, nuts, and legumes.
- Limit serving processed meats to no more than one serving per week.
- Serve only natural cheeses and choose low-fat or reduced-fat cheeses. (Modified)

Milk

- Serve only unflavored milk to all participants. If flavored milk is served to children 6 years old and older, or adults, use the Nutrition Facts Label to

select and serve flavored milk that contains no more than 22 grams of sugar per 8 fluid ounces, or the flavored milk with the lowest amount of sugar if flavored milk within this sugar limit is not available. (Modified)

- Serve water as a beverage when serving yogurt in place of milk for adults. (New)

Additional Best Practices

- Incorporate seasonal and locally produced foods into meals. (New)
- Limit serving purchased pre-fried foods to no more than one serving per week.
- Avoid serving non-creditable foods that are sources of added sugars, such as sweet toppings (e.g., honey, jam, syrup), mix-in ingredients sold with yogurt (e.g., honey, candy or cookie pieces), and sugar-sweetened beverages (e.g., fruit drinks or sodas). (New)
- In adult day care centers, offer and make water available to adults upon their request throughout the day. (New)

FNS would like to emphasize that these best practices are *optional*. The best practices are suggestions only and are not required to be followed in order to receive reimbursement for the meal, and non-compliance with the best practices cannot be used as a serious deficiency finding or as a basis for other disciplinary actions. FNS applauds those centers and day care homes that find ways to incorporate these best practices into their meal service.

E. Corresponding Changes to Other Child Nutrition Programs

1. National School Lunch Program, School Breakfast Program, and Special Milk Program

Proposed Rule: The proposed rule at 7 CFR 220.8 and 210.10 would revise the breakfast meal pattern requirements in the School Breakfast Program (SBP) and the snack and lunch meal pattern requirements in the National School Lunch Program (NSLP), respectively, for infants and children ages 1 through 4 to reflect the proposed CACFP meal patterns for infants and children ages 1 through 4; and it would eliminate the option of OVS for children under 5 years old. In addition, the proposed rule at 7 CFR 215.7a would revise the fluid milk requirements and approved non-dairy milk substitutes in the Special Milk Program (SMP) to reflect CACFP's fluid milk requirements and approved non-dairy milk substitutes.

Comments: Only a handful of commenters expressed their opinion on revising the NSLP and SBP meal patterns to align with the CACFP meal patterns for infants and children ages 1 through 4 years old. The majority of

those commenters generally favored the proposal because they believed the alignment would maintain consistency and simplicity among CNPs for children under 5 years old. A professional association urged FNS to maintain the option for OVS in the NSLP and SBP for children under 5 years old. Additionally, a dietitian or nutritionist and a State agency opposed altering the NSLP and SBP meal patterns citing concerns regarding complexity and decreased flexibility.

An advocacy organization and a health care association recommended FNS establish a preschool grade group for children 1 through 4 years old that could be added to the current age-grade groups in the NSLP and SBP to help simplify food service when a preschool has 5 year olds or when a kindergarten has 4 year olds. For flexibility of school vended meals, these same commenters recommended allowing a single menu option if preschool and elementary school students are in the same cafeteria at the same time. In addition, to maintain flexibility for community-based CACFP afterschool programs and child care programs with school vending, these commenters asserted that it will be critical to continue to allow those programs the option to follow the NSLP and SBP meal patterns, which is currently allowed under 7 CFR 226.20(o).

Of the few commenters (15 comments) that addressed the SMP, most of them supported revising the fluid milk requirements and non-dairy milk substitutes in the SMP to align with CACFP's proposed fluid milk requirements. A professional association stated that it would only support streamlining SMP with CACFP if low-sugar, flavored milk is an allowable option.

FNS Response: This final rule revises the NSLP and SBP meal patterns to reflect the CACFP meal patterns for infants and children ages 1 through 4 years old and eliminates the option of OVS for children under 5 years old. This change maintains consistency across CNPs and will improve administrative efficiencies for those operating multiple CNPs. Generally, OVS is not considered to be appropriate for preschool children because it may interfere with CNP nutrition goals and the center, day care home, or school's efforts to introduce new foods to children.

FNS wishes to provide some clarity around some of commenters' concerns. First, the 1 through 4 year old age group is considered the preschool grade group in the NSLP and SBP. In situations where a 5 year old is in a preschool or

a 4 year old is in kindergarten, the provider may continue to serve the meal pattern appropriate for that grade. Second, this final rule maintains the flexibility to serve a single menu when preschool and elementary school students are in the same cafeteria at the same time.

Although not raised specifically in the proposed rule, FNS agrees with commenters that institutions, particularly at-risk afterschool programs, which serve meals prepared in schools that participate in the NSLP and SBP should continue to have the flexibility to follow the NSLP or SBP meal patterns, as currently provided under 7 CFR 226.20(o), *Additional provision*. Therefore, this final rule

continues that flexibility for institutions serving children 5 years old and older under 7 CFR 226.20(i), *Meals prepared in schools*.

This final rule revises the SMP milk requirements to align with all of the CACFP's milk requirements, including requiring unflavored whole milk be served to one year olds; allowing only low-fat or fat-free milk for children ages 2 years old and older; prohibiting flavored milk for children 2 through 5 years old; requiring flavored milk to be fat-free for children 6 years old and older; and allowing non-dairy milk substitutes that are nutritionally equivalent to milk to be served in place of fluid milk for children with medical or special dietary needs. Accordingly,

this final rule implements the proposed rule's amendments to the school nutrition programs and codifies them under 7 CFR 210.10(o), (p), and (q), 215.7a, and 220.8(o) and (p). In addition, this final rule makes a technical amendment to renumber and rename, without substantive changes, 7 CFR 226.20(o), *Additional provision*, to 7 CFR 226.20(i), *Meals prepared in schools*; and to remove 7 CFR 220.23, which is no longer applicable as the updated SBP meal pattern requirements are fully implemented.

III. New Meal Patterns

The following meal patterns must be implemented by October 1, 2017, unless otherwise specified in the footnotes.

INFANT MEAL PATTERNS

Infants	Birth through 5 months	6 through 11 months
Breakfast, Lunch, or Supper	4–6 fluid ounces breastmilk ¹ or formula ²	6–8 fluid ounces breastmilk ¹ or formula ² ; and 0–4 tablespoons infant cereal ^{2,3} meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0–2 ounces of cheese; or 0–4 ounces (volume) of cottage cheese; or 0–8 ounces or 1 cup of yogurt ⁴ ; or a combination of the above ⁵ ; and 0–2 tablespoons vegetable or fruit ³ or a combination of both ^{5,6}
Snack	4–6 fluid ounces breastmilk ¹ or formula ²	2–4 fluid ounces breastmilk ¹ or formula ² ; and 0–½ slice bread ^{3,7} ; or 0–2 crackers ^{3,7} ; or 0–4 tablespoons infant cereal ^{2,3,7} or ready-to-eat breakfast cereal ^{3,5,7,8} ; and 0–2 tablespoons vegetable or fruit, or a combination of both ^{5,6}

¹ Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.

² Infant formula and dry infant cereal must be iron-fortified.

³ Beginning October 1, 2019, ounce equivalents are used to determine the quantity of creditable grains.

⁴ Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

⁵ A serving of this component is required when the infant is developmentally ready to accept it.

⁶ Fruit and vegetable juices must not be served.

⁷ A serving of grains must be whole grain-rich, enriched meal, or enriched flour.

⁸ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21 grams sucrose and other sugars per 100 grams of dry cereal).

BREAKFAST MEAL PATTERN FOR CHILDREN AND ADULTS

	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 ¹ (at-risk afterschool programs and emergency shelters)	Adult
Food Components and Food Items ²	Minimum Quantities				
Fluid milk ³	4 fl oz	6 fl oz	8 fl oz	8 fl oz	8 fl oz.
Vegetables, fruits, or portions of both ⁴	¼ cup	½ cup	½ cup	½ cup	½ cup.
Grains (oz eq) ^{5,6,7}					

BREAKFAST MEAL PATTERN FOR CHILDREN AND ADULTS—Continued

	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 ¹ (at-risk afterschool programs and emergency shelters)	Adult
Whole grain-rich or enriched bread.	½ slice	½ slice	1 slice	1 slice	2 slices.
Whole grain-rich or enriched bread product, such as biscuit, roll, muffin.	½ serving	½ serving	1 serving	1 serving	2 servings.
Whole grain-rich, enriched or fortified cooked breakfast cereal, ⁸ cereal grain, and/or pasta.	¼ cup	¼ cup	½ cup	½ cup	1 cup.
Whole grain-rich, enriched or fortified ready-to-eat breakfast cereal (dry, cold) ^{8,9}					
Flakes or rounds	½ cup	½ cup	1 cup	1 cup	2 cups.
Puffed cereal	¾ cup	¾ cup	1¼ cup	1¼ cup	2½ cups.
Granola	⅓ cup	⅓ cup	¼ cup	¼ cup	½ cup.

¹ Larger portion sizes than specified may need to be served to children 13 through 18 year olds to meet their nutritional needs.

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

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

⁴ 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 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 cereals is ¼ cup for children ages 1–2; ⅓ cup for children ages 3–5; ¾ cup for children 6–12; and 1 ½ cups for adults.

LUNCH AND SUPPER MEAL PATTERN FOR CHILDREN AND ADULTS

	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 ¹ (at-risk afterschool programs and emergency shelters)	Adult
Food Components and Food Items ²	Minimum Quantities				
Fluid milk ³	4 fl oz	6 fl oz	8 fl oz	8 fl oz	8 fl oz. 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	¾ 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 1cup	8 ounces or 1cup.
The following may be used to meet no more than 50 percent of the requirement:					
Peanuts, soy nuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternates (1 ounce of nuts/seeds = 1 ounce of cooked lean meat, poultry or fish).	½ ounce = 50% ...	¾ ounce = 50% ...	1 ounce = 50% ...	1 ounce = 50% ...	1 ounce = 50%.
Vegetables ⁷	⅓ cup	¼ cup	½ cup	½ cup	½ cup.
Fruits ^{7,8}	⅓ cup	¼ cup	½ cup	½ cup	½ cup.

LUNCH AND SUPPER MEAL PATTERN FOR CHILDREN AND ADULTS—Continued

	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 ¹ (at-risk afterschool programs and emergency shelters)	Adult
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, 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.

¹ Larger portion sizes than specified may need to be served to children 13 through 18 year olds to meet their nutritional needs.

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

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

⁴ 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.

⁶ Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

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

⁸ A vegetable may be used to meet the entire fruit requirement. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.

⁹ At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards the grains requirement.

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

¹¹ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21 grams sucrose and other sugars per 100 grams of dry cereal).

SNACK MEAL PATTERN FOR CHILDREN AND ADULTS

	Ages 1–2 ²	Ages 3–5	Ages 6–12	Ages 13–18 ¹ (at-risk afterschool programs and emergency shelters)	Adult
Food Components and Food Items					
	Minimum Quantities				
Fluid milk ³	4 fl oz	4 fl oz	8 fl oz	8 fl oz	8 fl oz.
Meats/meat alternates Edible portion as served:					
Lean meat, poultry, or fish	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Tofu, soy products, or alternate protein products ⁴ .	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Cheese	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Large egg	½	½	½	½	½.
Cooked dry beans or peas	⅛ cup	⅛ cup	¼ cup	¼ cup	¼ cup.
Peanut butter or soy nut butter or other nut or seed butters.	1 Tbsp	1 Tbsp	2 Tbsp	2 Tbsp	2 Tbsp.
Yogurt, plain or flavored unsweetened or sweetened ⁵ .	2 ounces or ¼ cup.	2 ounces or ¼ cup.	4 ounces or ½ cup.	4 ounces or ½ cup.	4 ounces or ½ cup.
Peanuts, soy nuts, tree nuts, or seeds.	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Vegetables ⁶	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Fruits ⁶	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Grains (oz eq) ^{7, 8} .					
Whole grain-rich or enriched bread.	½ slice	½ slice	1 slice	1 slice	1 slice.
Whole grain-rich or enriched bread product, such as biscuit, roll, 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}					

SNACK MEAL PATTERN FOR CHILDREN AND ADULTS—Continued

	Ages 1–2 ²	Ages 3–5	Ages 6–12	Ages 13–18 ¹ (at-risk afterschool programs and emergency shelters)	Adult
	Minimum Quantities				
Flakes or rounds	1/2 cup	1/2 cup	1 cup	1 cup	1 cup.
Puffed cereal	3/4 cup	3/4 cup	1 1/4 cup	1 1/4 cups	1 1/4 cups.
Granola	1/8 cup	1/8 cup	1/4 cup	1/4 cup	1/4 cup.

¹ Larger portion sizes than specified may need to be served to children 13 through 18 year olds to meet their nutritional needs.

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

³ Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old. Must be unflavored low-fat (1 percent), unflavored fat-free (skim), or flavored fat-free (skim) milk for children six years old and older and adults. For adult participants, 6 ounces (weight) or 3/4 cup (volume) of yogurt may be used to meet the equivalent of 8 ounces of fluid milk once per day when yogurt is not served as a meat alternate in the same meal.

⁴ Alternate protein products must meet the requirements in Appendix A to Part 226.

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

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

⁷ At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.

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

⁹ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21 grams sucrose and other sugars per 100 grams of dry cereal).

¹⁰ Beginning October 1, 2019, the minimum serving sizes specified in this section for ready-to-eat breakfast cereals must be served. Until October 1, 2019, the minimum serving size for any type of ready-to-eat breakfast cereals is 1/4 cup for children ages 1–2; 1/3 cup for children ages 3–5; 3/4 cup for children 6–12; and 1 1/2 cups for adults.

IV. Implementation

Compliance with the provisions of this final rule must begin October 1, 2017, except for the adjusted minimum serving sizes for the grains requirement based on ounce equivalents criteria, which must be implemented by October 1, 2019.

Implementation Resources

Section 221 of the HHFKA requires FNS to provide technical assistance to participating child care centers and day care homes in complying with the new meal pattern requirements. As a first step, FNS coordinated with the U.S. Department of Health and Human Services to develop recommendations, guidelines, and best practices for providers that are consistent with the nutrition, physical activity, and wellness requirements of the HHFKA and this final rule. From this collaboration, the handbook “Nutrition and Wellness Tips for Young Children: Provider Handbook for the Child and Adult Care Food Program” was published in January 2013 (<http://www.fns.usda.gov/tn/nutrition-and-wellness-tips-young-children-provider-handbook-child-and-adult-care-food-program>). The handbook includes 15 tip sheets addressing nutrition, physical activity, and screen time. Three new supplements addressing family style meals, positive meal environments, and encouragement of healthful foods were recently added. The handbook will be updated as needed.

FNS conducted needs assessment research to identify additional materials and training that would be useful to CACFP operators. The final report was published in March 2015 (<http://www.fns.usda.gov/cacfp/formative-research-nutrition-physical-activity-and-electronic-media-use-cacfp>). FNS is in the process of developing pertinent resources and guidance materials based on the results of the research and the new meal pattern requirements. Resources and training materials being developed include menu planning tools, new and updated recipes (including multicultural recipes), guidance on identifying whole grain-rich foods, and tip sheets. FNS is also currently updating the “Feeding Infants: A Guide for Use in Child Nutrition Programs” (<http://www.fns.usda.gov/tn/feeding-infants-guide-use-child-nutrition-programs>) to reflect the new infant meal pattern requirements. Training on the new meal pattern requirements will be available through a variety of methods including webinars and online learning modules.

In addition, FNS will work with State agencies to facilitate transition to the new meal pattern requirements. FNS continues to partner with the Institute of Child Nutrition (formerly the National Food Service and Management Institute) to develop and provide appropriate training materials for CACFP.

V. Procedural Matters

Executive Order 12866 and Executive Order 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.

Regulatory Impact Analysis Summary

As required for all rules that have been designated as significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this final rule. The full RIA is included in the supporting documents of the rule docket at www.regulations.gov. The following summarizes the conclusions of the regulatory impact analysis.

Need for Action

This rule changes the meal pattern requirements for the Child and Adult Care Food Program (CACFP), pursuant

to section 221 of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). Pursuant to the statute, changes are made to better align the CACFP meal patterns with the *Dietary Guidelines for Americans* (Dietary Guidelines) and improve participants' diets by reducing the prevalence of inadequate and excessive intakes of food, nutrients, and calories. The rule implements a cost-neutral subset of CACFP meal pattern recommendations for infants, children, and adults contained in the 2010

National Academy of Medicine (NAM; formerly the Institute of Medicine of the National Academies) report, *Child and Adult Care Food Program: Aligning Dietary Guidance for All*.

Costs

The baseline for this regulatory impact analysis is the current cost of food to providers in homes and centers that participate in the CACFP. The final rule more closely aligns the meals served in CACFP with the Dietary

Guidelines in an essentially cost-neutral manner, as HHFKA did not provide any funding for additional or increased meal reimbursements in CACFP. USDA estimates that the rule will result in a very small decrease in the cost for CACFP providers to prepare and serve meals to Program participants,⁴ and may result in a small, temporary increase in labor and administrative costs to implement the rule. Therefore, we project no meaningful net change in cost as a result of the rule.

TABLE 1—SUMMARY TABLE OF NET COSTS TO CACFP PROVIDERS OF FINAL RULE PROVISIONS
[By fiscal year, in millions of dollars—change from baseline. Negative numbers = cost savings]

	2017	2018	2019	2020	2021	Total
Net Effect of Infant Provisions	\$0.0	\$0.2	\$0.2	\$0.2	\$0.4	\$0.9
Infant Formula Change	0.0	-3.4	-3.5	-3.6	-3.6	-14.1
Infant Snack—Fruits and Vegetables	0.0	3.6	3.7	3.8	4.0	15.0
On-site Breastfeeding provision	*	*	*	*	*	*
Separating Fruits and Vegetables	*	*	*	*	*	*
Net Effect of Grain Provisions	0.0	-18.9	-19.6	-20.4	-21.2	-80.1
New Whole Grain-Rich Requirement	0.0	9.7	10.1	10.5	10.9	41.2
Disallowing Desserts	0.0	-28.6	-29.7	-30.9	-32.1	-121.3
Breakfast Cereal Sugar Limit	*	*	*	*	*	*
Other Provisions	*	*	*	*	*	*
Rule Impact on NSLP, SBP, & SMP	*	*	*	*	*	*
Potable Water Provision	*	*	*	*	*	*
Flavored Milk Prohibition	*	*	*	*	*	*
Yogurt Sugar Limit	*	*	*	*	*	*
Disallowing Frying as Preparation	*	*	*	*	*	*
Method	*	*	*	*	*	*
Increased Flexibility in Foods Served	*	*	*	*	*	*
to CACFP Participants	*	*	*	*	*	*
Net Cost of Rule to CACFP providers	-0.0	-18.7	-19.4	-20.2	-20.8	-79.2
Baseline Federal Reimbursement and						
USDA Food Assistance ⁵	3,502	3,630	3,767	3,911	4,066	18,877
Net Cost of Rule as a Percent of Federal						
Reimbursement	-0.0%	-0.5%	-0.5%	-0.5%	-0.5%	-0.4%

* Cost or savings is too uncertain to be estimated with precision (and is almost certainly too small to affect the estimate meaningfully); see the relevant sections for in-depth discussions of the cost implications of each provision.
Note: Sums may not match exactly due to rounding.

Much of the net cost savings in the table results from disallowing grain-based desserts as a reimbursable food item as recommended by NAM. However, even without counting this provision as a cost savings, the rule has only a small net cost, which providers should be able to absorb within their current food budgets, as described in detail in the full regulatory impact analysis. Other provisions of the rule that are expected to have a small cost savings include:

- The changes to the meal patterns for infants. A change in the age groups and formula quantities mean that slightly

less formula will be served under the final meal patterns than under current rules.

- Provisions that increase provider flexibility in serving meals, such as allowing a meat or meat alternate to be served in place of the entire grains requirement at breakfast a maximum of three times per week, allowing tofu as a meat alternate, and allowing yogurt to be used to meet the fluid milk requirement for adults, no more than once per day.

Provisions that are expected to or may slightly increase the cost of serving

meals that meet the final requirements include:

- The addition of fruits and vegetables as a component of infant snacks starting at 6 months.
- The requirement that at least one grain serving per day be whole grain-rich. Because whole grain-rich products tend to cost more than their refined grain substitutes, this provision is expected to have a modest upward effect on the cost of providing CACFP meals.
- The separation of fruits and vegetables into separate meal components. Although this is not

⁴ The final rule no longer allows grain based desserts to contribute to the meal patterns' grain requirement. The \$79.2 million 5-year cost reduction shown in Table 1 includes the savings to CACFP providers of substituting program-creditable grains in place of more expensive grain-based desserts. To the extent that providers continue to serve similar desserts on a non-creditable basis, their actual costs of serving meals to program

participants will exceed the cost of serving meals that meet program requirements. If we do not count the current cost of grain-based desserts as a savings in this analysis, then the estimated net cost of the rule is +42.1 million over 5 years. Given the considerable potential savings from at least reducing the number of grain based desserts served, providers, on average, should be able to implement the final rule with no increase in cost.

⁵ Projections prepared by FNS for the development of the FY 2016 President's Budget. These figures are included in this table only to demonstrate that any potential cost impact of the rule (or, indeed, of any individual provision in the rule) is an extremely small percentage of overall Federal reimbursements to CACFP providers.

expected to result in an increase in the quantities of fruits and vegetables offered, unit costs may increase if providers choose to buy smaller pre-packed servings of fruits and vegetables in order to serve both a fruit and a vegetable at the same meal; however, this would be an optional cost, as providers also have the flexibility to serve two vegetables at lunch or supper.

- Provisions that limit provider flexibility in serving meals, such as the disallowing of frying as an on-site food preparation method.

Benefits

By updating Program regulations to make them more consistent with the recommendations of the Dietary Guidelines, the final rule will ensure that meals served at CACFP centers and homes better reflect nutrition science; increase the availability of key food groups; better meet the nutritional needs of infants, children, and adults; and foster healthy eating habits.

The changes are expected to positively impact the nutritional outcomes of all groups of CACFP participants. The infant meal pattern will help to ensure that infants will exclusively breast- or formula-feed throughout their first six months of life, as recommended by the American Academy of Pediatrics (AAP). Separating fruits and vegetables into two components increases the variety of foods that CACFP participants are able to consume at meal times. Disallowing grain-desserts as reimbursable food items, establishing a sugar limit on yogurt, disallowing frying as an on-site food preparation method, and modifying the fluid milk requirements will decrease the amount of added sugars and solid fats consumed by CACFP participants through Program meals. Requiring that one serving of grains be whole grain-rich will increase CACFP participants' consumption of whole grains, which, as the NAM notes in its report, is very low across all CACFP participant age groups.

The rule also increases flexibility for CACFP providers to better meet the nutritional requirements and dietary preferences of participants. It allows a meat or meat alternate to be served in place of the entire grains requirement at breakfast a maximum of three times per week, allows tofu as a meat alternate, and allows yogurt to be used to meet the fluid milk requirement for adults, no more than once per day.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to analyze the impact of rulemaking on

small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, the Administrator of FNS certifies that this rule would not have a significant economic impact on a substantial number of small entities. While this final rule makes several revisions to the CACFP meal patterns, the provisions in this rulemaking are of minimal cost and are achievable without creating a hardship for any small entities that administer and participate in the nutrition assistance programs affected by this rulemaking, including State agencies, local educational agencies, school food authorities, child care institutions, and adult care institutions.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of \$146 million or more (when adjusted for 2015 inflation; GDP deflator source: Table 1.1.9 at <http://www.bea.gov/iTable>) in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This 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 Child and Adult Care Food Program (CACFP), National School Lunch Program (NSLP), School Breakfast Program (SBP), and Special Milk Program (SMP) are listed in the Catalog of Federal Domestic Assistance under CACFP No. 10.558, NSLP No. 10.555, SBP No. 10.553, and SMP No. 10.556, respectively, and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. The Child Nutrition Programs are federally funded

programs administered at the State level. The Department headquarters and regional offices staff engage in ongoing formal and informal discussions with State and local officials regarding program operational issues. This structure of the Child Nutrition Programs allows State and local agencies to provide feedback that forms the basis of any discretionary decisions made in this and other rules.

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 13121.

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

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have a 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 would permit State or local agencies operating the Child and Adult Care Food Program to establish more rigorous nutrition requirements or additional requirements for child or adult care meals that are not inconsistent with the nutritional provisions of this rule. Such additional requirements would be permissible as part of an effort by a State or local agency to enhance the child and adult day care meals or the child and adult day care nutrition environment. To illustrate, State or local agencies would be permitted to establish more restrictive whole grain requirements. For this requirement, quantities are stated as a minimum and could not be lower; however, greater amounts than the minimum could be offered. While State agencies and local agencies may establish more rigorous nutrition requirements, they cannot establish less rigorous nutrition requirements as the Russell B. National School Lunch Act; 42 U.S.C. 1766(g) provides the U.S. Department of Agriculture the authority

to establish the minimum nutritional requirements. This rule is not intended to have a retroactive effect. Prior to any judicial challenge to the provisions or application of this final rule, all applicable administrative procedures in §§ 226.6(k) and 210.18(q), 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. Existing regulations at §§ 226.60(h) and 210.10(m)(1) require centers, day care homes and schools to make food substitutions or modifications in the meals or snacks served under the Child and Adult Care Food Program, the National School Lunch Program, or the School Breakfast Program for children and adults who are considered to have a disability that restricts their diets. Centers, day care homes, and schools will continue to be required to offer accommodations to children and adults whose disability restricts their diet. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not expected to affect the participation of protected individuals in the Child and Adult Care Food Program, National School Lunch Program, School Breakfast Program, or Special Milk Program.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Food and Nutrition Service has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under EO 13175. FNS provides regularly scheduled quarterly webinars and conference calls as a venue for collaborative conversations with Tribal officials or their designees.

On a February 18, 2015 call, FNS advised Tribal officials that the proposed rule to update the CACFP meal patterns had been published and encouraged participants to submit public comments. No comments or questions from Tribal officials arose related to the proposed rule. If a Tribe requests consultation, the Food and Nutrition Service will work with the USDA Office of Tribal Relations to ensure meaningful collaboration is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule contains information collections that have been approved by OMB under OMB #0584-0055. Additionally, FNS will issue a separate 60-day notice under OMB #0584-0055 and submit a request for clearance to OMB to include the required written requests for non-dairy milk substitutions. This requirement will become effective until such time that clearance is received from OMB. When OMB notifies FNS of its decision, FNS will publish a notice in the **Federal Register** of the action.

E-Government Act Compliance

FNS 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

Children, Commodity School Program, Food assistance programs, Grants programs—social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 215

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

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

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

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

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. Amend § 210.10 as follows:

- a. In paragraph (a)(1)(i), remove the words "1 to 4" in the fourth sentence and add in their place words "1 through 4";
- b. In paragraph (a)(1)(ii), remove the last sentence;
- c. In paragraph (e), revise the paragraph heading;
- d. In paragraph (g), revise the first sentence;
- e. Revise paragraph (j);
- f. In paragraph (l)(1), add two sentences at the end of the paragraph;
- g. Revise paragraphs (o)(2) through (4);
- h. Revise paragraph (p); and
- i. Add paragraph (q).

The additions and revisions read as follows:

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

* * * * *

(e) *Offer versus serve for grades K through 12.* * * *

* * * * *

(g) * * * The State agency and school food authority must provide technical assistance and training to assist schools in planning lunches that meet the meal pattern in paragraph (c) of this section; the calorie, saturated fat, sodium, and *trans* fat specifications established in paragraph (f) of this section; and the meal pattern requirements in paragraphs (o), (p), and (q) of this section as applicable. * * *

* * * * *

(j) *State agency's responsibilities for compliance monitoring.* Compliance with the meal requirements in paragraph (b) of this section, including

dietary specifications for calories, saturated fat, sodium and *trans* fat, and paragraphs (o), (p), and (q) of this section, as applicable, will be monitored by the State agency through administrative reviews authorized in § 210.18.

* * * * *

(l) * * *

(1) * * * With State agency approval, schools may serve lunches to children under age 5 over two service periods. Schools may divide quantities and food items offered each time any way they wish.

* * * * *

(o) * * *

(2) *Afterschool snack requirements for grades K through 12.* Afterschool snacks must contain two different components from the following four:

(i) A serving of fluid milk as a beverage, or on cereal, or used in part for each purpose.

(ii) A serving of meat or meat alternate, including nuts and seeds and their butters listed in FNS guidance that are nutritionally comparable to meat or other meat alternates based on available nutritional data.

(A) Nut and seed meals or flours may be used only if they meet the requirements for alternate protein products established in appendix A of this part.

(B) Acorns, chestnuts, and coconuts cannot be used as meat alternates due to their low protein and iron content.

(iii) A serving of vegetable or fruit, or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods. Juice must not be served when fluid milk is served as the only other component.

(iv) A serving of whole-grain or enriched bread; or an equivalent serving of a bread product, such as cornbread, biscuits, rolls, or muffins made with whole-grain or enriched meal or flour;

or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as enriched rice, bulgur, or enriched corn grits; or an equivalent quantity of any combination of these foods.

(3) *Afterschool snack requirements for preschoolers*—(i) *Snacks served to preschoolers.* Schools serving afterschool snack to children ages 1 through 4 must serve the food components and quantities required in the snack meal pattern established for the Child and Adult Care Food Program, under § 226.20(a), (c)(3), and (d) of this chapter. In addition, schools serving afterschool snacks to this age group must comply with the requirements set forth in paragraphs (a), (c)(3), (4), and (7), (d)(2) through (4), (g), and (m) of this section.

(ii) *Preschooler snack meal pattern table.* The minimum amounts of food components to be served at snack are as follows:

PRESCHOOL SNACK MEAL PATTERN

Food Components and Food Items ¹	Ages 1–2	Ages 3–5
	Minimum Quantities	
Fluid milk ^{2,3}	4 fluid ounces	4 fluid ounces.
Meats/meat alternates		
Edible portion as served:		
Lean meat, poultry, or fish	1/2 ounce	1/2 ounce.
Tofu, soy products, or alternate protein products ⁴	1/2 ounce	1/2 ounce.
Cheese	1/2 ounce	1/2 ounce.
Large egg	1/2	1/2.
Cooked dry beans or peas	1/8 cup	1/8 cup.
Peanut butter or soy nut butter or other nut or seed butters	1 Tbsp	1 Tbsp.
Yogurt, plain or flavored unsweetened or sweetened ⁵	2 ounces or 1/4 cup	2 ounces or 1/4 cup.
Peanuts, soy nuts, tree nuts, or seeds	1/2 ounce	1/2 ounce.
Vegetables ³	1/2 cup	1/2 cup.
Fruits ³	1/2 cup	1/2 cup.
Grains (oz eq) ^{6,7}		
Whole grain-rich or enriched bread	1/2 slice	1/2 slice.
Whole grain-rich or enriched bread product, such as biscuit, roll, muffin.	1/2 serving	1/2 serving.
Whole grain-rich, enriched or fortified cooked breakfast cereal, ⁸ cereal grain, and/or pasta.	1/4 cup	1/4 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.
Puffed cereal	3/4 cup	3/4 cup.
Granola	1/8 cup	1/8 cup.

¹ Select two of the five components for a reimbursable snack. Only one of the two components may be a beverage.

² Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old.

³ Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

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

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

⁶ 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.

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 grams sucrose and other sugars 100 grams of dry cereal).

⁹ Beginning October 1, 2019, the minimum serving sizes specified in this section for ready-to-eat breakfast cereals must be served. Until October 1, 2019, the minimum serving size for any type of ready-to-eat breakfast cereals is 1/4 cup for children ages 1–2, and 1/8 cup for children ages 3–5.

(4) *Afterschool snack requirements for infants*—(i) *Snacks served to infants.* Schools serving afterschool snacks to infants ages birth through 11 months must serve the food components and quantities required in the snack meal

pattern established for the Child and Adult Care Food Program, under § 226.20(a), (b), and (d) of this chapter. In addition, schools serving afterschool snacks to infants must comply with the requirements set forth in paragraphs (a),

(c)(3), (4), and (7), (g), and (m) of this section.

(ii) *Infant snack meal pattern table.* The minimum amounts of food components to be served at snack are as follows:

INFANT SNACK MEAL PATTERN

Infants	Birth through 5 months	6 through 11 months
Snack	4–6 fluid ounces breastmilk ¹ or formula ²	2–4 fluid ounces breastmilk ¹ or formula ² ; and 0-½ slice bread ^{3,4} ; or 0–2 cracker ^{3,4} ; or 0–4 tablespoons infant cereal ^{2,3,4} or ready-to-eat breakfast cereal ^{3,4,5,6} ; and 0–2 tablespoons vegetable or fruit, or a combination of both ^{5,7}

¹ Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.

² Infant formula and dry infant cereal must be iron-fortified.

³ A serving of grains must be whole grain-rich, enriched meal, or enriched flour.

⁴ Beginning October 1, 2019, ounce equivalents are used to determine the quantity of creditable grains.

⁵ A serving of this component is required when the infant is developmentally ready to accept it.

⁶ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21 grams sucrose and other sugars per 100 grams of dry cereal).

⁷ Fruit and vegetable juices must not be served.

(p) *Lunch requirements for preschoolers*—(1) *Lunches served to preschoolers.* Schools serving lunches to children ages 1 through 4 under the National School Lunch Program must serve the food components and quantities required in the lunch meal

pattern established for the Child and Adult Care Food Program, under § 226.20(a), (c)(2), and (d) of this chapter. In addition, schools serving lunches to this age group must comply with the requirements set forth in paragraphs (a), (c)(3), (4), and (7), (d)(2)

through (4), (g), (k), (l), and (m) of this section.

(2) *Preschooler lunch meal pattern table.* The minimum amounts of food components to be served at lunch are as follows:

PRESCHOOL LUNCH MEAL PATTERN

Food Components and Food Items ¹	Ages 1–2	Ages 3–5
	Minimum Quantities	
Fluid milk ²	4 fluid ounces	6 fluid ounces.
Meat/meat alternates		
Edible portion as served:		
Lean meat, poultry, or fish	1 ounce	1½ ounces.
Tofu, soy products, or alternate protein products ³	1 ounce	1½ ounces.
Cheese	1 ounce	1½ ounces.
Large egg	½	¾.
Cooked dry beans or peas	¼ cup	⅜ cup.
Peanut butter or soy nut butter or other nut or seed butters	2 Tbsp	3 Tbsp.
Yogurt, plain or flavored unsweetened or sweetened ⁴	4 ounces or ½ cup	6 ounces or ¾ cup.
The following may be used to meet no more than 50 percent of the requirement:		
Peanuts, soy nuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternates (1 ounce of nuts/seeds = 1 ounce of cooked lean meat, poultry or fish).	½ ounce = 50%	¾ ounce = 50%.
Vegetables ⁵	⅓ cup	¼ cup.
Fruits ^{5,6}	⅓ cup	¼ cup
Grains (oz eq) ^{7,8}		
Whole grain-rich or enriched bread	½ slice	½ slice.
Whole grain-rich or enriched bread product, such as biscuit, roll, muffin.	½ serving	½ serving.
Whole grain-rich, enriched or fortified cooked breakfast cereal, ⁹ cereal grain, and/or pasta.	¼ cup	¼ cup.

¹ Must serve all five components for a reimbursable meal.

² Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old.

³ Alternate protein products must meet the requirements in appendix A to part 226 of this chapter.

⁴ Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

⁵ Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

⁶ A vegetable may be used to meet the entire fruit requirement. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.

⁷ At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards the grains requirement.

⁸ Beginning October 1, 2019, ounce equivalents are used to determine the quantity of the creditable grain.

⁹ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21 grams sucrose and other sugars per 100 grams of dry cereal).

(q) *Lunch requirements for infants*—
 (1) *Lunches served to infants*. Schools serving lunches to infants ages birth through 11 months under the National School Lunch Program must serve the food components and quantities

required in the lunch meal pattern established for the Child and Adult Care Food Program, under § 226.20(a), (b), and (d) of this chapter. In addition, schools serving lunches to infants must comply with the requirements set forth

in paragraphs (a), (c)(3), (4), and (7), (g), (l), and (m) of this section.

(2) *Infant lunch meal pattern table*. The minimum amounts of food components to be served at lunch are as follows:

INFANT LUNCH MEAL PATTERN

Infants	Birth through 5 months	6 through 11 months
Lunch	4–6 fluid ounces breastmilk ¹ or formula ²	6–8 fluid ounces breastmilk ¹ or formula ² ; and 0–4 tablespoons infant cereal ^{2,3} meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0–2 ounces of cheese; or 0–4 ounces (volume) of cottage cheese; or, 0–8 ounces or 1 cup of yogurt ⁴ ; or a combination of the above ⁵ ; and 0–2 tablespoons vegetable or fruit, or a combination of both ^{5,6}

¹ Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.

² Infant formula and dry infant cereal must be iron-fortified.

³ Beginning October 1, 2019, ounce equivalents are used to determine the quantity of creditable grains.

⁴ Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

⁵ A serving of this component is required when the infant is developmentally ready to accept it.

⁶ Fruit and vegetable juices must not be served.

PART 215—SPECIAL MILK PROGRAM

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

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

■ 4. Add § 215.7a to read as follows:

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

Fluid milk and non-dairy fluid milk substitutes served must meet the requirements as outlined in this section.

(a) *Types of fluid milk*. All fluid milk served in the Program must be pasteurized fluid milk which meets State and local standards for such milk, have vitamins A and D at levels specified by the Food and Drug Administration, and must be consistent with State and local standards for such milk. Fluid milk must also meet the following requirements:

(1) *Children 1 year old*. Children one year of age must be served unflavored whole milk.

(2) *Children 2 through 5 years old*. Children two through five years old must be served either unflavored low-fat

(1 percent) or unflavored fat-free (skim) milk.

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

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

Nutrient	Per cup (8 fl oz)
Calcium	276 mg.
Protein	8 g.
Vitamin A	500 IU.
Vitamin D	100 IU.

Nutrient	Per cup (8 fl oz)
Magnesium ...	24 mg.
Phosphorus ..	222 mg.
Potassium	349 mg.
Riboflavin	0.44 mg.
Vitamin B-12	1.1 mcg.

PART 220—SCHOOL BREAKFAST PROGRAM

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

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

■ 6. Amend § 220.8 as follows:

- a. In paragraph (a), revise the first sentence;
- b. In paragraph (a)(3), revise the third sentence;
- c. In paragraph (c), revise the paragraph heading;
- d. In paragraph (e), revise the paragraph heading;
- e. In paragraph (g), revise the first sentence;
- f. Revise paragraphs (j) and (o); and
- g. Add paragraph (p).

The addition and revisions read as follows:

§ 220.8 Meal requirements for breakfasts.

(a) * * * This section contains the meal requirements applicable to school breakfasts for students in grades K through 12, and for children under the age of 5. * * *

* * * * *

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

* * * * *

(c) *Meal pattern for school breakfasts for grades K through 12.* * * *

* * * * *

(e) *Offer versus serve for grades K through 12.* * * *

* * * * *

(g) * * * The State agency and school food authority must provide technical assistance and training to assist schools in planning breakfasts that meet the meal pattern in paragraph (c) of this section, the dietary specifications for calorie, saturated fat, sodium, and *trans* fat established in paragraph (f) of this section, and the meal pattern in paragraphs (o) and (p) of this section, as applicable. * * *

* * * * *

(j) *State agency's responsibilities for compliance monitoring.* Compliance with the applicable meal requirements in paragraph (b), (o), and (p) of this section will be monitored by the State

agency through administrative reviews authorized in § 210.18 of this chapter.

* * * * *

(o) *Breakfast requirements for preschoolers—*(1) *Breakfasts served to preschoolers.* Schools serving breakfast to children ages 1 through 4 under the School Breakfast Program must serve the meal components and quantities required in the breakfast meal pattern established for the Child and Adult Day Care Food Program under § 226.20(a), (c)(1), and (d) of this chapter. In addition, schools serving breakfasts to this age group must comply with the requirements set forth in paragraphs (a), (c)(3), (k), (l), and (m) of this section as applicable.

(2) *Preschooler breakfast meal pattern table.* The minimum amounts of food components to be served at breakfast are as follows:

PRESCHOOL BREAKFAST MEAL PATTERN

Food components and food items ¹	Minimum quantities	
	Ages 1–2	Ages 3–5
Fluid milk ²	4 fluid ounces	6 fluid ounces.
Vegetables, fruits, or portions of both ³	¼ cup	½ cup
Grains (oz eq) ^{4 5 6}		
Whole grain-rich or enriched bread	½ slice	½ slice
Whole grain-rich or enriched bread product, such as biscuit, roll, muffin.	½ serving	½ serving
Whole grain-rich, enriched or fortified cooked breakfast cereal, ⁷ cereal grain, and/or pasta.	¼ cup	¼ cup
Whole grain-rich, enriched or fortified ready-to-eat breakfast cereal (dry, cold) ^{7 8} .		
Flakes or rounds	½ cup	½ cup
Puffed cereal	¾ cup	¾ cup
Granola	⅙ cup	⅙ cup

¹ Must serve all three components for a reimbursable meal.
² Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old.
³ Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.
⁴ At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.
⁵ 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.
⁶ Beginning October 1, 2019, ounce equivalents are used to determine the quantity of creditable grains.
⁷ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21 grams sucrose and other sugars per 100 grams of dry cereal).
⁸ Beginning October 1, 2019, the minimum serving size specified in this section for ready-to-eat breakfast cereals must be served. Until October 1, 2019, the minimum serving size for any type of ready-to-eat breakfast cereals is ¼ cup for children ages 1–2, and ⅓ cup for children ages 3–5.

(p) *Breakfast requirements for infants—*(1) *Breakfasts served to infants.* Schools serving breakfasts to infants ages birth through 11 months under the School Breakfast Program must serve the food components and quantities

required in the breakfast meal pattern established for the Child and Adult Day Care Food Program, under § 226.20(a), (b), and (d) of this chapter. In addition, schools serving breakfasts to infants must comply with the requirements set

forth in paragraphs (a), (c)(3), (k), (l), and (m) of this section as applicable.
 (2) *Infant breakfast meal pattern table.* The minimum amounts of food components to be served at breakfast are as follows:

INFANT BREAKFAST MEAL PATTERN

Infants	Birth through 5 months	6 through 11 months
Breakfast	4–6 fluid ounces breastmilk ¹ or formula ²	6–8 fluid ounces breastmilk ¹ or formula ² ; and

INFANT BREAKFAST MEAL PATTERN—Continued

Infants	Birth through 5 months	6 through 11 months
		0–4 tablespoons infant cereal ^{2 3} meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0–2 ounces of cheese; or 0–4 ounces (volume) of cottage cheese; or, 0–8 ounces or 1 cup of yogurt ⁴ ; or a combination of the above ⁵ ; and 0–2 tablespoons vegetable or fruit, or a combination of both ^{5 6}

¹ Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.

² Infant formula and dry infant cereal must be iron-fortified.

³ Beginning October 1, 2019, ounce equivalents are used to determine the quantity of creditable grains.

⁴ Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

⁵ A serving of this component is required when the infant is developmentally ready to accept it.

⁶ Fruit and vegetable juices must not be served.

§ 220.23 [Removed]

■ 7. Remove § 220.23.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 8. The authority citation for 7 CFR part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 9. Revise § 226.1 to read as follows:

§ 226.1 General purpose and scope.

This part announces the regulations under which the Secretary of Agriculture will carry out the Child and Adult Care Food Program. Section 17 of the Richard B. Russell National School Lunch Act, as amended, authorizes assistance to States through grants-in-aid and other means to initiate, maintain, and expand nonprofit food service programs for children and adult participants in non-residential institutions which provide care. The Program is intended to provide aid to child and adult participants and family or group day care homes for provision of nutritious foods that contribute to the wellness, healthy growth, and development of young children, and the health and wellness of older adults and chronically impaired persons.

■ 10. In § 226.2, add definitions of *Tofu* and *Whole grains* in alphabetical order to read as follows:

§ 226.2 Definitions.

* * * * *

Tofu means a commercially prepared soy-bean derived food, made by a

process in which soybeans are soaked, ground, mixed with water, heated, filtered, coagulated, and formed into cakes. Basic ingredients are whole soybeans, one or more food-grade coagulants (typically a salt or acid), and water.

* * * * *

Whole grains means foods that consist of intact, ground, cracked, or flaked grain seed whose principal anatomical components—the starchy endosperm, germ, and bran—are present in the same relative proportions as they exist in the intact grain seed.

* * * * *

■ 11. In § 226.7, revise paragraph (m) to read as follows:

§ 226.7 State agency responsibilities for financial management.

* * * * *

(m) *Financial management system.* Each State agency must establish a financial management system in accordance with 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400, 415, and 416, as applicable, and FNS guidance to identify allowable Program costs and set standards for institutional recordkeeping and reporting. These standards must:

(1) Prohibit claiming reimbursement for meals provided by a participant’s family, except as authorized by §§ 226.18(e) and 226.20(b)(2), (g)(1)(ii), and (g)(2)(ii); and

(2) Allow the cost of the meals served to adults who perform necessary food service labor under the Program, except in day care homes. The State agency must provide guidance on financial

management requirements to each institution and facility.

■ 12. Revise § 226.20 to read as follows:

§ 226.20 Requirements for meals.

(a) *Food components.* Except as otherwise provided in this section, each meal served in the Program must contain, at a minimum, the indicated food components:

(1) *Fluid milk.* Fluid milk must be served as a beverage or on cereal, or a combination of both, as follows:

(i) *Children 1 year old.* Children one year of age must be served unflavored whole milk.

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

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

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

(2) *Vegetables.* A serving may contain fresh, frozen, or canned vegetables, dry beans and peas (legumes), or vegetable juice. All vegetables are credited based on their volume as served, except that 1 cup of leafy greens counts as ½ cup of vegetables.

(i) Pasteurized, full-strength vegetable juice may be used to fulfill the entire requirement. Vegetable juice or fruit juice may only be served at one meal, including snack, per day.

(ii) Cooked dry beans or dry peas may be counted as either a vegetable or as a meat alternate, but not as both in the same meal.

(3) *Fruits*. A serving may contain fresh, frozen, canned, dried fruits, or fruit juice. All fruits are based on their volume as served, except that ¼ cup of dried fruit counts as ½ cup of fruit.

(i) Pasteurized, full-strength fruit juice may be used to fulfill the entire requirement. Fruit juice or vegetable juice may only be served at one meal, including snack, per day.

(ii) A vegetable may be used to meet the entire fruit requirement at lunch and supper. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.

(4) *Grains*—(i) *Enriched and whole grains*. All grains must be made with enriched or whole grain meal or flour.

(A) At least one serving per day, across all eating occasions of bread, cereals, and grains, must be whole grain-rich. Whole grain-rich foods contain at least 50 percent whole grains and the remaining grains in the food are enriched, and must meet the whole grain-rich criteria specified in FNS guidance.

(B) A serving may contain whole grain-rich or enriched bread, cornbread, biscuits, rolls, muffins, and other bread products; or whole grain-rich, enriched, or fortified cereal grain, cooked pasta or noodle products, or breakfast cereal; or any combination of these foods.

(ii) *Breakfast cereals*. Breakfast cereals are those as defined by the Food and Drug Administration in 21 CFR 170.3(n)(4) for ready-to-eat and instant and regular hot cereals. Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21 grams sucrose and other sugars per 100 grams of dry cereal).

(iii) *Desserts*. Grain-based desserts do not count towards meeting the grains requirement.

(5) *Meat and meat alternates*. (i) Meat and meat alternates must be served in a main dish, or in a main dish and one other menu item. The creditable quantity of meat and meat alternates must be the edible portion as served of:

- (A) Lean meat, poultry, or fish;
- (B) Alternate protein products;
- (C) Cheese, or an egg;
- (D) Cooked dry beans or peas;
- (E) Peanut butter; or
- (F) Any combination of these foods.

(ii) *Nuts and seeds*. Nuts and seeds and their butters are allowed as meat

alternates in accordance with FNS guidance. For lunch and supper meals, nuts or seeds may be used to meet one-half of the meat and meat alternate component. They must be combined with other meat and meat alternates to meet the full requirement for a reimbursable lunch or supper.

(A) Nut and seed meals or flours may be used only if they meet the requirements for alternate protein products established in appendix A of this part.

(B) Acorns, chestnuts, and coconuts cannot be used as meat alternates because of their low protein and iron content.

(iii) *Yogurt*. Four ounces (weight) or ½ cup (volume) of yogurt equals one ounce of the meat and meat alternate component. Yogurt may be used to meet all or part of the meat and meat alternate component as follows:

(A) Yogurt may be plain or flavored, unsweetened, or sweetened;

(B) Yogurt must contain no more than 23 grams of total sugars per 6 ounces;

(C) Noncommercial or commercial standardized yogurt products, such as frozen yogurt, drinkable yogurt products, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruits or nuts, or similar products are not creditable; and

(D) For adults, yogurt may only be used as a meat alternate when it is not also being used as a fluid milk substitute in the same meal.

(iv) *Tofu and soy products*. Commercial tofu and soy products may be used to meet all or part of the meat and meat alternate component in accordance with FNS guidance and appendix A of this part. Non-commercial and non-standardized tofu and soy products cannot be used.

(v) *Beans and peas (legumes)*. Cooked dry beans and peas may be used to meet all or part of the meat and meat alternate component. Beans and peas include black beans, garbanzo beans, lentils, kidney beans, mature lima beans, navy beans, pinto beans, and split peas. Beans and peas may be counted as either a meat alternate or as a vegetable, but not as both in the same meal.

(vi) *Other meat alternates*. Other meat alternates, such as cheese, eggs, and nut butters may be used to meet all or part of the meat and meat alternate component.

(b) *Infant meals*—(1) *Feeding infants*. Foods in reimbursable meals served to infants ages birth through 11 months must be of a texture and a consistency that are appropriate for the age and development of the infant being fed. Foods must also be served during a span

of time consistent with the infant's eating habits.

(2) *Breastmilk and iron-fortified formula*. Breastmilk or iron-fortified infant formula, or portions of both, must be served to infants birth through 11 months of age. An institution or facility must offer at least one type of iron-fortified infant formula. Meals containing breastmilk or iron-fortified infant formula supplied by the institution or facility, or by the parent or guardian, are eligible for reimbursement.

(i) *Parent or guardian provided breastmilk or iron-fortified formula*. A parent or guardian may choose to accept the offered formula, or decline the offered formula and supply expressed breastmilk or an iron-fortified infant formula instead. Meals in which a mother directly breastfeeds her child at the child care institution or facility are also eligible for reimbursement. When a parent or guardian chooses to provide breastmilk or iron-fortified infant formula and the infant is consuming solid foods, the institution or facility must supply all other required meal components in order for the meal to be reimbursable.

(ii) *Breastfed infants*. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered. In these situations, additional breastmilk must be offered at a later time if the infant will consume more.

(3) *Solid foods*. The gradual introduction of solid foods may begin at six months of age, or before or after six months of age if it is developmentally appropriate for the infant and in accordance with FNS guidance.

(4) *Infant meal pattern*. Infant meals must have, at a minimum, each of the food components indicated, in the amount that is appropriate for the infant's age.

(i) *Birth through 5 months*—(A) *Breakfast*. Four to 6 fluid ounces of breastmilk or iron-fortified infant formula, or portions of both.

(B) *Lunch or supper*. Four to 6 fluid ounces of breastmilk or iron-fortified infant formula, or portions of both.

(C) *Snack*. Four to 6 fluid ounces of breastmilk or iron-fortified infant formula, or portions of both.

(ii) *6 through 11 months*. Breastmilk or iron-fortified formula, or portions of both, is required. Meals are reimbursable when institutions and facilities provide all the components in the meal pattern that the infant is developmentally ready to accept.

(A) *Breakfast, lunch, or supper.* Six to 8 fluid ounces of breastmilk or iron-fortified infant formula, or portions of both; and 0 to 4 tablespoons of iron-fortified dry infant cereal, meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0 to 2 ounces (weight) of cheese; or 0 to 4 ounces (volume) of cottage cheese; or 0 to 8

ounces of yogurt; and 0 to 2 tablespoons of vegetable, fruit, or portions of both. Fruit juices and vegetable juices must not be served.

(B) *Snack.* Two to 4 fluid ounces of breastmilk or iron-fortified infant formula; and 0 to 1/2 slice bread; or 0–2 crackers; or 0–4 tablespoons infant cereal or ready-to-eat cereals; and 0 to

2 tablespoons of vegetable or fruit, or portions of both. Fruit juices and vegetable juices must not be served. A serving of grains must be whole grain-rich, enriched meal, or enriched flour.

(5) *Infant meal pattern table.* The minimum amounts of food components to serve to infants, as described in paragraph (b)(4) of this section, are:

INFANT MEAL PATTERNS

Infants	Birth through 5 months	6 through 11 months
Breakfast, Lunch, or Supper	4–6 fluid ounces breastmilk ¹ or formula ²	6–8 fluid ounces breastmilk ¹ or formula ² ; and 0–4 tablespoons infant cereal ^{2,3} meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0–2 ounces of cheese; or 0–4 ounces (volume) of cottage cheese; or, 0–8 ounces or 1 cup of yogurt ⁴ ; or a combination of the above ⁵ ; and 0–2 tablespoons vegetable or fruit, or a combination of both ^{5,6}
Snack	4–6 fluid ounces breastmilk ¹ or formula ²	2–4 fluid ounces breastmilk ¹ or formula ² ; and 0–1/2 slice bread ^{3,7} ; or 0–2 cracker ^{3,7} ; or 0–4 tablespoons infant cereal ^{2,3,7} or ready-to-eat breakfast cereal ^{3,5,7,8} ; and 0–2 tablespoons vegetable or fruit, or a combination of both ^{5,6}

¹ Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.

² Infant formula and dry infant cereal must be iron-fortified.

³ Beginning October 1, 2019, ounce equivalents are used to determine the quantity of creditable grains.

⁴ Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

⁵ A serving of this component is required when the infant is developmentally ready to accept it.

⁶ Fruit and vegetable juices must not be served.

⁷ A serving of grains must be whole-grain rich, enriched meal, or enriched flour.

⁸ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21 grams sucrose and other sugars per 100 grams of dry cereal).

(c) *Meal patterns for children age 1 through 18 and adult participants.* Institutions and facilities must serve the food components and quantities specified in the following meal patterns

for children and adult participants in order to qualify for reimbursement.

(1) *Breakfast.* Fluid milk, vegetables or fruit, or portions of both, and grains are required components of the breakfast meal. Meat and meat alternates

may be used to meet the entire grains requirement a maximum of three times per week. The minimum amounts of food components to be served at breakfast are as follows:

BREAKFAST MEAL PATTERN FOR CHILDREN AND ADULTS

Food Components and Food Items ²	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 ¹ (at-risk afterschool programs and emergency shelters)	Adult
	Minimum Quantities				
Fluid milk ³	4 fl oz	6 fl oz	8 fl oz	8 fl oz	8 fl oz.
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, muffin	1/2 serving	1/2 serving	1 serving	1 serving	2 servings.
Whole grain-rich, enriched or fortified cooked break- fast cereal, ⁸ cereal grain, and/or pasta	1/4 cup	1/4 cup	1/2 cup	1/2 cup	1 cup.

BREAKFAST MEAL PATTERN FOR CHILDREN AND ADULTS—Continued

	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 ¹ (at-risk afterschool programs and emergency shelters)	Adult
Whole grain-rich, enriched or fortified ready-to-eat breakfast cereal (dry, cold) ^{8,9}					
Flakes or rounds	½ cup	½ cup	1 cup	1 cup	2 cups.
Puffed cereal	¾ cup	¾ cup	1¼ cup	1¼ cup	2½ cups.
Granola	⅓ cup	⅓ cup	¼ cup	¼ cup	½ cup.

¹ Larger portion sizes than specified may need to be served to children 13 through 18 year olds to meet their nutritional needs.
² Must serve all three components for a reimbursable meal. Offer versus serve is an option for only adult and at-risk afterschool participants.
³ Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old. Must be unflavored low-fat (1 percent), unflavored fat-free (skim), or flavored fat-free (skim) milk for children six years old and older and adults. For adult participants, 6 ounces (weight) or ¾ cup (volume) of yogurt may be used to meet the equivalent of 8 ounces of fluid milk once per day when yogurt is not served as a meat alternate in the same meal.
⁴ 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 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 cereals is ¼ cup for children ages 1–2; ⅓ cup for children ages 3–5; ¾ cup for children ages 6–12 and ages 13–18; and 1½ cups for adults.

(2) *Lunch and supper.* Fluid milk, meat and meat alternates, vegetables, fruits, and grains are required components in the lunch and supper meals. The minimum amounts of food components to be served at lunch and supper are as follows:

LUNCH AND SUPPER MEAL PATTERN FOR CHILDREN AND ADULTS

	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 ¹ (at-risk afterschool programs and emergency shelters)	Adult
Food Components and Foot Items ²	Minimum Quantities				
Fluid milk ³	4 fl oz	6 fl oz	8 fl oz	8 fl oz	8 fl oz. 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	⅓ cup	½ cup	½ cup	½ cup.
Peanut butter or soy nut butter or other nut or seed butters.	2 Tbsp	3 Tbsp	4 Tbsp	4 Tbsp	4 Tbsp.
Yogurt, plain or flavored unsweetened or sweetened ⁶	4 ounces	6 ounces or ¾ cup.	8 ounces or 1 cup	8 ounces or 1 cup	8 ounces or 1 cup.
The following may be used to meet no more than 50 percent of the requirement:					
Peanuts, soy nuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternates (1 ounce of nuts/seeds = 1 ounce of cooked lean meat, poultry or fish).	½ ounce = 50% ...	¾ ounce = 50% ...	1 ounce = 50% ...	1 ounce = 50% ...	1 ounce = 50%.
Vegetables 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.

LUNCH AND SUPPER MEAL PATTERN FOR CHILDREN AND ADULTS—Continued

	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 ¹ (at-risk afterschool programs and emergency shelters)	Adult
Whole grain-rich or enriched bread product, such as biscuit, roll, muffin.	½ serving	½ serving	1 serving	1 serving	2 servings.
Whole grain-rich, enriched or fortified cooked breakfast cereal, ¹¹ cereal grain, and/or pasta.	¼ cup	¼ cup	½ cup	½ cup	1 cup.

¹ Larger portion sizes than specified may need to be served to children 13 through 18 year olds to meet their nutritional needs.

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

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

⁴ 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 this part.

⁶ Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

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

⁸ A vegetable may be used to meet the entire fruit requirement. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.

⁹ At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards the grains requirement.

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

¹¹ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21 grams sucrose and other sugars per 100 grams of dry cereal).

(3) *Snack.* Serve two of the following five components: Fluid milk, meat and meat alternates, vegetables, fruits, and grains. Fruit juice, vegetable juice, and milk may comprise only one component of the snack. The minimum amounts of food components to be served at snacks are as follows:

SNACK MEAL PATTERN FOR CHILDREN AND ADULTS

	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 ¹ (at-risk afterschool programs and emergency shelters)	Adult
Food Components and Food Items ²	Minimum Quantities				
Fluid milk ³	4 fl oz	4 fl oz	8 fl oz	8 fl oz	8 fl oz.
Meats/meat alternates					
Edible portion as served					
Lean meat, poultry, or fish	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Tofu, soy products, or alternate protein products ⁴ .	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Cheese	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Large egg	½	½	½	½	½.
Cooked dry beans or peas	⅛ cup	⅛ cup	¼ cup	¼ cup	¼ cup.
Peanut butter or soy nut butter or other nut or seed butters.	1 Tbsp	1 Tbsp	2 Tbsp	2 Tbsp	2 Tbsp.
Yogurt, plain or flavored unsweetened or sweetened ⁵ .	2 ounces or ¼ cup.	2 ounces or ¼ cup.	4 ounces or ½ cup.	4 ounces or ½ cup.	4 ounces or ½ cup.
Peanuts, soy nuts, tree nuts, or seeds.	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Vegetables ⁶	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Fruits ⁶	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Grains (oz eq) ^{7,8}					
Whole grain-rich or enriched bread.	½ slice	½ slice	1 slice	1 slice	1 slice.
Whole grain-rich or enriched bread product, such as biscuit, roll, 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.

SNACK MEAL PATTERN FOR CHILDREN AND ADULTS—Continued

	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 ¹ (at-risk afterschool programs and emergency shelters)	Adult
Whole grain-rich, enriched or fortified ready-to-eat breakfast cereal (dry, cold) ^{9,10} .					
Flakes or rounds	1/2 cup	1/2 cup	1 cup	1 cup	1 cup.
Puffed cereal	3/4 cup	3/4 cup	1 1/4 cup	1 1/4 cups	1 1/4 cups.
Granola	1/8 cup	1/8 cup	1/4 cup	1/4 cup	1/4 cup.

¹ Larger portion sizes than specified may need to be served to children 13 through 18 year olds to meet their nutritional needs.

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

³ Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old. Must be unflavored low-fat (1 percent), unflavored fat-free (skim), or flavored fat-free (skim) milk for children six years old and older and adults. For adult participants, 6 ounces (weight) or 3/4 cup (volume) of yogurt may be used to meet the equivalent of 8 ounces of fluid milk once per day when yogurt is not served as a meat alternate in the same meal.

⁴ Alternate protein products must meet the requirements in appendix A to this part.

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

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

⁷ At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.

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

⁹ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21 grams sucrose and other sugars per 100 grams of dry cereal).

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

(d) *Food preparation.* Deep-fat fried foods that are prepared on-site cannot be part of the reimbursable meal. For this purpose, deep-fat frying means cooking by submerging food in hot oil or other fat. Foods that are pre-fried, flash-fried, or par-fried by a commercial manufacturer may be served, but must be reheated by a method other than frying.

(e) *Unavailability of fluid milk—(1) Temporary.* When emergency conditions prevent an institution or facility normally having a supply of milk from temporarily obtaining milk deliveries, the State agency may approve the service of breakfast, lunches, or suppers without milk during the emergency period.

(2) *Continuing.* When an institution or facility is unable to obtain a supply of milk on a continuing basis, the State agency may approve service of meals without milk, provided an equivalent amount of canned, whole dry or fat-free dry milk is used in the preparation of the components of the meal set forth in paragraph (a) of this section.

(f) *Statewide substitutions.* In American Samoa, Puerto Rico, Guam, and the Virgin Islands, the following variations from the meal requirements are authorized: a serving of starchy vegetable, such as yams, plantains, or sweet potatoes, may be substituted for the grains requirement.

(g) *Exceptions and variations in reimbursable meals—(1) Exceptions for disability reasons.* Reasonable

substitutions must be made on a case-by-case basis for foods and meals described in paragraphs (a), (b), and (c) of this section for individual participants who are considered to have a disability under 7 CFR 15b.3 and whose disability restricts their diet.

(i) A written statement must support the need for the substitution. The statement must include recommended alternate foods, unless otherwise exempted by FNS, and must be signed by a licensed physician or licensed health care professional who is authorized by State law to write medical prescriptions.

(ii) A parent, guardian, adult participant, or a person on behalf of an adult participant may supply one or more components of the reimbursable meal as long as the institution or facility provides at least one required meal component.

(2) *Exceptions for non-disability reasons.* Substitutions may be made on a case-by-case basis for foods and meals described in paragraphs (a), (b), and (c) of this section for individual participants without disabilities who cannot consume the regular meal because of medical or special dietary needs.

(i) A written statement must support the need for the substitution. The statement must include recommended alternate foods, unless otherwise exempted by FNS. Except for substitutions of fluid milk, as set forth

below, the statement must be signed by a recognized medical authority.

(ii) A parent, guardian, adult participant, or a person on behalf of an adult participant may supply one component of the reimbursable meal as long as the component meets the requirements described in paragraphs (a), (b), and (c) of this section and the institution or facility provides the remaining components.

(3) *Fluid milk substitutions for non-disability reasons.* Non-dairy fluid milk substitutions that provide the nutrients listed in the following table and are fortified in accordance with fortification guidelines issued by the Food and Drug Administration may be provided for non-disabled children and adults who cannot consume fluid milk due to medical or special dietary needs when requested in writing by the child's parent or guardian, or by, or on behalf of, an adult participant. An institution or facility need only offer the non-dairy beverage that it has identified as an allowable fluid milk substitute according to the following table.

Nutrient	Per cup (8 fl oz)
Calcium	276 mg.
Protein	8 g.
Vitamin A	500 IU.
Vitamin D	100 IU.
Magnesium	24 mg.
Phosphorus	222 mg.
Potassium	349 mg.
Riboflavin	0.44 mg.
Vitamin B–12	1.1 mcg.

(h) *Special variations.* FNS may approve variations in the food components of the meals on an experimental or continuing basis in any institution or facility where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(i) *Meals prepared in schools.* The State agency must allow institutions and facilities which serve meals to children 5 years old and older and are prepared in schools participating in the National School Lunch and School Breakfast Programs to substitute the meal pattern requirements of the regulations governing those Programs (7 CFR parts 210 and 220, respectively) for the meal pattern requirements contained in this section.

(j) *Meal planning.* Institutions and facilities must plan for and order meals on the basis of current participant trends, with the objective of providing only one meal per participant at each meal service. Records of participation and of ordering or preparing meals must be maintained to demonstrate positive action toward this objective. In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed and to reduce the resultant waste, any excess meals that are ordered may be served to participants and may be claimed for reimbursement, unless the State agency determines that the institution or facility has failed to plan and prepare or order meals with the objective of providing only one meal per participant at each meal service.

(k) *Time of meal service.* State agencies may require any institution or facility to allow a specific amount of time to elapse between meal services or require that meal services not exceed a specified duration.

(l) *Sanitation.* Institutions and facilities must ensure that in storing, preparing, and serving food proper sanitation and health standards are met

which conform with all applicable State and local laws and regulations.

Institutions and facilities must ensure that adequate facilities are available to store food or hold meals.

(m) *Donated commodities.* Institutions and facilities must efficiently use in the Program any foods donated by the Department and accepted by the institution or facility.

(n) *Family style meal service.* Family style is a type of meal service which allows children and adults to serve themselves from common platters of food with the assistance of supervising adults. Institutions and facilities choosing to exercise this option must be in compliance with the following practices:

(1) A sufficient amount of prepared food must be placed on each table to provide the full required portions of each of the components, as outlined in paragraphs (c)(1) and (2) of this section, for all children or adults at the table and to accommodate supervising adults if they wish to eat with the children and adults.

(2) Children and adults must be allowed to serve the food components themselves, with the exception of fluids (such as milk). During the course of the meal, it is the responsibility of the supervising adults to actively encourage each child and adult to serve themselves the full required portion of each food component of the meal pattern. Supervising adults who choose to serve the fluids directly to the children or adults must serve the required minimum quantity to each child or adult.

(3) Institutions and facilities which use family style meal service may not claim second meals for reimbursement.

(o) *Offer versus serve.* (1) Each adult day care center and at-risk afterschool program must offer its participants all of the required food servings as set forth in paragraphs (c)(1) and (2) of this section. However, at the discretion of the adult day care center or at-risk afterschool

program, participants may be permitted to decline:

(i) *For adults.* (A) *One of the four* food items (one serving of fluid milk; one serving of vegetable or fruit, or a combination of both; and two servings of grains, or meat or meat alternates) required at breakfast;

(B) *Two of the six* food items (one serving of fluid milk; one serving of vegetables; one serving of fruit; two servings of grain; and one serving of meat or meat alternate) required at lunch; and

(C) *Two of the five* food items (one serving of vegetables; one serving of fruit; two servings of grain; and one serving of meat or meat alternate) required at supper.

(ii) *For children.* *Two of the five* food items (one serving of fluid milk; one serving of vegetables; one serving of fruit; one serving of grain; and one serving of meat or meat alternate) required at supper.

(2) In pricing programs, the price of the reimbursable meal must not be affected if a participant declines a food item.

(p) *Prohibition on using foods and beverages as punishments or rewards.* Meals served under this part must contribute to the development and socialization of children. Institutions and facilities must not use foods and beverages as punishments or rewards.

■ 13. In paragraph § 226.25, add paragraph (i) to read as follows:

§ 226.25 Other provisions.

* * * * *

(i) *Drinking water.* A child care institution or facility must offer and make potable drinking water available to children throughout the day.

Dated: April 19, 2016.

Kevin Concannon,
Under Secretary for Food, Nutrition, and
Consumer Services.

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