

**Summary of Flexibilities and Changes Proposed by this Rule**

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

Area	Program	Current Requirement	Proposed Rule	Regulations Impacted
<b>Proposals to Simplify Monitoring</b>				
Establish 5-year Administrative Review Cycle & Targeted, Follow-up Reviews of High- Risk SFAs	SBP, NSLP	All SFAs are reviewed on a 3-year cycle.	State agencies would be required to review SFAs once every 5 years, with high- risk SFAs receiving additional oversight.	7 CFR 210.18(c)
Align Administrative Review and Food Service Management Company Review Cycles	SBP, NSLP	SFAs operating with a food service management company must be reviewed once every 3 years.	State agencies would be required to review SFAs operating with a food service management company once every 5 years.	7 CFR 210.19(a)(5)
Address Significant Performance Standard 1 Noncompliance Early in Review Cycle	SBP, NSLP	SFAs with significant Performance standard 2 noncompliance must be reviewed earlier in the administrative review cycle.	SFAs with significant Performance standard 1 and/or performance standard 2 noncompliance would be reviewed earlier in the administrative review cycle.	7 CFR 210.18(e)(5)
Allow Expanded Use of Third-Party Audits	SBP, NSLP	State agencies may use recent and currently applicable findings from federally required audit activity or from any State-imposed audit requirements.	State agencies also would be allowed to use recent and applicable findings from supplementary audit activities, requirements added to Federal or State audits by local operators, or other third-party audits initiated by SFAs or other local entities.	7 CFR 210.18(f)(3)

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<b>Proposals to Simplify Monitoring</b>				
Allow Completion of Review Requirements Outside of the Administrative Review	SBP, NSLP, SMP, FFVP <sup>37</sup>	State agencies cannot satisfy Administrative Review requirements by conducting monitoring and oversight activities outside of the formal administrative review process.	State agencies would be allowed to satisfy sections of the administrative review through equivalent State monitoring or oversight activities conducted outside of the established administrative review process.	7 CFR 210.18(f), (g), and (h)
Provide Incentives to Invest in Integrity-Focused Process Improvements	SBP, NSLP	State agencies conduct Administrative reviews to monitor compliance with Program requirements.	Proposes a framework for waiving or by passing certain administrative review requirements for State and/or local agencies that implement FNS-specified process improvements.	7 CFR 210.18(f), (g), and (h)
Omit the On-Site Breakfast Review in Extenuating Circumstances	SBP	State agencies must conduct on-site SBP reviews of half of review sites that operate SBP.	State agencies would be allowed to omit the on-site SBP review in extenuating circumstances.	7 CFR 210.18(g)(1)(ii) 7 CFR 210.18(g)(2)(i)(B)
Add Flexibility to Completion of the Resource Management Module	SBP, NSLP	State agencies must conduct an off-site assessment of an SFA's financial practices before the review of Resource Management requirements.	State agencies would be allowed to assess an SFA's risk for noncompliance in Resource Management areas at any point in the review process.	7 CFR 210.18(h)(1)

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<b>Proposals to Simplify Monitoring</b>				
Set Consistent Fiscal Action for Repeated Meal Pattern Violations	SBP, NSLP	State agencies <u>must</u> take fiscal action for repeated violations for milk type and vegetable subgroups.	Proposal would allow State agencies <u>discretion to</u> take fiscal action for repeated violations for milk type and vegetable subgroups.	7 CFR 210.18(l)(2)
Add Buy American to the General Areas of the Administrative Review	SBP, NSLP	State agencies conduct an on- site review of food components to check compliance with Buy American provision, as specified in guidance, but not in regulations.	Proposal would add Buy American on-site compliance check to the regulations under general areas of the administrative review.	7 CFR 210.18(h)(2)

<sup>37</sup> SMP = Special Milk Program, FFVP = Fresh Fruit and Vegetable Program

Area	Program	Current Requirement	Proposed Rule	Regulation Impacted
<b>Proposals to Simplify Meal Service</b>				
Facilitate the Service of Vegetable Subgroups in the NSLP	NSLP	SFAs must offer different amounts of five vegetable subgroups identified in the Dietary Guidelines over the school week (Dark Green, Red/Orange, Legumes, Starchy, and Other).	Proposal would allow SFAs to offer the same amount of vegetables from all five subgroups to all age/grade groups. It would also allow legumes offered as a meat alternate to count toward the weekly legumes vegetable requirement.	7 CFR 210.10(c)(2)(iii) 7 CFR 210.10(m)(4)(ii)
Add Flexibility to Established Age/Grade Groups	SBP, NSLP	Schools are required to offer meals that meet requirements established for three established age/grade groups (K-5, 6-8, 9-12).	Proposal would allow schools with unique grade configurations to add or subtract a grade on either or both ends of an established age/grade group. Also, schools with unique grade configurations in SFAs with fewer than 2,500 students would have the option to use one (or two) meal patterns for established age/grade groups for all students.	7 CFR 210.10(c)(1) 7 CFR 210.10(m)(4) 7 CFR 220.8(c)(1) 7 CFR 220.8(m)(2)
Increase Flexibility to Offer Meats/Meat Alternates at Breakfast	SBP	Schools may offer meats/meat alternates at breakfast after the minimum daily grains requirement is offered.	Proposal would allow schools to offer a meat/meat alternate or a grain at breakfast (or a combination of the two) with no daily minimum grain requirement.	7 CFR 220.8(c)(2)
Flexibility in SBP Fruit Component	SBP	Schools must offer 1 cup of fruit per day and 5 cups of fruit per week. Students may select ½ cup of fruit for a reimbursable meal under Offer versus Serve (OVS).	With State agency approval, schools serving SBP in a non-cafeteria setting would be allowed to offer ½ cup fruit per day (2½ cups per week) as part of reimbursable breakfasts.	7 CFR 220.8(c)(2) 7 CFR 220.8(m)(1)
Remove <u>Trans</u> Fat Limit as a Dietary Specification	SBP, NSLP, Competitive Foods	<u>Trans</u> fats are prohibited in NSLP, SBP, and competitive foods.	Proposal would remove USDA's <u>trans</u> fat prohibition effective July 1, 2021. The Food & Drug Administration is removing <u>trans</u> fats from the food supply.	7 CFR 210.10(f)(4) 7 CFR 210.11(g) 7 CFR 220.8(f)(4)

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<b>Proposals to Simplify Meal Service</b>				
Change Performance-based Reimbursement (7 cents) Quarterly Report to an Annual Report	NSLP	States are required to submit a quarterly report detailing the SFAs to receive the performance-based 7 cents reimbursement.	Proposal would reduce the frequency of the performance-based report from quarterly to annually.	7 CFR 210.5(d)(2)(ii)
Update Meal Modifications for Disability and Non-Disability Reasons	SBP, NSLP, CACFP	Schools, institutions, and facilities are required to obtain a written statement from a licensed physician to make meal substitutions for a child's disability.	<p>Proposal would:</p> <p>Remove the term "special dietary needs," which is encompassed in the expanded definition of "disability."</p> <p>Add a definition for "State licensed healthcare professional".</p> <p>Clarify that a medical statement is only required for accommodations that fall outside the meal patterns.</p>	7 CFR 210.2 7 CFR 210.10(d)(3) 7 CFR 210.10(m) 7 CFR 226.2 7 CFR 226.20(g)
Expand Potable Water Requirement to Include Calorie-free, Noncarbonated, Naturally Flavored Water	SBP, NSLP	Schools are required to make unflavored, potable water available and accessible without restriction to children at no charge in the place(s) where lunches are served during the meal service.	Proposal would permit schools to offer naturally flavored water to meet the potable water requirement.	7 CFR 210.10(a)(1)(i) 7 CFR 220.8(a)(1)

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<b>Proposals to Simplify Competitive Foods</b>				
Extend the Entrée Exemption Timeframe	Competitive Foods	Currently, an entrée is exempt from competitive food standards the day offered on the NSLP and SBP menu and the day after.	Would exempt entrées from standards the day offered on the SBP and NSLP menu and for two days after.	7 CFR 210.11(c)(3)
Expand Flexibility for the Sale of Calorie- Free, Naturally Flavored Waters During the School Day to All Age/Grade Groups	Competitive Foods	Calorie-free, flavored waters, with or without carbonation may be sold to students in grades 9-12.	Proposal would allow the sale of calorie-free, flavored waters, with or without carbonation to students in all grades.	7 CFR 210.11(l)
<b>Clarifications, Updates, &amp; Technical Corrections</b>				
Add Flexibility to State Administrative Expense (SAE) Funds	SBP, NSLP, SMP, CACFP, SFSP <sup>38</sup>	States are required to return any unexpended SAE funds at the end of the fiscal year following the fiscal year for which the funds are awarded.	Changes “unexpended” to “unobligated” to allow States more flexibility to spend SAE funds.	7 CFR 235.5(e)(2)
Correct NSLP Afterschool Snack Eligibility Erroneous Citations & Definition of “child”	NSLP	7 CFR 210 contains erroneous citations related to NSLP Afterschool Snack site eligibility. Definition of “child” is outdated.	Corrects erroneous citations and definition.	7 CFR 210.2 7 CFR 210.4(b)(3) 7 CFR 210.7(e) 7 CFR 210.9(c)

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

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<b>Clarifications, Updates, &amp; Technical Corrections</b>				
Expand List of Outlying Areas	SBP, NSLP	Certain outlying areas are permitted to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains component.	Adds Guam and Hawaii to the list of outlying areas permitted to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains component.	7 CFR 210.10(c)(3) 7 CFR 220.8(c)(3)
Change Vitamin A and Vitamin D Units for Fluid Milk Substitutions	SBP, NSLP, SMP, CACFP	Fluid milk substitutes must contain at least 500 International Units (IUs) of vitamin A and 100 IUs of vitamin D per 8 fluid ounces.	The required levels of vitamin A and D are unchanged. Consistent with FDA labeling changes for vitamins A and D, the proposal would change the units of the vitamin A and vitamin D requirements for fluid milk substitutes to 150 mcg and 2.5 mcg, respectively, per 8 fluid ounces.	7 CFR 210.10(d)(3) 7 CFR 215.7a(b) 7 CFR 226.20(g)(3)
<b>Seeking Public Input on Specific Items</b> (no changes proposed)				
Substituting Vegetables for Fruits at Breakfast	SBP	SFAs choosing to offer a vegetable in place of a fruit must ensure that at least two cups per week are from the dark green, red/orange, legumes, or "other vegetables" subgroups. <sup>39</sup>	Proposal requests public comments on whether or not to permanently allow SFAs to credit any vegetable offered, including potatoes and other starchy vegetables, in place of fruit without including vegetables from the designated subgroups in the weekly menus.	7 CFR 220.8(c)

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<b>Seeking Public Input on Specific Items</b> (no changes proposed)				
Definition of Entrée and Expanding Entrée Exemption to All SBP/NSLP Foods	Competitive Foods	Entrees are required to be whole grain- rich.  Entrees are exempt from competitive foods standards on the day offered on the SBP/NSLP menu and one day after.	Proposal requests public comments on whether the whole grain- rich/whole grain as a first ingredient requirement should be removed from the definition of "Entrée" included in 7 CFR 210.11(a)(3)(i), and whether or not to extend the competitive food entrée exemption to all food items offered in SBP and NSLP reimbursable meals.	7 CFR 210.11(a)(3) 7 CFR 210.11(c)(3)
Transparency for Administrative Review Results	SBP, NSLP	State agencies must report the final results of an administrative review to the public (in an accessible, easily understood manner) no later than 30 days after the State agency provides the results to the SFA.	Proposal requests public comments on how to simplify this transparency requirement, including the process of posting results, the summary content, and the 30 day timeframe.	7 CFR 210.18(m)
Grain-based Desserts in the Child and Adult Care Food Program	CACFP	Grain-based desserts do not count toward the Grains requirement.	Proposal requests comments on permitting grain-based desserts: up to 2 oz. eq. per week (same as SBP and NSLP) or other approaches.	7 CFR 226.20

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