

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

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

[FNS–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:** Proposed rule.

**SUMMARY:** This rule proposes changes to the meal pattern requirements for the Child and Adult Care Food Program (CACFP) to better align the meal patterns with the 2010 Dietary Guidelines for Americans, as required by the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). The proposed changes are based on the Dietary Guidelines for Americans, science-based recommendations made by the Institute of Medicine of the National Academies in the report *Child and Adult Care Food Program: Aligning Dietary Guidance for All*, and input from stakeholders, as well as cost and practical considerations for CACFP institutions and facilities. In addition, this proposal would make additional revisions to the health and wellness components of CACFP to reflect several requirements set forth in the HHFKA, including making changes to the purpose of the Program and making water available to Program participants. Several of these changes would be extended to the National School Lunch Program, School Breakfast Program, and Special Milk Program to increase consistency across all Child Nutrition Programs. Implementation of this proposed rule would serve as a step towards more nutritious meals that improve the dietary habits of participants in day care.

**DATES:** To be assured of consideration, comments must be received on or before April 15, 2015.

**ADDRESSES:** The Food and Nutrition Service (FNS), USDA, invites interested persons to submit comments on this proposed rule. In order to ensure proper receipt, comments may be submitted through one of the following methods only:

- *Preferred method:* Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Written comments should be addressed to Tina Namian, Branch Chief, Policy and Program Development Division, Child Nutrition Programs, Food and Nutrition Service, Department of Agriculture, Post Office Box 66874, St. Louis, Missouri 63166.

Comments sent by other methods not listed above will not be able to be accepted and subsequently not posted. Comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. USDA will make the comments publicly available on the Internet via <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Tina Namian, Branch Chief, Policy and Program Development Division, Child Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1206, Alexandria, Virginia 22302–1594, 703–305–2590.

#### SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Executive Summary
- III. Background and Discussion of the Proposed Rule
- IV. Procedural Matters

#### I. Public Comment Procedures

Your written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason(s) and/or provide supporting information for any change you recommend or proposal(s) you oppose. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. Comments received after the close of the comment period (see **DATES**) will not be considered or included in the Administrative Record for the final rule.

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make the proposed regulations easier to understand, as well as comments and information that could help us make the programs as effective as practical, including answers to questions such as the following:

- (1) Are the requirements in the proposed regulations clearly stated?
- (2) Does the proposed rule contain technical language or jargon that interferes with its clarity?
- (3) Does the format of the proposed rule (e.g., grouping and order of sections, use of headings, and paragraphing) make it clearer or less clear?

- (4) Would the proposed rule be easier to understand if it was divided into more (but shorter) sections?

- (5) Is the description of the proposed rule in the preamble section entitled “Background and Discussion of the Proposed Rule” helpful in understanding the proposed rule? How could this description be more helpful in making the proposed rule easier to understand?

- (6) What could be done to minimize the burdens and/or improve outcomes of the program, consistent with program objectives? Costs and benefits include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Please provide information that would help quantitatively assess the benefits and costs of this proposed rule.

- (7) What could be done to foster incentives for innovation, flexibility, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public)?

#### II. Executive Summary

##### *Purpose of the Regulatory Action*

This rulemaking sets forth proposed revisions to implement amendments made to Section 17 of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1766, by section 221 of Public Law 111–296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), for day care institutions participating in the Child and Adult Care Food Program (CACFP), schools serving infants and

young children, ages four and under, who participate in the School Breakfast Program (SBP) or National School Lunch Program (NSLP), and schools and institutions serving children of all ages who participate in the Special Milk Program (SMP).

The amendments made by the HHFKA require the Department of Agriculture (USDA) through its CACFP to promote health and wellness in child care settings through guidance and technical assistance that focuses on nutrition, physical activity, and limiting electronic media use. More specifically, the amendments to the NSLA made by the HHFKA require USDA to review the CACFP meal patterns and make them consistent with (a) the most recent version of the Dietary Guidelines for Americans, (b) the most recent relevant nutrition science, and (c) appropriate authoritative scientific agency and organization recommendations. These updates should occur no less frequently than every 10 years. As the Dietary Guidelines and science evolve, USDA will continue to provide guidance, as needed, to support CACFP's nutrition and wellness goals. In formulating this proposed rule, the USDA relied primarily on recommendations included in the *Dietary Guidelines for Americans, 2010*, and *Child and Adult Care Food Program: Aligning Dietary Guidance for All*, a 2010 report prepared for USDA by the Institute of Medicine (IOM) of the National Academies, <http://www.iom.edu/Reports/2010/Child-and-Adult-Care-Food-Program-Aligning-Dietary-Guidance-for-All.aspx>. In reviewing the recommendations, USDA recognized that changes to the meal pattern must be sensitive to cost and practical application. With this in mind, a number of revisions to the meal pattern have been proposed, as well as optional best practices that facilities may choose to implement.

#### *Summary of the Major Provisions of the Regulatory Action in Question*

##### Program Purpose

The HHFKA redefined the purpose of the CACFP as a program that provides aid to child and adult care institutions and family or group day care homes for the 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 disabled persons.

##### Infant Meal Patterns

Under the proposed rule, the age groups for infants would be 0 through 5 months, and 6 through 11 months.

These proposed changes would allow us to better meet the recommendations of the American Academy of Pediatrics (AAP) and make the age groups consistent with the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Additionally, to better meet the nutritional needs of infants, this proposed rule would revise the infant meal patterns to allow service of only breastmilk and/or infant formula to infants through 5 months of age, allow the introduction of additional meal components at 6 months of age (as developmentally appropriate), prohibit the service of fruit juice to infants through 11 months, and require the service of a fruit or vegetable in the infant snack pattern. In addition, as an incentive for encouraging breastfeeding and to better align program rules, this proposed rule would allow reimbursement for meals served to infants under six months of age when the mother directly breastfeeds her child at the child care facility. Meals containing breastmilk or iron-fortified infant formula supplied by the parent or the facility are already eligible for CACFP reimbursement.

##### Child and Adult Meal Patterns

To address the nutritional needs of older children, this proposed rule would include the addition of a new age group for children: 13 through 18 years old. Additionally, to more closely align the meals served in CACFP with the 2010 Dietary Guidelines, the IOM's 2010 report, *Child and Adult Care Food Program: Aligning Dietary Guidance for All*, and other USDA Child Nutrition Programs, this proposed rule would require that:

- The currently combined fruits and vegetables component be divided into a separate fruit component and vegetable component;
- At least one serving per day, across all eating occasions, of grains be whole grain-rich as described in the new definition of "whole grains" under 7 CFR 226.2;
- Breakfast cereals conform to requirements as outlined by WIC, under Table 4 of 7 CFR 246.10(e)(1212);
- Grain-based desserts be excluded from being used to meet the grain component requirement;
- A meat or meat alternate be allowed as a substitute for up to one-half of the required grains at breakfast meals;
- Tofu be allowed as a meat alternate;
- Unflavored whole milk be served to children one year of age (12 through 23 months) and 1 percent or fat-free milk be served to children two and older and adults;

- Flavored milk served is fat-free only;

- Non-dairy milk substitutions, flavored or unflavored, that are nutritionally equivalent to milk, as outlined by the NSLP under 7 CFR 210.10(d), may be served in lieu of fluid milk, if requested in writing by a child's parent or guardian or an adult participant;

- For adult participants only, yogurt be permitted as a fluid milk alternate up to one time per day across all eating occasions; and

- Frying be disallowed as an onsite preparation method for day care institutions.

Additionally, as required by the HHFKA, this proposed rule would require that day care institutions make drinking water available throughout the day to all children upon their request.

##### Best Practices

This proposed rule also includes best practices that day care facilities may choose to follow to further improve the nutritional quality of meals served. These proposed changes are intended to provide options for participants that will further improve the overall health and wellness of children and adults in day care settings.

##### Flavored Milk and Yogurt—Proposed Alternatives

This proposed rule includes alternatives for the service of flavored milk and yogurt and seeks public comment on these options. It proposes to prohibit the service of flavored milk or, alternatively, limit the sugar content in flavored milk served to children 2 through 4 years of age. The rule also seeks public comment on whether provisions limiting sugar in flavored milk served to children 5 years of age and older should be a required part of the CACFP meal patterns or a best practice that facilities may choose to adopt. The proposed rule's sugar limit for flavored milk is no more than 22 grams per 8 fluid ounces. Similarly, the rule invites public comment on whether sugar limits for yogurt should be a required part of the CACFP meal patterns or a best practice that facilities may choose to adopt. The proposed sugar limit for yogurt is no more than 30 grams of sugar per 6 ounces. The proposed rule presents these as Alternatives A1 and A2 for flavored milk for children 2 through 4 years of age; B1 and B2 for flavored milk for children 5 years of age and older; and C1 and C2 for yogurt for all age groups.

### Other Child Nutrition Programs

To maintain consistency across programs, this proposed rule would revise the SBP and NSLP meal patterns for infants and children under 5 years of age to reflect the respective meal patterns proposed for CACFP. Additionally, this proposed rule would revise the fluid milk requirements and approved non-dairy milk substitutions for the SMP.

### Cost and Benefits

The proposed rule adopts a cost-neutral subset of recommendations from the 2010 IOM report because no additional meal reimbursement has been provided to institute the proposed changes. Due to the structure of the CACFP, day care institutions are sensitive to even modest increases in Program operation cost; therefore it is important to propose cost-neutral changes that do not discourage participation in the CACFP. Without increasing net costs to CACFP center and day care home providers, the proposed changes will increase the availability of key food groups in program meals, reduce the amount of solid fats and sugars offered, and give providers additional flexibility to offer meals that meet participants' nutritional requirements as well as their dietary preferences.

## III. Background and Discussion of the Proposed Rule

### Overview of the Preamble

This rule proposes to revise the nutritional aspects of the CACFP based on statutory requirements and recommendations from a variety of sources. The statutory requirements are in Section 17 of the NSLA, as amended by section 221 of the HHFKA. The recommendations are derived from the *Dietary Guidelines for Americans, 2010*, a 2010 report from the Institute of Medicine of the National Academies, and stakeholders. In addition, USDA exercised discretion in implementing these recommendations based on cost and operational issues. Throughout this preamble, the term "providers" refer to centers and day care homes that operate the Program.

To assist the reader, the preamble that follows is organized to discuss the following topics:

- *Background*, which includes an overview of CACFP and the current meal patterns;
- *HHFKA*, which includes a discussion of the statutory provisions pertinent to the nutritional aspects of the CACFP;

- *Updating the CACFP Meal Patterns*, which includes a discussion of the recommendations of the Dietary Guidelines, the Institute of Medicine, and stakeholders;

- *Proposed Meal Pattern Changes for CACFP*;
- *Best Practices*;
- *Flavored Milk and Yogurt*;
- *Proposed Miscellaneous Changes*;
- *Proposed Corresponding Changes to Other Child Nutrition Programs*; and
- *Technical Assistance*.

### Background

The predecessor to the CACFP, the Child Care Food Program, was authorized as a pilot program in 1968 and became permanent in 1975. It provides cash assistance to States to assist child and adult care institutions and family or group day care homes in providing nutritious foods that contribute to the wellness, healthy growth, and development of children, and the health and wellness of older adults and functionally impaired adults. CACFP generally provides for more vulnerable populations: Children from birth through 18 years of age, adults 60 years of age or older, and functionally impaired adults of any age. In fiscal year 2013, the Program served over 3.67 million children and adults.

As with the NSLP and SBP, in CACFP, the USDA establishes meal patterns with minimum food component and quantity requirements to facilitate the planning of well-balanced meals. Participating centers and day care homes providing meals meeting the minimum requirements are eligible for reimbursement for the meals served to eligible children and adults.

Under current regulations found at 7 CFR 226.20, the daily meal patterns for children and adults require that minimum amounts of four food components be served. For example, lunches must contain:

- Fluid milk;
- Two or more vegetables or fruits, or a combination of both. Full-strength vegetable or fruit juice may be counted to meet not more than one-half of the fruit/vegetable component for lunch and supper meals;
- Whole grain or enriched bread; cornbread, biscuits, rolls, muffins, etc., made with whole grain or enriched meal or flour; whole grain or enriched pasta or noodle products such as macaroni, cereal grains such as rice, bulgur, or corn grits; or any combination of these foods; and
- Lean meat, poultry or fish; alternate protein products (as defined in Appendix A of 7 CFR part 226); cheese; an egg; cooked dry beans or peas;

peanut butter; or any combination of these foods. These foods must be served in a main dish, or in a main dish and one other menu item, to meet this requirement. Cooked dry beans or dry peas may be used as the meat alternate requirement or as part of the vegetable/fruit component but not as both in the same meal. Generally, nuts and seeds and their butters may be used to meet no more than one-half of the meat/meat alternative component.

Existing Program regulations permit substitutions of foods if individual participants are unable, because of medical or other special dietary needs, to consume such foods. Substitutions because of medical needs are permissible only when supported by a statement from a recognized medical authority which includes recommended alternate foods.

The CACFP meal patterns have not been significantly revised since the inception of the Program, and in that time nutritional concerns have shifted from those of malnutrition, to the overconsumption of calories, saturated fats, added fats, added sugar, and sodium and the under consumption of fiber and other essential vitamins. Such overconsumption has contributed to an epidemic of overweight, obesity, and other major health concerns affecting children, adolescents, and adults. The meal pattern revisions seek to address this new set of concerns regarding the health of America's children.

### Healthy, Hunger-Free Kids Act of 2010

In recognition of advances in nutritional science, section 221 of the HHFKA amended section 17 of the NSLA (42 U.S.C. 1766) to make a number of changes designed to improve the nutrition and wellness of children and adults participating in the CACFP.

*Purpose of the Program*—Section 17(a) of the NSLA (42 U.S.C. 1766(a)), as amended by the HHFKA, significantly expands the focus of CACFP from initiating and maintaining nonprofit food service programs to ensuring those programs provide nutritious foods that contribute to the wellness, healthy growth and development of young children and the health and wellness of adults in care. Section 17(a) also directs the USDA to encourage health and wellness and to provide guidance and technical assistance in a number of related areas including nutrition, physical activity, and limiting electronic media use.

*Meal Pattern Updates*—Section 17(g)(2) of the NSLA (42 U.S.C. 1766(g)(2)), requires USDA to review and, as appropriate, update the CACFP meal patterns to ensure that meals are

consistent with the goals of the most recent Dietary Guidelines for Americans and promote the health of the populations served as indicated by the most recent and relevant nutrition science and appropriate authoritative scientific agency and organization recommendations. These updates must be made within 18 months of the review of the meal patterns and no less frequently than every 10 years thereafter. Section 17(g)(2) further directs the USDA to conduct a review of the cost of any changes to child care centers and family day care homes.

**Exceptions for Special Dietary Needs/ Emergency Shelters**—While amendments made by the HHFKA will update meal pattern requirements in CACFP, the provisions also accommodate the need for exceptions to the requirements. As a result, Section 17(g)(2)(C) of the NSLA (42 U.S.C. 1766(g)(2)(C)), now makes it clear that the minimum nutritional requirements established through this rulemaking process are not to prohibit participating institutions from substituting foods to accommodate individual participants who do not have disabilities, but who are medically certified as having special medical or dietary needs. Further, this paragraph allows the USDA to waive all or part of the meal pattern requirements for emergency shelters.

**Prohibition on Using Food as Reward or Punishment**—Section 17(g)(3) of the NSLA (42 U.S.C. 1766(g)(3)), now explicitly reaffirms the USDA’s long-standing policy that reimbursable meals

must contribute to the development and socialization of children by providing food that is not used as a punishment nor a reward.

**Fluid Milk Requirement**—Section 17(g)(4) of the NSLA, as amended by the HHFKA (42 U.S.C. 1766(g)(4)), requires that fluid milk served in the CACFP be consistent with the most recent version of the Dietary Guidelines for Americans and in cases of medical or special dietary needs allows the substitution of non-dairy beverages that are nutritionally equivalent to fluid milk (*i.e.*, meet the nutritional standards of fortification for calcium, protein, vitamin A, vitamin D and other nutrients to levels found in cow’s milk). The 2010 Dietary Guidelines recommend that persons two years of age and older consume low-fat (1 percent) or fat-free (skim) fluid milk. Therefore, fluid milk served in CACFP to participants two years of age and older must be: fat-free or low-fat milk, fat-free or low-fat lactose reduced milk, fat-free or low-fat lactose free milk, fat-free or low-fat buttermilk, or fat-free or low-fat acidified milk.

**Nondiscrimination Policy and Use of Donated Foods**—Sections 17(g)(5) and (g)(6) of the NSLA, as amended by the HHFKA (42 U.S.C. 1766(g)(5) and (g)(6)), restate two long-standing statutory provisions. Section 17(g)(5) prohibits physical segregation or other discrimination against any person because of inability to pay and any overt identification by special tokens, tickets, etc. Section 17(g)(6) requires

participating institutions to use foods donated by the Secretary, to the maximum extent practicable.

**Promoting Health and Wellness**—Section 221 of the HHFKA also amended section 17 by adding a new paragraph (u) (42 U.S.C. 1766(u)), which requires USDA to encourage centers and family day care homes to provide daily opportunities for structured and unstructured age-appropriate physical activity and to limit the use of electronic media. In addition, paragraph (u) requires participating institutions to make available to children, as nutritionally appropriate, potable water as an acceptable fluid for consumption throughout the day, including at meal times. While drinking water must be made available to children during meal times, the changes made to the NSLA by HHFKA do not include water as part of the reimbursable meal and thus, water may not be served in lieu of fluid milk.

**Technical Assistance**—Finally, section 17(u) directs the USDA to assist participating centers and homes in complying with the nutritional and wellness recommendations through training, education materials, guidance, and technical assistance.

Implementation of these statutory requirements is discussed in more detail in this preamble and in the proposed regulatory language. To assist the reader, the following table directs the reader to further discussions of these provisions in this proposed rule.

Statutory requirements	Location in proposed regulation
Purpose of the Program .....	Miscellaneous Changes and 226.20(a).
Meal Pattern Updates .....	Proposed Meal Pattern Changes for CACFP.
Exceptions for Special Dietary Needs/Emergency Shelters .....	Miscellaneous Changes.
Prohibition on Using Food as a Reward or Punishment .....	Miscellaneous Changes and 226.20(g).
Fluid Milk Requirement (including Substitutions) .....	Proposed Meal Pattern Changes for CACFP and 226.20(a) and (i).
Nondiscrimination Policy and Use of Donated Foods .....	Miscellaneous Changes and 226.20(n).
Promoting Health and Wellness (Water) .....	Miscellaneous Changes and 226.25(i).
Technical Assistance .....	Technical Assistance.

**Updating the CACFP Meal Patterns**

Prior to the enactment of the HHFKA, the USDA commissioned the IOM to review the current CACFP meal patterns and provide recommendations that would improve the nutritional quality of meals and align them with the 2005 Dietary Guidelines, the most recent version available at the time. In the past, the IOM has also provided recommendations for WIC, and the NSLP and SBP.

In November 2010, the IOM 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*). The IOM’s recommendations encompass two distinct elements: Meal patterns and food specifications.

The meal pattern recommendations are intended to align the meal patterns with the Dietary Guidelines and nutrient targets and allow the identification of meals that qualify for reimbursement. The IOM developed three meal pattern recommendations:

1. Revise the meal pattern requirements for healthy infants up to one year of age to include only breastmilk or formula for infants under

6 months of age; the gradual introduction of baby meats, cereals, fruits and vegetables beginning at age 6 months; and the omission of fruit juice at any time before the age of 1 year.

2. Revise the meal pattern requirements for children 1 year and older and adults to increase the variety of fruits and vegetables, increase the proportion of whole grains, and decrease solid fats, added sugars, trans fats, and sodium.

3. Allow CACFP facilities the option of serving one enhanced snack in the afternoon in place of a smaller snack in both the morning and the afternoon.

In addition to the meal pattern recommendations, the IOM also recommended including overall food specifications in the meal patterns. Food specifications were intended to restrict certain types of foods and food preparation methods, increase the minimum amounts of food required to be served at each meal, and increase the amounts of whole grains, lean meats, and dark green, red, and orange vegetables served.

The IOM concluded that implementation of all of its recommendations would increase the cost of meals by an average of 27 percent to 44 percent for all age groups, except infants. The IOM acknowledged that the increased cost and the need for extensive technical assistance due to the complexity of the new meal patterns would present challenges to the successful implementation of the recommended meal pattern changes.

To address these issues, the IOM recommended that the USDA consult with stakeholders regarding their ability to implement and monitor the recommendations. The IOM also recommended that USDA conduct additional research on the overall CACFP population to determine the foods currently served in CACFP in order to establish a baseline on which cost implications could be more accurately calculated.

Upon release of the IOM's report and recommendations for changes to the CACFP meal pattern, the USDA consulted at national meetings and other venues with a number of CACFP stakeholders, including State agencies, professional organizations, and advocacy groups, to discuss the recommendations. The stakeholders expressed concerns centered primarily on the complexity of the recommendations and possible changes, the anticipated large increase in meal cost, and the expected result of increased difficulty in monitoring such changes. Concerns and alternative recommendations expressed by stakeholders were considered when drafting these proposed changes.

After careful thought and consideration of the recommendations in the 2010 Dietary Guidelines, the IOM's recommendations, and stakeholder concerns, the USDA concluded that any proposed changes to the meal pattern must be implemented by providers without undue difficulty and be sensitive to cost.

Thus, this proposed rule would adopt the following recommendations:

- Revise the infant age groups from three age groups to two age groups;

- Introduce solid foods to infants beginning at 6 months of age;
- Eliminate the service of fruit juice to infants of any age;
- Allow reimbursement for infant meals when the mother directly breastfeeds her child at the child care facility;
- Require a fruit or vegetable serving in the snack meal pattern for the 6 to 11 month infant age group;
- Allow additional grain options for infant snacks;
- Add a fourth age group (13 through 18 years) to the meal pattern for children;
- Separate the fruit and vegetable component for children and adults;
- Require that at least one grain serving per day, across all eating occasions, be whole grain or whole grain-rich;
- Require breakfast cereals to conform to WIC requirements;
- Prevent grain-based desserts from counting towards the grains component;
- Allow an optional meat or meat alternate to be served at breakfast in lieu of some grains;
- Allow tofu to be counted as a meat alternate;
- Allow yogurt to be used to meet the fluid milk requirement for adults only, no more than once per day; and
- Disallow frying as an onsite preparation method for day care institutions and facilities.

These proposed changes are discussed in more detail under the section entitled, Proposed Meal Pattern Requirements for CACFP.

Additionally, this rule seeks public comment on a number of provisions related to the service of flavored milk and yogurt in the CACFP meal pattern. It proposes to prohibit the service of flavored milk or, alternatively, limit the sugar content in flavored milk served to children 2 through 4 years of age. The rule also seeks public comment on whether provisions limiting sugar in flavored milk served to children 5 years of age and older should be a required part of the CACFP meal patterns or a best practice that facilities may choose to adopt. The proposed rule's sugar limit for flavored milk is no more than 22 grams per 8 fluid ounces. Similarly, the rule invites public comment on whether sugar limits for yogurt should be a required part of the CACFP meal patterns or a best practice that facilities may choose to adopt. The proposed sugar limit for yogurt is no more than 30 grams of sugar per 6 ounces. The proposed rule presents these as Alternatives A1 and A2 for flavored milk for children 2 through 4 years of age; B1 and B2 for flavored milk for

children 5 years of age and older; and C1 and C2 for yogurt for all age groups. These alternatives are discussed in more detail under the section entitled Flavored Milk and Yogurt.

As discussed below, the proposed rule does not adopt the IOM recommendations relating to weekly meal patterns, specifications for certain foods, and enhanced snacks for reasons related to the increased cost and efficient operation of the Program.

#### Weekly Meal Patterns and Certain Food Specifications

The IOM recommended many food specifications which would limit or prohibit certain types of foods and/or how foods may be prepared. Food specifications included such things as limiting fruit juice and highly processed meats throughout the week and prohibiting cheese products/foods and deep fried or pre-fried vegetables. While some food specifications were adopted, others were deemed overly complicated to implement at this time and/or challenging to monitor. For example, the IOM recommended limiting processed meats. The proposed rule does not adopt this recommendation at this time due to the difficulty involved in clearly defining processed meats. However, comments on how processed meats could be defined and the feasibility, practicality, and challenges associated with implementing such a limitation are encouraged.

In addition, the IOM recommended weekly meal patterns, similar in nature to the NSLP. Many stakeholders expressed concern over the weekly meal pattern because it would increase recordkeeping and monitoring complexity. Additionally, many children are not in full-time child care and therefore, weekly meal patterns and certain food specifications would not achieve the anticipated benefit. Further, implementing these recommendations would likely have a negative impact on the administration of the Program. CACFP is offered in diverse types of facilities, mostly small or very small, with varying degrees of staffing, training in meal planning and preparation, and resources. Adding weekly menus was determined to add unnecessary complexity. Therefore, it is important that the CACFP meal patterns are easy to understand, implement, and monitor in a wide variety of settings.

#### Enhanced Snack

The recommendation to give facilities the option of serving one enhanced snack in the afternoon in place of a smaller snack in both the morning and afternoon was not adopted for inclusion

in this proposed rule. The IOM suggested that the enhanced snack option would be particularly appropriate for older children in afterschool programs and for adults because the size of a normal snack may not be sufficient to meet their nutritional needs. However, we determined that an enhanced snack with larger components would prove more costly than snacks currently approved. Additionally, because the USDA does not have the authority to change the reimbursement structure for meals served, the enhanced snack option would place an increased economic burden on institutions and facilities. Lastly, section 122 of the HHFKA (which was enacted after the IOM report was completed) extended the at-risk afterschool meals option to all States, thus providing an immediate solution to the need for larger meals in the late afternoon or evening for older children.

The USDA realizes many facilities may want to go further when it comes to providing healthy meals to CACFP participants. Therefore, we have outlined some best practices based on both the IOM recommendations and the Dietary Guidelines that facilities may strive for when choosing to serve healthier options. A number of these best practices represent recommendations or food specifications not adopted as requirements for reasons of cost or complexity. USDA applauds those facilities that find ways to incorporate these best practices into their meal service and requests comments on how to encourage more facilities to implement the best practices.

Lastly, comments on other ways to improve the meals served to children in care without negatively impacting Program participation are encouraged. Specifically, comments on the reasonableness of implementing separate meal pattern requirements for day care centers and day care homes are requested. Centers would include those providing outside-school-hours-care, at-risk afterschool care, and adult day care, as well as homeless shelters. Comments on whether such an approach would be beneficial and the feasibility, practicality, and challenges of implementing separate requirements are encouraged.

#### Proposed Meal Pattern Changes for CACFP

#### Proposed Changes to the Infant Meal Pattern

The field of pediatric nutrition has increased greatly in recent years and

with it, a better understanding of what is necessary to meet the needs of growing and developing infants. Because the Dietary Guidelines do not address children under the age of two, the AAP serves as the leading authority for children's developmental needs from birth through 23 months. The IOM recommendations pertaining to infants took the AAP recommendations into consideration. IOM recommendations for the infant meal pattern would require fewer components than the current meal pattern for lunch and supper meals, but more components for snacks.

*Infant Age Groups and the Introduction of Solid Foods*—Current regulations establish three infant age groupings: 0 through 3 months, 4 through 7 months, and 8 through 11 months (7 CFR 226.20(b)). These age groups permit the introduction of solid foods in breakfasts, lunches or suppers as early as 4 months, if the infant is developmentally ready.

The IOM noted that the first Feeding Infants and Toddlers Study (FITS), 2002, a comprehensive assessment of food and nutrient intakes of infants and toddlers, found that almost 30 percent of infants were fed complementary foods before the age of 4 months, when infants should be consuming only breastmilk or formula. The AAP advises delaying the introduction of complementary foods until after 6 months of age. To accommodate these concerns, the IOM recommended that infant age groupings be revised from the current three age groups to two age groups. Under the recommended 0 through 5 month age group, infants under 6 months of age would receive only breastmilk or infant formula. The 6 month through 11 month age group would allow for the gradual introduction of solid foods beginning at 6 months of age. This change would also ensure the CACFP age groupings are consistent with infant age groups established by WIC.

Accordingly, the proposed rule would consolidate the CACFP age groups for infants into the two recommended age groups and would allow for the gradual introduction of solid foods beginning at 6 months of age. These changes are found at § 226.20(b).

*Breastfeeding*—Current meal patterns only allow day care home providers who breastfeed their own infants to claim reimbursement for the meal if the provider is eligible to claim her own children's meals at the time of the feeding. The IOM recommended that additional incentives be developed to support breastfeeding. USDA agrees with the IOM's recommendation.

Therefore, this proposed rule would allow any child care facility to receive reimbursement for meals when the mother directly breastfeeds her child at the child care facility. Facilities are encouraged to make available a quiet, private area for mothers who come to the facility to breastfeed.

*Fruits and Vegetables*—The IOM made two recommendations relating to the service of fruits and vegetables to infants. First, the IOM recommended eliminating the service of fruit juice to infants of any age. Current regulations permit fruit juice to be served in the snack meal pattern for infants 8 through 11 months. The second recommendation would require a fruit or vegetable serving in the snack meal pattern for the 6 through 11 month age group. These recommendations ensure infants are provided more access to fruits and vegetables without the consumption of sugars and low-nutrient dense calories that fruit juice provides. These recommendations would bring the CACFP meal patterns into alignment with the food packages for infants in the WIC Program.

Accordingly, the proposed rule would require a fruit or vegetable serving in the snack meal pattern for the 6 through 11 month age group and eliminate fruit juice from the meal patterns for infants. These proposed changes are found at § 226.20(b).

*Grains*—Feedback from CACFP stakeholders and providers included a request to allow additional grain options, as developmentally appropriate, for infant snacks, primarily ready-to-eat cereals which are often served but not counted towards the grain requirement. The IOM recommended limiting grain options for infants to bread and/or crackers only. To better meet the needs of child care providers and because allowing additional grain alternatives would not result in an increased cost to the provider, this proposed rule also would allow ready-to-eat cereal as a grain for older infants. Accordingly, this provision is included in § 226.20(b) of the proposed rule.

*Meat and Meat Alternates*—Current meal patterns allow infants to be served cheese, cottage cheese, or a cheese food or spread beginning at the age of 8 months. Stakeholders requested that the proposed meal pattern also allow yogurt to be served to infants. However, the IOM recommends that no cow's milk or cow's milk byproducts be introduced to infants until 12 months of age. We concur with the IOM's recommendation. This proposed rule would eliminate the option of serving cheese, cottage cheese, or cheese food or spread to infants and

will continue to prohibit serving yogurt to infants.

*Summary*—The proposed changes to the infant meal patterns are reflected in

the following chart and are found at § 226.20(b)(5) of this proposed rule.

Infants	Birth through 5 months	6 through 11 months
Breakfast, Lunch, or Supper	4–6 fluid ounces breastmilk <sup>1</sup> or formula <sup>2</sup> .....	6–8 fluid ounces breastmilk <sup>1</sup> or formula <sup>2</sup> . 1–4 tablespoons infant cereal <sup>2</sup> , meat, fish, poultry, egg yolk, cooked dry beans, or cooked dry peas or a combination of any of the above.
Snack .....	2–4 fluid ounces breastmilk <sup>1</sup> or formula <sup>2</sup> .....	1–2 tablespoons vegetable <sup>3</sup> or fruit <sup>3</sup> . 2–4 fluid ounces breastmilk <sup>1</sup> or formula <sup>2</sup> . ¼–½ ounce bread, <sup>4</sup> cracker <sup>4</sup> , or ready-to-eat breakfast cereal <sup>4</sup> . 1–2 tablespoons vegetable <sup>3</sup> or fruit <sup>3</sup> .

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

<sup>2</sup> Infant formula and dry infant cereal must be iron-fortified.

<sup>3</sup> Fruit or vegetable, or portions of both, may be served. Fruit and vegetable juices may not be served.

<sup>4</sup> A serving of grains must be whole grain, whole grain-rich, enriched meal, or enriched flour.

**Proposed Changes to the Meal Pattern for Children and Adults**

*Age Groups*—Current regulations establish CACFP meal patterns for three age groups for children: 1 through 2 years, 3 through 5 years, and 6 through 12 years (§ 226.20(c)). Children older than 12 years of age are not addressed directly, though providers are directed to follow the 6 through 12 year old meal pattern when serving older children.

To remain consistent with age groups used by NSLP and SBP, the IOM recommended that the children’s age groups be revised from the current three age groups to four age groups: 1 year, 2 through 4 years, 5 through 13 years, and 14 through 18 years.

This proposed rule would retain the existing three age groups (1 through 2 years, 3 through 5 years, and 6 through 12 years). As noted above, revising the age groups would result in some children being moved into the next age group, thus requiring larger minimum amounts of foods to be served. Because the meal reimbursement would remain unchanged, requiring larger amounts of food to be served would likely increase the cost of operating the Program for child care institutions and facilities.

However, the proposal would adopt the IOM’s recommendation to add a fourth age group (13 through 18 years). While creating a 13 through 18 year age group better reflects the characteristics of the population served by CACFP, USDA is not proposing to modify the meal pattern requirements for these children at this time because doing so would increase the cost of operating the Program. Instead, the meal pattern for children ages 13 through 18 is the same as the meal pattern for children ages 6 through 12. Recognizing that the nutritional needs of this age group may vary, recommended accommodations

will be addressed through guidance. Accordingly, the age group modification can be found at § 226.20(c) of this proposed rule.

*Fruits and Vegetables*—Current breakfast and lunch meal patterns, found at § 226.20(a) and (c), include one combined fruit and vegetable component, which allows providers to meet the minimum quantities by providing fruits, vegetables, or a combination of both. In addition, full-strength fruit juice may be counted to meet the breakfast requirement and, in the case of lunch and supper, it may be counted towards no more than one-half of the minimum quantity required for the fruit and vegetable component. Finally, two different fruits and/or vegetables are required to be served at lunch and supper meals.

The Dietary Guidelines recommends that all Americans consume more fruits and vegetables, because they are a major contributor of vitamins and minerals, including vitamin A, vitamin C, vitamin K, potassium, folate, and magnesium, all of which are under consumed in the American population as a whole. Additionally, the increased consumption of fruits and vegetables is associated with a reduced risk of cardiovascular disease and can be protective against certain types of cancer.

For these reasons, the IOM determined that it is important to not only increase the amount of fruits and vegetables offered in meals, but also to increase the variety of those served and limit the servings of those high in solid fats and added sugars. To accomplish these goals, the IOM also recommended that fruit and vegetables be split into two separate components and recommended food specifications which included limiting how fruits and vegetables can be prepared and served.

This proposed rule would adopt the IOM’s recommendation to separate the current fruit and vegetable component into two separate components for lunch and supper meals and snacks. To maintain consistency with the SBP, the recommendation to separate the fruit and vegetable component for breakfast meals was not adopted. Additionally, to maintain cost neutrality, the total amount of fruits and vegetables required at each meal would remain the same as under the current regulations. In order to remain consistent with SBP, for breakfast meals, the provider may choose to serve the fruit component, the vegetable component, or a combination of both.

Additionally, this proposed rule would no longer require providers to serve two different types of vegetables or fruits at lunch and supper meals, as currently required, because the fruit and vegetable component would be split into two components.

The proposed rule also would allow fruit juice or vegetable juice to comprise the entire fruit or vegetable component for all meals. With the fruit and vegetable component separated into two components with no increase in the total serving size, requiring that juice comprise no more than half of the component would result in very small servings. However, this proposed rule would not allow fruit juice and vegetable juice to be served at the same meal, and would allow only one beverage (fluid milk, fruit juice, or vegetable juice) to be served at snacks.

Accordingly, the proposed rule changes to the vegetable component are found at § 226.20(a)(2), the fruit component at § 226.20(a)(3), and the meal pattern at § 226.20(c).

*Grains*—Current meal patterns for all age groups, found at § 226.20(a) and § 226.20(c), require that all grains served

are whole grain or enriched and/or fortified.

The Dietary Guidelines state that half of the recommended total grain intake should be whole grains. Whole grains are an excellent source of nutrients, including magnesium, selenium, iron, B vitamins, and dietary fiber.

Additionally, whole grain consumption may reduce the risk of cardiovascular disease. Recognizing concerns such as whole grain product availability and the difficulty in identifying whole grain products based on product labeling, however, the IOM recommended that at least one-half of all grains served over the course of the day be whole grain or whole grain-rich. Other grains must be enriched. The IOM's recommendation that a portion of the grains served be whole grain or whole grain-rich is consistent with requirements in the NSLP, SBP, and WIC.

Based on these recommendations, this proposed rule would require that at least one grain serving per day, across all eating occasions, be whole grain or whole grain-rich. The proposed rule would adopt the definition of whole grain used in the NSLP at § 210.2, which defines whole grain to mean foods that consist of the intact, ground, cracked, or flaked grain seed and 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. Whole grain-rich foods are those that are not 100 percent whole grain but generally contain at least 50 percent whole grains, while the remaining grains are enriched. Because the whole grain content of food products is not always easily identifiable on a product label, the Food and Nutrition Service (FNS) will provide additional guidance on evaluation of grain products as needed.

Additionally, in order to reduce the amount of sugars consumed, the IOM recommended prohibiting breakfast cereals containing more than 21.2 grams of sugar per 100 grams (less than or equal to 6 grams of sugar per dry ounce of cereal) from being served. WIC has already adopted similar requirements for breakfast cereals, and WIC State agencies maintain State-specific lists of breakfast cereals that meet these requirements. For these reasons, implementing this recommendation should be relatively straightforward. Therefore, this proposed rule would require that breakfast cereals meet the WIC requirements. This means that breakfast cereals must: Contain a minimum of 28 mg of iron per 100 grams of dry cereal; contain no more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (no

more than 6 grams per dry ounce); contain a minimum of 51 percent whole grains (using dietary fiber as an indicator); meet the regulatory definitions for “low saturated fat” at 21 CFR 101.62 (no more than one gram of saturated fat per Reference Amount Customarily Consumed (RACC)) and “low cholesterol” (less than 20 mg cholesterol per RACC); bear quantitative trans fat labeling; and contain no more than 6.5 grams of total fat per RACC and no more than 0.5 grams of trans fat per RACC. Breakfast cereals will be defined by the Food and Drug Administration (FDA) definition in 21 CFR 170.3(n)(4) for ready-to-eat, instant, and regular hot cereals.

Finally, the IOM recognized that many grain-based dessert products are a source of solid fats and added sugar. Therefore, the IOM recommended that such products be limited to no more than one serving per week across all eating occasions. Because weekly meal patterns will not be implemented, the proposed rule would not allow grain-based desserts to be counted towards the grains component. More information regarding what would be considered a grain-based dessert will be provided by FNS as needed during implementation. Accordingly, the proposed grain changes are found at § 226.20(a)(4) and § 226.20(c) of this proposed rule.

*Meat and Meat Alternates*—Current regulations, found at § 226.20(a) and § 226.20(c), require a meat or meat alternate component in lunches and suppers only; there is no meat or meat alternate component requirement in the breakfast or snack meal pattern. The meat or meat alternate requirement can be met by serving age-appropriate quantities of lean meat, poultry, or fish; alternate protein products; cheese; eggs; cooked dry beans or peas; peanut butter, soy nut butter, or other nut or seed butters; peanuts, soy nuts or seeds; or yogurt. Tofu is not currently credited as a meat alternate in CACFP, although it is for school programs.

In recognition that meat and meat alternates are good sources of a host of vitamins and minerals, including B vitamins, vitamin E, zinc, magnesium, and iron, the IOM recommended that a meat or meat alternate be required at breakfast a minimum of three times per week, in lieu of additional grains. The IOM also recommended allowing tofu to be served as a meat alternate. To address concerns about meats as a source of solid fats, the IOM outlined a number of food specifications including: Serving only lean meats, legumes, and nuts; limiting processed, fried, pre-fried, and higher fat meats; serving only natural cheeses; and restricting the preparation

methods (for example, requiring that the skin be removed from poultry before serving).

The proposed rule generally adopts the recommendation to include a meat or meat alternate in the breakfast meal pattern; however, to maintain cost neutrality, this proposed rule would not require that the breakfast meal include a meat or meat alternate at least three times a week, as recommended. Rather, the proposal would allow a meat or meat alternate to be served in lieu of up to one-half of the grains requirement at breakfast. This option would provide more flexibility to providers, especially those providing care for older adults, who may have to limit their consumption of carbohydrates due to medical reasons such as diabetes.

This rule also would allow tofu to be used to meet all or part of the meat or meat alternate components in accordance with FNS guidance. Tofu would be defined to mean 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 an acid), and water. Accordingly, the proposed meat and meat alternate changes are found at § 226.2 and § 226.20(a)(5) and (c) of this proposed rule.

*Fluid Milk*—Section 221 of the HHFKA amended section 17(g)(4) of the NSLA (42 U.S.C. 1766(g)(4)) to require that all milk served in the CACFP be consistent with the most recent version of the Dietary Guidelines. The Dietary Guidelines recommends low-fat (1 percent) and fat-free milk (skim) for children over the age of two and adults. Section 17(g)(4) of the NSLA also allows non-dairy milk substitutions in the case of children and adults who cannot consume fluid milk due to medical or other special dietary needs other than a disability. Such substitutions must be nutritionally equivalent to fluid milk and meet specified nutritional standards. Providers may, but are not required to, provide beverages identified by the State as acceptable substitutions based on a written statement of a medical authority or the parent or legal guardian or adult participant that identifies the medical or special dietary need that requires the substitution. Finally, section 17(g)(4) of the NSLA makes it clear that day care facilities are responsible for any expenses incurred in exercising this option that exceed Program reimbursement. It should be noted that this authority applies to children and adults with medical or

special dietary needs other than a disability. In accordance with Federal law, day care facilities serving handicapped children or adults with one or more disabilities that restrict their diets under 7 CFR 15b.3, continue to be required to make appropriate substitutions based on a written statement by a licensed physician.

Because the Dietary Guidelines do not address children under the age of two, the IOM was tasked with providing appropriate recommendations based on other current nutritional science for this population. The IOM recommended that children 1 year of age (12 through 23 months) are served whole milk only, which is consistent with the most recent recommendation of the AAP.

Additionally, to allow flexibility in menu planning, the IOM recommended that yogurt be allowed as an alternate to either fluid milk or meat/meat alternates no more than once per day for children older than 2 years of age and adults.

To implement these provisions of the HHFKA, the USDA issued a memorandum entitled “Child Nutrition Reauthorization 2010: Nutrition Requirements for Fluid Milk and Fluid Milk Substitutions in the Child and Adult Care Food Program, Questions and Answers” (CACFP 21–2011 REVISED, September 15, 2011, <http://www.fns.usda.gov/sites/default/files/CACFP-21-2011.pdf>). The memorandum advised State agencies that milk served in the CACFP must be consistent with the most recent version of the Dietary Guidelines for Americans as noted above. Therefore, fluid milk served in CACFP to participants 2 years of age and older must be: Fat-free or low-fat milk, fat-free or low-fat lactose reduced milk, fat-free or low-fat lactose free milk, fat-free or low-fat buttermilk, or fat-free or low-fat acidified milk.

This proposed rule reflects the provisions set forth in the memorandum. In addition, this proposed rule would require children 1 year of age (12 through 23 months) to be served unflavored whole milk only. Furthermore, to ensure consistency with the NSLP and the SBP, this proposed rule would require flavored milk served be fat-free only.

The memorandum discussed above further advised State agencies that in the case of children and adults who cannot consume fluid milk due to medical or other special dietary needs, other than a disability, non-dairy beverages may be served in lieu of fluid milk. Non-dairy beverages must be 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 § 210.10(m)(3). CACFP State agencies have the discretion to identify appropriate substitutions that meet these requirements. Based on the memorandum, parents or guardians may now request in writing non-dairy milk substitutions, as described above, without providing a medical statement. The written request must identify the medical or other special dietary need that restricts the diet of the child. Such substitutions are at the option and the expense of the facility. One-year-old children who require a beverage other than whole milk must follow the individual and fluid milk substitution requirements as outlined in the memorandum described above and now found in § 226.20(i) introductory text and (i)(1) of this proposed rule.

To summarize these changes, the proposed rule would:

- Require only unflavored whole milk to be served to children 1 year of age;
- Require low-fat or fat-free milk to be served to children 2 years and older and adults;
- Require that flavored milk served be fat-free only; and
- Allow non-dairy beverages that are nutritionally equivalent to milk to be served in lieu of fluid milk for participants with medical or other special dietary needs.

Lastly, this proposed rule would adopt the IOM’s recommendation to allow yogurt to be used to meet the fluid milk requirement for adults only, no more than once per day. Additionally, yogurt may still be used as a meat alternate no more than once per day for all ages. At this time, the USDA will not extend the allowance of yogurt as a fluid

milk substitute for children. Milk provides a wealth of nutrients growing children need such as vitamins A and D; comparable quantities of these nutrients are not found in commercially available yogurts at this time.

Additionally, there is concern about the types of beverages that will be served at meals if yogurt is served as the milk component (*i.e.* sugary beverages, soft drinks, etc). Comments from the general public regarding this recommendation are encouraged. For additional discussion of sugar limits on flavored milk and yogurt, please see the section of this preamble entitled Flavored Milk and Yogurt. Accordingly, the proposed milk and milk substitution changes are found at §§ 226.20(a), 226.20(c), and 226.20(i).

*Food Preparation*—The IOM provided a number of recommendations that would restrict or eliminate certain foods in the meal patterns, or limit how foods could be prepared. Because current CACFP meal patterns do not include nutrient specifications, this was seen as a way to limit the amount of saturated fats and sodium contained in meals. USDA has decided not to adopt various restrictions on individual foods due to the complexity of implementation. However, this proposed rule would prohibit facilities from frying foods (*i.e.*, cooking in added fat or oil) as a method of onsite preparation. Purchased foods that are pre-fried, flash-fried, or par-fried by the manufacturer may still be served, but must be reheated using a method other than frying. This approach is being taken because prohibiting all fried, pre-fried, flash-fried, and par-fried foods from being served would lead to increased food and preparation costs. Additional guidance on what constitutes “frying” would be provided by FNS prior to implementation. Comments are requested regarding the feasibility, practicality, and any challenges associated with such a restriction.

*Summary*—The proposed changes to the child and adult meal patterns are reflected in the following charts and are found at § 226.20(c) of this proposed rule.

BREAKFAST MEAL PATTERN FOR CHILDREN AND ADULT PARTICIPANTS

Food components and food items <sup>1</sup>	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18	Adult
	Minimum quantities				
Fluid milk <sup>2</sup>	4 fluid ounces .....	6 fluid ounces .....	8 fluid ounces .....	8 fluid ounces .....	8 fluid ounces.
Vegetables, fruits, or portions of both <sup>3</sup>	¼ cup .....	½ cup .....	½ cup .....	½ cup .....	½ cup.
Grains <sup>4,5</sup> :					
Whole grain or enriched bread ....	½ slice .....	½ slice .....	1 slice .....	1 slice .....	2 slices.

BREAKFAST MEAL PATTERN FOR CHILDREN AND ADULT PARTICIPANTS—Continued

Food components and food items <sup>1</sup>	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18	Adult
	Minimum quantities				
Whole grain or enriched bread product, such as biscuit, roll, muffin.	½ serving .....	½ serving .....	1 serving .....	1 serving .....	2 servings.
Whole grain, enriched or fortified Cereal, <sup>6</sup> cereal grain, and/or pasta.	¼ cup .....	¼ cup .....	½ cup .....	½ cup .....	1 cup.

<sup>1</sup> Must serve all three components for a reimbursable meal. Offer versus serve is an option only for adult participants.

<sup>2</sup> Must be unflavored whole milk for children age one. Multiple options related to flavored milk are presented for public comment for children age 2 years and older. 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 no more than once per day.

<sup>3</sup> Pasteurized full-strength juice may be used to meet the requirement. Fruit and vegetable juices may not be served at the same meal.

<sup>4</sup> At least one serving per day, across all eating occasions, must be whole grain or whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.

<sup>5</sup> Meat/meat alternates may be used to meet up to 50 percent of the grains requirement. One ounce of meat/meat alternates is equivalent to one cup/serving of grains.

<sup>6</sup> Breakfast cereals must conform to the requirements of the WIC program as outlined in 7 CFR 246.10(e)(12).

LUNCH AND SUPPER MEAL PATTERN FOR CHILDREN AND ADULT PARTICIPANTS

Food components and food items <sup>1</sup>	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18	Adult
	Minimum quantities				
Fluid milk <sup>2</sup> .....	4 fluid ounces .....	6 fluid ounces .....	8 fluid ounces .....	8 fluid ounces .....	8 fluid ounces <sup>3</sup> .
Meat/meat alternates. Edible portion as served:					
Lean meat, poultry, or fish .....	1 ounce .....	1½ ounces .....	2 ounces .....	2 ounces .....	2 ounces.
Tofu, soy products, or alternate protein products <sup>4</sup> .	1 ounce .....	1½ ounces .....	2 ounces .....	2 ounces .....	2 ounces.
Cheese .....	1 ounce .....	1½ ounces .....	2 ounces .....	2 ounces .....	2 ounces.
Large egg .....	½ .....	¾ .....	1 .....	1 .....	1.
Cooked dry beans or peas .....	¼ cup .....	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.	4 ounces or ½ cup.	6 ounces or ¾ cup.	8 ounces or 1 cup	8 ounces or 1 cup	8 ounces or 1 cup.
The following may be used to meet no more than 50 percent of the requirement:					
Peanuts, soy nuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternates (1 ounce of nuts/seeds = 1 ounce of cooked lean meat, poultry or fish).	½ ounce = 50% ...	¾ ounce = 50% ...	1 ounce = 50% ...	1 ounce = 50% ...	1 ounce = 50%.
Vegetables <sup>5</sup> .....	⅓ cup .....	¼ cup .....	½ cup .....	½ cup .....	½ cup.
Fruits <sup>5</sup> .....	⅓ cup .....	¼ cup .....	½ cup .....	½ cup .....	½ cup.
Grains <sup>6</sup> :					
Whole grain or enriched bread	½ slice .....	½ slice .....	1 slice .....	1 slice .....	2 slices.
Whole grain or enriched bread product, such as biscuit, roll, muffin	½ serving .....	½ serving .....	1 serving .....	1 serving .....	2 servings.
Whole grain, enriched or fortified Cereal <sup>7</sup> , cereal grain, and/or pasta	¼ cup .....	¼ cup .....	½ cup .....	½ cup .....	1 cup.

<sup>1</sup> Must serve all five components for a reimbursable meal. “Offer versus serve” is an option only for children in at-risk afterschool care centers and adult participants.

<sup>2</sup> Must be unflavored whole milk for children age 1. Multiple options related to flavored milk are presented for public comment for children age 2 years and older. For adult participants a serving of 6 ounces (weight) or ¾ cup (volume) of yogurt may be used to meet the equivalent of 8 ounces of fluid milk no more than once per day.

<sup>3</sup> A serving of fluid milk is optional for suppers served to adult participants.

<sup>4</sup> Alternate Protein Products must meet the requirements in Appendix A to Part 226.

<sup>5</sup> Pasteurized full-strength juice may be used to meet the requirement. Fruit and vegetable juices may not be served at the same meal.

<sup>6</sup> At least one serving per day, across all eating occasions, must be whole grain or whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.

<sup>7</sup> Breakfast cereals must conform to the requirements of the WIC program as outlined in 7 CFR 246.10(e)(12).

## SNACK MEAL PATTERN FOR CHILDREN AND ADULT PARTICIPANTS

Food Components and food items <sup>1</sup>	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18	Adult
	Minimum quantities				
Fluid milk <sup>2,3</sup> .....	4 fluid ounces .....	4 fluid ounces .....	8 fluid ounces .....	8 fluid ounces .....	8 fluid ounces.
Meat/meat alternates Edible portion as served:					
Lean meat, poultry, or fish .....	1/2 ounce .....	1/2 ounce .....	1 ounce .....	1 ounce .....	1 ounce.
Tofu, soy products, or alternate protein products <sup>4</sup> .....	1/2 ounce .....	1/2 ounce .....	1 ounce .....	1 ounce .....	1 ounce.
Cheese .....	1/2 ounce .....	1/2 ounce .....	1 ounce .....	1 ounce .....	1 ounce.
Large egg .....	1/2 .....	1/2 .....	1/2 .....	1/2 .....	1/2.
Cooked dry beans or peas .....	1/8 cup .....	1/8 cup .....	1/4 cup .....	1/4 cup .....	1/4 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.	2 ounces or 1/4 cup.	2 ounces or 1/4 cup.	4 ounces or 1/2 cup.	4 ounces or 1/2 cup.	4 ounces or 1/2 cup.
Peanuts, soy nuts, tree nuts, or Seeds.	1/2 ounce .....	1/2 ounce .....	1 ounce .....	1 ounce .....	1 ounce.
Vegetables <sup>3</sup> .....	1/2 cup .....	1/2 cup .....	3/4 cup .....	3/4 cup .....	1/2 cup.
Fruits <sup>3</sup> .....	1/2 cup .....	1/2 cup .....	3/4 cup .....	3/4 cup .....	1/2 cup
Grains <sup>5</sup> :					
Whole grain or enriched bread ...	1/2 slice .....	1/2 slice .....	1 slice .....	1 slice .....	1 slice
Whole grain or enriched bread product, such as biscuit, roll, muffin.	1/2 serving .....	1/2 serving .....	1 serving .....	1 serving .....	1 serving
Whole grain, enriched or fortified Cereal, <sup>6</sup> cereal grain, and/or pasta.	1/4 cup .....	1/3 cup .....	3/4 cup .....	3/4 cup .....	3/4 cup

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

<sup>2</sup> Must be unflavored whole milk for children age 1. Multiple options related to flavored milk are presented for public comment for children age 2 years and older. 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 no more than once per day.

<sup>3</sup> Only one beverage (fluid milk, vegetable juice or fruit juice) may be served. Pasteurized full-strength juice must be used to meet the requirement.

<sup>4</sup> Alternate Protein Products must meet the requirements in Appendix A to Part 226.

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

<sup>6</sup> Breakfast cereals must conform to the requirements of the WIC program as outlined in 7 CFR 246.10(e)(12).

### Best Practices

The USDA acknowledges that the mandated changes for the meal patterns are limited due to increased cost and practicality issues. However, providers are encouraged to take the initiative in providing healthier meals to children. According to the U.S. Department of Health and Human Services (National Center for Health Statistics, 2011), obesity rates of preschoolers have more than doubled over the last four decades, and one in five children will be overweight or obese by the time they turn age 6. Because of this, numerous parents, public and private agencies and organizations, and the White House have shown a renewed interest in the health of the Nation's children. In June 2011, the First Lady launched "Let's Move! Child Care," an effort to work with child care providers to help our youngest children get off to a healthier start. This initiative uses several tools to promote healthy eating, physical activity, and limiting screen time.

Because child care providers have the ability to influence positive development so early in a child's life,

those looking to make further nutritional improvements are encouraged to follow the proposed guidelines discussed below when serving meals to children. These guidelines reflect recommendations from the IOM and the AAP and would allow caregivers to ensure that children and adults are getting the optimal benefit from the meals they receive while in care.

These best practices are included in the regulatory text, but they are optional. Due to the potential of increased food and labor costs associated with implementing these guidelines, they would be met at the sole discretion of the provider. These guidelines would not be required in order to receive Federal reimbursement for meals served. Also, failure to meet the best practices could not be used as a serious deficiency finding (7 CFR 226.6(c)) or as the basis for other disciplinary actions for homes or centers. No additional Federal reimbursement would be available to providers who meet these guidelines. Comments on strategies to encourage

providers to implement the identified best practices are requested.

*Infants*—The IOM recommended that providers support and encourage breastfeeding by providing mothers access to breastfeeding materials and educational opportunities, encouraging mothers to supply breastmilk for their infant while in day care, and providing mothers who come to the day care facility with a quiet, private area to breastfeed. The USDA encourages all providers to adopt these recommendations. (As noted above, this proposed rule would provide reimbursement for breastmilk—only meals when the mother comes to the day care facility to breastfeed her infant, when no other component is required to be served.)

*Fruits and Vegetables*—Fruits and vegetables provide a variety of vitamins and minerals needed for growth and health maintenance. Exposing children to a variety of fruits and vegetables throughout the week is not only good for them but may serve as the foundation for healthier habits later in life. Therefore, the USDA encourages providers to offer at least one serving

each of dark green vegetables, red or orange vegetables, and legumes once per week. Additionally, we encourage providers to ensure that every snack includes at least one serving of a fruit or vegetable.

As the IOM recognized, some products and preparation methods used for fruits and vegetables can be a source of added sugars and solid fats. To limit the intake of added sugars and solid fats, the USDA recommends that providers adopt the IOM's recommendations and limit the consumption of fruit juice to no more than once per day for children.

In addition, while facilities would not be permitted under this proposed rule to prepare foods onsite by frying them, store-bought, catered, or pre-fried foods can still contribute large amounts of calories and saturated fat to a meal. Therefore, facilities are encouraged to limit all fried and pre-fried foods (including fried and pre-fried vegetables) to no more than once per week across all eating occasions.

**Grains**—The IOM recommended that at least one-half of all grains served are whole grain-rich. To meet this goal, providers are encouraged to prepare at least two servings of whole grain-rich grains each day. This is an increase from the required one serving of whole grain-rich grains per day.

**Fluid Milk**—The IOM identified flavored milk as a source of added sugar for children of all ages. In light of this, the USDA recommends that providers serve only unflavored milk to all children, regardless of age. (For additional discussion of flavored milk, please see the section of this preamble entitled Flavored Milk and Yogurt.)

**Meat and Meat Alternates**—The Dietary Guidelines recommends consuming only lean meats. The IOM identified meats as a source of solid fats and outlined a number of food specifications to address this concern, including: Serving only lean meats, legumes, and nuts; serving only natural cheese; limiting processed meats to no more than once per week across all eating occasions; and limiting fried and pre-fried foods (including meats) to no more than once per week across all eating occasions. As noted above, this proposed rule prohibits frying foods onsite at the facility. In addition, under these best practices, USDA recommends that providers adopt all of the other IOM recommendations regarding meat and meat alternates.

**Summary of Best Practices**—In summary, the best practices, as outlined in this section, are:

*Infants*

- Encourage mothers to breastfeed their infants;
- Provide materials and other educational opportunities to breastfeeding mothers;
- Encourage mothers to supply breastmilk for their infants while in day care; and
- Provide mothers who come to the day care facility a quiet, private area to breastfeed.

*Fruits and Vegetables*

- Limit the consumption of fruit juice to no more than one serving per day;
- Make at least one of the two required components of every snack a fruit or a vegetable;
- Avoid or limit the service of fried and pre-fried foods to no more than one serving per week; and
- Provide at least one serving each of dark green vegetables, red/orange vegetables, and legumes per week.

*Grains*

- Provide at least two servings of whole grain-rich grains per day (an increase over the required one serving); and
- Serve breakfast cereals that contain no more than 6 grams of sugar per serving.

*Milk*

- Serve only unflavored milk to all participants, regardless of age.

*Meat and Meat Alternates*

- Serve only lean meats, nuts, and legumes;
- Avoid or limit the service of processed meats to no more than once per week;
- Avoid or limit the service of fried and pre-fried foods to no more than one serving per week; and
- Serve only natural cheeses.

Accordingly, the proposed rule includes these best practices in § 226.20(e).

*Flavored Milk and Yogurt*

The IOM identified flavored milk as a source of added sugars. To limit added sugars, the IOM recommended that flavored milk be limited and served only to adults and children 5 years of age and older participating in at-risk afterschool programs, and that flavored milk not be allowed to be served to children of any age in traditional child care or emergency shelters.

The IOM also made recommendations to limit the amount of sugar in flavored milk and in yogurt. For flavored milk, the IOM recommended no more than 22 grams per 8 fluid ounces serving. For yogurt, the IOM recommended no more

than 40 grams of sugar per 8 ounce serving. USDA acknowledges that foods high in sugar such as some flavored milk and some yogurt can contribute excess calories to a child's diet, and agrees that the sugar limits recommended for these products by the IOM seem reasonable based on products currently available in the marketplace. We are especially interested in obtaining public input on (1) the proposed prohibition or limitation of serving flavored milk to children 2 through 4 years of age (2) whether sugar limits on flavored milk served to children 5 years of age and older should be adopted in the final rule as a meal pattern requirement or as an optional best practice that facilities may choose to implement at their discretion and (3) whether sugar limits on yogurt should be adopted in the final rule as a meal pattern requirement or as an optional best practice that facilities may choose to implement at their discretion. Therefore, this preamble and the proposed regulatory text present these as specific alternatives for comment, as discussed below.

For flavored milk served to children 2 through 4 years,

- Alternative A1 would prohibit the service of flavored milk to children 2 through 4 years of age. This provision would be considered a requirement under the meal pattern components, which could result in corrective action and/or disallowance of meals if not followed;
- Alternative A2 would require that flavored milk served to children 2 through 4 years of age contain no more than 22 grams of sugar per 8 fluid ounce serving. This provision would be considered a requirement under the meal pattern components, which could result in corrective action and/or disallowance of meals if not followed.

For flavored milk served to children 5 years and older,

- Alternative B1 would require that flavored milk, when served to children 5 years and older and adults, contain no more than 22 grams of sugar per 8 fluid ounce serving. This provision would be considered a requirement under the meal pattern components, which could result in required corrective action and/or disallowance of meals if not followed;
- Alternative B2 would recommend that flavored milk, when served to children 5 years of age and older and adults, contain no more than 22 grams of sugar per 8 fluid ounce serving. This recommendation would be included as a best practice; providers would be encouraged to adhere to these

limitations but would not be required to do so.

For yogurt served to all age groups,

- Alternative C1 would require that yogurt contain no more than 30 grams of sugar per 6 ounce serving. We have converted the IOM's recommendation from 40 grams of sugar per 8 ounce serving because commercially available yogurt is typically sold in 6 ounce containers. This provision would be considered a requirement under the meal pattern components, which could result in required corrective action and/or disallowance of meals if not followed;

- Alternative C2 would recommend that yogurt contain no more than 30 grams of sugar per 6 ounce serving. This recommendation would be included under best practices; providers would be encouraged to adhere to these limitations but would not be required to do so.

Accordingly, these alternatives can be found in the proposed rule in § 226.20(r).

#### Proposed Miscellaneous Changes

*Program Purpose*—Section 17(a) of the NSLA (42 U.S.C. 1766(a)), was amended by the HHFKA, and redefined CACFP as a program authorized to provide aid to child and adult care providers and family or group day care homes for the 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 disabled persons. Previously, the purpose of the Program was to enable providers to integrate a nutritious food service with organized care services for enrolled participants. This proposed rule would revise the purpose of the program to reflect the expanded purpose. Accordingly, the proposed change can be found at § 226.1 of this proposed rule.

*Meal Pattern Exceptions*—Section 17(g)(2)(C) of the NSLA (42 U.S.C. 1766(g)(2)(C)), as amended by the HHFKA, provides for meal pattern flexibility in two areas, special dietary needs and the needs of emergency shelters. Under this paragraph, the minimal nutrition requirements must not prohibit providers from substituting foods to accommodate the medical or other special dietary needs of individual participants. This provision is found at § 226.20(i)(2) of the proposed rule.

The HHFKA also amended the NSLA by providing new authority allowing the USDA to waive all or part of the requirements of the meal patterns for emergency shelters. This proposed rule does not codify the waiver authority for

emergency shelters, as it is authority that the USDA may exercise, and not State or local program operators. The USDA does not anticipate the meal pattern requirements in this proposed rule would pose a particular challenge for emergency shelters. However, if challenges arise, the emergency shelter or the sponsoring organization of the shelter may request a waiver through the State agency for FNS Regional Office approval.

Section 17(g)(3) of the NSLA (42 U.S.C. 1766(g)(3)), as amended by the 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. The amendment reflects the long-standing position of the USDA and is included in § 226.20(r) of this proposed rule.

*Water*—Section 221 of the HHFKA amended section 17 of the NSLA by adding paragraph (u)(2), which requires that child care centers, family day care homes, at-risk afterschool programs, and shelters participating in the CACFP make drinking water available to children for consumption throughout the day. USDA issued an implementation memorandum advising State agencies of this new provision, “Child Nutrition Reauthorization 2010: Water Availability in the Child and Adult Care Food Program” (CACFP 20–2011, May 11, 2011, <http://www.fns.usda.gov/sites/default/files/CACFP-20-2011.pdf>). The memorandum advised State agencies that CACFP centers and day care homes must make drinking water available to children, as nutritionally appropriate, throughout the day, including at meal times. Water should be made available to children to drink upon their request, but does not have to be available for children to self-serve. While drinking water must be made available to children during meal times, it is not part of the reimbursable meal and may not be served in lieu of fluid milk. While not specifically required for adult participants, adult day care centers are encouraged to ensure adult participants also have access to drinking water throughout the day.

The 2010 Dietary Guidelines for Americans do not establish a daily minimum intake for water consumption, but do recommend that water be consumed daily. States and sponsors should encourage facilities to serve water with snacks when no other beverage is being served, and in lieu of other high calorie, sweetened beverages (juice drinks, soda, sports drinks, etc.) that are served outside of meal times.

Water can be made available to children in a variety of ways including but not limited to: Having cups available next to the kitchen sink faucet, having water pitchers and cups set out, or simply providing water to a child when it is requested. USDA expects that this provision can be instituted with no or very low cost. However, circumstances may arise in which safe drinking water is not readily available in a facility. In these instances, purchasing water for children may be considered a reasonable and allowable cost for participating facilities. The purchase of water will continue to be an unallowable cost in CACFP facilities if purchased for employee consumption.

Accordingly, this proposed rule would require child care centers and day care homes to make safe drinking water available to children upon their request, throughout the day. The proposed changes can be found at § 226.25(h).

*Food Substitutions Supplied by Parents*—Program regulations at 7 CFR 226.7(m) and FNS Instruction 784–3, “Reimbursement for Meals Provided by Parents in the Child Care Food Program” (October 14, 1982), currently prohibit the reimbursement of meals in which any of the required components are provided by a parent or guardian, unless such food substitutions are specifically related to a medical disability. To better accommodate children with special dietary needs that do not rise to the level of a medical disability, this proposed rule would allow reimbursement for meals that contain up to one component that has been provided by a parent or guardian. Providing a meal component is at the option of the parent or guardian and may not be required by the provider. Additionally, providers are not required to serve meal components provided by a parent or guardian if the substitution is not related to a medical disability. The proposed changes can be found at §§ 226.6(m) and 226.20(i).

*Family-Style Meals*—Family-Style meal service provides a further opportunity to enhance the nutritional goals of CACFP by encouraging a pleasant eating environment. It promotes mealtime as a learning experience by allowing children to serve themselves from common platters of food, with assistance from supportive adults, and providing educational activities that are centered around food. FNS Instruction 783–9, Revision 2, “Family Style Meal Service in the Child and Adult Care Food Program” (May 3, 1993), outlines a number of practices that a center or day care home should follow when utilizing this option,

including placement of a sufficient amount of prepared food on each table and active encouragement of children to serve themselves the full required portion of each component. This proposed rule would codify these practices at § 226.20(o).

**Offer Versus Serve**—CACFP allows Offer Versus Serve as a meal service option in adult day care centers. It enables adult participants to choose to decline some of the offered food. It helps centers reduce food waste and costs, while maintaining the nutritional integrity of the reimbursable meal served. This proposed rule would extend the option of offer versus serve to children receiving meals in at-risk afterschool care centers. It would allow a child to decline up to two food items offered as part of a reimbursable lunch or supper. The proposed changes can be found at § 226.20(p)(1)(ii).

**Technical Amendments**—Finally, since this proposed rule revises § 226.20 in its entirety, a number of sections have been restated, without change. These sections include existing paragraphs (e) *Temporary unavailability of milk*, (f) *Continuing unavailability of milk*, (i) *Special variations*, (j) *Meal planning*, (k) *Time of meal service*, (l) *Sanitation*, and (m) *Donated commodities*. In addition, paragraphs (n) *Plentiful foods* and (o) *Additional provisions* have been removed as they are now obsolete.

#### Proposed Corresponding Changes to Other Child Nutrition Programs

**School Breakfast Program**—To maintain consistency across programs, the meal pattern requirements for SBP meals to infants and children 1 through 4 years of age will be revised to reflect the proposed breakfast meal requirements for infants and children 1 through 4 years of age for children participating in the CACFP. This proposed rule would remove the meal pattern charts and component description for children under 5 years of age and instead refer to § 226.20(c) for meal pattern quantity and component requirements. Children ages 5 years and up will continue to follow the SBP meal pattern requirements as currently outlined in 7 CFR part 220. Comments from the general public are encouraged as to whether referring to the CACFP regulations for the meal patterns for children under 5 years of age is sufficient or whether meal pattern components, quantities, and charts should be reproduced in SBP regulations, as they are currently.

Additionally, for reasons of consistency with the CACFP meal pattern, this proposed rule would eliminate the offer versus serve option

for children under 5 years of age. All proposed changes are discussed and outlined above under the section titled “*Proposed Meal Pattern Changes for CACFP*.” The minimum serving size of required components remains unchanged. Accordingly, this proposed rule would amend § 220.8(o) to incorporate these changes by reference.

**National School Lunch Program**—To maintain consistency across programs, the meal pattern requirements for NSLP schools providing snacks and lunches to infants and children 1 through 4 years of age will be revised to reflect the proposed meal pattern requirements for snacks and lunches for infants and children participating in the CACFP outlined in this rule. Children ages 5 years and up will continue to follow the NSLP meal pattern requirements as currently outlined. Comments from the general public are encouraged as to whether referring to the CACFP regulations for the meal patterns for children under 5 years of age is sufficient or whether meal pattern components, quantities, and charts should be reproduced in NSLP regulations, as they are currently.

Additionally, for reasons of consistency with the CACFP meal pattern, this proposed rule would eliminate the offer versus serve option for lunches served to children under 5 years of age. Schools will continue to have the option of serving lunch meals to children under 5 years of age across two serving periods (*i.e.*, splitting the reimbursable meal into two smaller meals). All proposed changes are discussed and outlined above under the section titled “*Proposed Meal Pattern Changes for CACFP*.” The minimum serving size of required components remains unchanged. Accordingly, this proposed rule would amend § 210.10(o) and (p) to incorporate these changes by reference.

**Special Milk Program**—To maintain consistency across programs, this proposed rule would require schools and institutions participating in the Special Milk Program to serve only low-fat and fat-free milk to children over the age of 2 years. Additionally, this proposed rule would require that flavored milk served be fat-free. The proposed changes are found at § 215.7a of this proposed rule.

#### Technical Assistance

The IOM recommended that the USDA provide extensive technical assistance to State agencies, sponsors, and day care providers to implement the recommended meal pattern changes. Key aspects of this assistance would

include menu planning, purchasing, food preparation, and recordkeeping.

Section 221 of the HHFKA requires the USDA to provide technical assistance to participating child care centers and day care homes in complying with the new nutritional requirements. As a first step in this technical assistance, USDA has coordinated with the U.S. Department of Health and Human Services to develop recommendations, guidelines, and best practices for day care providers that are consistent with the nutrition, physical activity, and wellness requirements of the HHFKA and this regulation. Based on 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/nutrition-and-wellness-tips-young-children-provider-handbook-child-and-adult-care-food-program>). The Handbook includes 15 fact sheets addressing nutrition, physical activity, and screen time. It will be updated as needed upon publication of the final rule.

In addition, USDA conducted needs assessment research to identify additional materials and training that would be useful to CACFP entities; the final report will be available in 2015. Pertinent resources and guidance materials will be developed based on the research results. FNS continues to partner with the National Food Service Management Institute to develop and provide appropriate training materials for CACFP. To further extend the reach of the technical assistance provided, comments are requested on strategies that can be used for providing additional technical assistance on the new meal pattern requirements.

#### IV. Procedural Matters

##### *Executive Order 12866 and Executive Order 13563*

Executive Orders 12866 and 13563 direct agencies to assess all cost 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 cost and benefits, of reducing cost, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget.

*Regulatory Impact Analysis*

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 proposal. A summary is presented below. The full RIA is included in the supporting documents of the rule docket at [www.regulations.gov](http://www.regulations.gov).

Need for Action

This rule proposes changes to 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 improve participants' diets by reducing the prevalence of inadequate and excessive intakes of food, nutrients, and calories. The rule would implement a cost-neutral subset of CACFP meal pattern recommendations for infants, children, and adults contained in the 2010 Institute of Medicine 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 proposed 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,<sup>1</sup> 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 PROPOSED RULE PROVISIONS

[By fiscal year, in millions of dollars—change from baseline. Negative numbers = cost savings.]

	2015	2016	2017	2018	Total
Net Effect of Infant Provisions .....	-\$4.0	-\$4.1	-\$4.3	-\$4.4	-\$16.8
Infant Formula Change .....	-\$7.5	-\$7.7	-\$8.0	-\$8.2	-\$31.4
Infant Snack—Fruits and Vegetables .....	\$3.5	\$3.6	\$3.7	\$3.8	\$14.6
On-site Breastfeeding Provision .....	(*)	(*)	(*)	(*)	(*)
Separating Fruits and Vegetables .....	(*)	(*)	(*)	(*)	(*)
Net Effect of Grain Provisions .....	-\$17.3	-\$18.0	-\$18.6	-\$19.4	-\$73.3
New Whole Grain Requirement .....	\$9.0	\$9.3	\$9.7	\$10.0	\$38.0
Disallowing Desserts .....	-\$26.3	-\$27.3	-\$28.3	-\$29.4	-\$111.3
WIC Compliant Cereals .....	(*)	(*)	(*)	(*)	(*)
Fluid Milk Provision .....	-\$2.6	-\$2.7	-\$2.8	-\$2.9	-\$11.0
Other Provisions .....	(*)	(*)	(*)	(*)	(*)
Rule Impact on NSLP, SBP, and SMP .....	(*)	(*)	(*)	(*)	(*)
Potable Water Provision .....	(*)	(*)	(*)	(*)	(*)
Flavored Milk and Yogurt Option .....	(*)	(*)	(*)	(*)	(*)
Disallowing Frying as Preparation Method .....	(*)	(*)	(*)	(*)	(*)
Increased Flexibility in Foods Served to CACFP Participants .....	(*)	(*)	(*)	(*)	(*)
Net Cost of Rule to CACFP Providers .....	-\$23.9	-\$24.8	-\$25.7	-\$26.7	-\$101.1
Baseline Federal Reimbursement and USDA Food Assistance <sup>2</sup> .....	\$3,209	\$3,332	\$3,455	\$3,584	\$13,581
Net Cost of Rule as a Percent of Federal Reimbursement .....	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%

\* 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 meal component as recommended by IOM; however, even without counting this provision as a cost savings, the rule remains essentially cost neutral. Other provisions of the rule that are expected to have a small cost savings include:

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

<sup>1</sup> The proposed rule would no longer allow grain based desserts to contribute to the meal patterns' grain requirement. The \$101.1 million 4-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

under the proposed meal patterns than under current rules.

- Changes in the fat content of fluid milk served to children. The proposed rule would codify statutory requirements that fluid milk served to CACFP participants two years of age and older be low-fat or fat-free. Because lower fat content milks tend to cost less per unit than higher fat content milks, this change will slightly reduce the cost of CACFP meals.

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 +10.2 million over 4 years, even closer to cost neutral than shown here, though more costly to CACFP providers. Given the considerable potential savings from at least reducing the number of grain based desserts served, providers, on

- Provisions that increase provider flexibility in serving meals, such as allowing a meat or meat alternate to be served in lieu of up to one-half of the bread and grains requirement at breakfast, 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 proposed requirements include:

average, should be able to implement the proposed rule with no increase in cost.

<sup>2</sup> Projections prepared by FNS for the development of the FY 2014 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.

- The addition of fruits and vegetables as a component of infant snacks starting at 6 months.
- The proposed requirement that at least one bread or grain serving per day be whole grain or whole grain rich. Because whole grain 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 proposed separation of fruits and vegetables into separate meal components. Although this is not 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.
- 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 goals of the most recent *Dietary Guidelines for Americans*, the proposed rule will ensure that meals served at CACFP centers and homes better reflect current 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 proposed changes are expected to positively impact the nutritional outcomes of all groups of CACFP participants. The infant 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 desserts as reimbursable meal components, disallowing frying as an on-site food preparation method, and modifying the fluid milk requirements will decrease the amounts of solid fats and added sugars consumed by CACFP participants through Program meals. Requiring that one serving of grains be whole-grain-rich will increase the whole grain consumption of CACFP participants, which, as IOM 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

lieu of up to one-half of the bread and grains requirement at breakfast, 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

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). FNS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, including child care providers and school districts. While this proposed rule makes several revisions to the CACFP meal patterns based on recommendations of the Institute of Medicine (IOM), the provisions proposed in this rulemaking are of minimal cost and would be achievable without creating a hardship for any of the small entities that administer and participate in the Program.

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. Under section 202 of UMRA, FNS must generally 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 by the private sector, of \$100 million or more in any one year. When this statement is needed, section 205 of UMRA generally requires FNS 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 rulemaking.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) that would result in cost to State, local, or Tribal governments or to the private sector of \$100 million or more in any one year.

#### Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where these 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. FNS has considered the potential impact of this proposed rule on State and local governments and has determined that it does not have federalism implications. This proposed rule would not impose substantial or direct compliance costs on State and local governments. Therefore, a federalism summary impact statement is not required.

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rulemaking, when published as a 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. This rulemaking is not intended to have a retroactive effect. Prior to any judicial challenge to the provisions or application of the of this rulemaking, all applicable administrative procedures under §§ 210.18(q), 226.6(k), 226.6(l), 226.16(l), 226.22, 235.11(f), and 7 CFR parts 3016 and 3019 must be exhausted. This includes any administrative procedures provided by State or local governments.

#### Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with USDA regulations 4300–4, “Civil Rights Impact Analysis,” and 1512–1, “Regulatory Decision Making Requirements.” After a careful review of the proposed rule’s intent and provisions, FNS has determined that this proposed rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits on the basis of their race, color, national origin, sex, age, or disability, nor is it intended to have a differential impact on minority-owned or operated business establishments, and woman-owned or operated business establishments that participate in the programs affected by this rulemaking.

#### Executive Order 13175

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.

In spring 2011, FNS offered opportunities for consultation with Tribal officials or their designees to discuss the impact of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) on tribes or Indian Tribal governments. FNS coordinated five consultation sessions in total that provided the opportunity to address Tribal concerns related to the Child Nutrition Programs:

1. HHFKA Webinar and Conference Call—April 12, 2011
2. Mountain Plains—HHFKA Consultation, Rapid City, South Dakota—March 23, 2011
3. Tribal Self-Governance Annual Conference, Palm Springs, California—May 2, 2011
4. National Congress of American Indians Mid-Year Conference, Milwaukee, Wisconsin—June 14, 2011
5. HHFKA Webinar and Conference Call—June 22, 2011

Reports from these consultations are part of the USDA annual reporting on Tribal consultation and collaboration. FNS will respond in a timely and meaningful manner to Tribal government requests for consultation concerning this rulemaking. Currently, FNS provides regularly scheduled quarterly consultation sessions as an opportunity for collaborative conversations with Tribal officials and their designees.

#### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public 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. Information collections in this proposed rule have been previously approved under OMB #0584-0055. There is no new information collection burden associated with this proposed rule.

#### E-Government Act Compliance

FNS is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities to provide 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, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

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

#### **PART 210—NATIONAL SCHOOL LUNCH PROGRAM**

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

**Authority:** 42 U.S.C. 1751–1760, 1779.

- 2. 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 the words “1 through 4”;

- b. In paragraph (a)(1)(ii), remove the last sentence;

- c. Revise paragraph (e);

- 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; and

- g. Revise paragraphs (o) and (p).

The additions and revisions read as follows:

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

\* \* \* \* \*

(e) *Offer versus serve.* (i) *For students in grades K through 12.* School lunches must offer daily the five food components specified in the meal

pattern in paragraph (c) of this section. Under offer versus serve, students must be allowed to decline two items at lunch, except that the students must select at least 1/2 cup of either the fruit or vegetable component. Senior high schools (as defined by the State educational agency) must participate in offer versus serve. Schools below the senior high level may participate in offer versus serve at the discretion of the school food authority.

(ii) *For children ages 1 through 4.* School lunches must offer daily all five required food components specified in the meal pattern in paragraph (p) of this section. If the school food authority elects offer versus serve, students in preschool may decline one or two of the five food components.

\* \* \* \* \*

(g) *Compliance assistance.* 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) and (p) 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) and (p) 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 the quantities and/or food items offered each time any way they wish.

\* \* \* \* \*

(o) *Afterschool snacks.* Eligible schools operating afterschool care programs may be reimbursed for one afterschool snack served to a child (as defined in § 210.2) per day.

(1) “Eligible schools” means schools that:

(i) Operate school lunch programs under the Richard B. Russell National School Lunch Act; and

(ii) Sponsor afterschool care programs as defined in § 210.2.

(2) Afterschool snack requirements for children in grades K–12. Afterschool snacks shall 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. Nuts and seeds and their butters listed in FNS guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts are excluded and shall not be used as meat alternates due to their low protein content. Nut or seed meals or flours shall not be used as a meat alternate except as allowed under Appendix A of this part;

(iii) A serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods. Juice may 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 children under age 5. Afterschool snacks served to infants ages birth through 11 months and to children ages 1 through 4 must meet the requirements for meal supplements for the Child and Adult Care Food Program as specified under paragraphs § 226.20(a), (b), (c)(3) and (d) of this chapter, as applicable. In addition, school food authorities serving after school snacks must comply with the requirements set forth in paragraphs (a), (c)(3), (c)(7), (d)(2) through (4), (g), and (m) of this section.

(p) *Lunches for preschoolers and infants*—(1) *Requirements for preschoolers' lunch pattern.* Lunches for children ages 1 through 4 must meet the requirements for lunches for the Child and Adult Care Food Program as specified under paragraphs § 226.20(a), (c)(2) and (d) of this chapter. In addition, school food authorities serving lunches under this paragraph must comply with the requirements set forth in paragraphs (a), (c)(3), (c)(4), (c)(7), (d)(2) through (4), (e), (g), (j), (k), (l), and (m) of this section.

(2) *Requirements for infants' lunch pattern.* Lunches for infants ages birth through 11 months must meet the requirements for lunches under paragraphs § 226.20(b) and (d) of this chapter, as applicable. In addition, school food authorities serving lunches under this paragraph must comply with the requirements set forth in paragraphs

(a), (g), (l), and (m) of this section, as applicable.

**PART 215—SPECIAL MILK PROGRAM FOR CHILDREN**

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

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

■ 4. In 7 CFR part 215 add new § 215.7a to read as follows:

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

Fluid milk and non-dairy beverages served must meet the requirements as outlined in this paragraph.

(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. All fluid milk must 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 served must also meet the following requirements:

- (1) Children one year of age must be offered only unflavored whole milk.
- (2) Children ages 2 years and older must be served either unflavored low-fat (1 percent) or unflavored fat-free (skim) or flavored fat-free (skim) milk.

(b) *Fluid milk substitutes.* Non-dairy fluid milk substitutions may be provided for non-disabled children with medical or special dietary needs so long as requests are submitted in writing from the child's parent or guardian. If a school or day care center chooses to offer one or more substitutes for fluid milk, the non-dairy beverage(s) must provide the nutrients listed in the following table. Fluid milk substitutes must be fortified in accordance with fortification guidelines issued by the Food and Drug Administration. A school or day care center need only offer the non-dairy beverage(s) that it has identified as allowable fluid milk substitutes according to the following chart:

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.

**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) introductory text, revise the first sentence;
  - b. In paragraph (a)(3), revise the third sentence;
  - c. In paragraph (c), revise the title;
  - d. In paragraph (g), revise the first sentence;
  - e. In paragraph (j), revise the first sentence; and
  - f. Revise paragraph (o).
- The 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 to 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 to 12 must indicate zero grams of *trans* fat per serving (less than 0.5 grams).

(c) *Meal pattern for school breakfasts for grades K to 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 paragraph (o) of this section, as applicable.

(j) \* \* \* Effective SY 2013–2014, compliance with the applicable meal requirements in paragraphs (b) and (o) of this section will be monitored by the State agency through administrative reviews authorized in § 210.18 of this chapter.

(o) *Breakfasts for preschoolers and infants.* Breakfast served to infants ages birth through 11 months and to children ages 1 through 4 must meet the requirements for breakfasts served under the Child and Adult Care Food Program as specified under paragraphs § 226.20(a),(b), (c)(1), and (d). In addition, school food authorities serving breakfasts under this paragraph must comply with the requirements set forth

in paragraphs (a),(c)(3), (g), (j), (k), (l), and (m) of this section, as applicable.

## PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 7. 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).

■ 8. 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 or 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 the 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 disabled persons.

■ 9. 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 an acid), and water. Tofu must conform to FNS guidance to count towards the meat/meat alternates component.

\* \* \* \* \*

*Whole grains* means foods that consist of the 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. Whole grain-rich products must conform to FNS guidance to count towards the grain component.

\* \* \* \* \*

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

### § 226.7 State agency responsibilities for financial management.

\* \* \* \* \*

(m) *Financial management system.* (1) Each State agency shall establish a financial management system in accordance with 7 CFR parts 3015, 3016, and 3019, as applicable, and FNS guidance to identify allowable Program costs, and establish standards for institutional recordkeeping and reporting. These standards:

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

(ii) Allow the cost of meals served to adults who perform necessary food service labor under the Program, except in day care homes.

(2) The State agency shall provide guidance on financial management requirements to each institution.

■ 11. Revise § 226.20 to read as follows:

### § 226.20 Requirements for meals.

(a) *Meal 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 as a beverage or on cereal, or used in part for each purpose, as follows:

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

(ii) *Children 2 years and older.* Children two years and older must be served either unflavored low-fat (1 percent) or unflavored fat-free (skim) or flavored fat-free (skim) milk.

(iv) *Adults.* Adults must be served either unflavored low-fat (1 percent) or 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, not more than once per day.

(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 count as ½ cup of vegetables. Pasteurized, full-strength vegetable juice may be used to fulfill the requirement. Fruit juices and vegetable juices may not be served at the same meal. Cooked dry beans or dry peas may be used as either a vegetable or a meat alternate, but not both, in the same meal.

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

cup of dried fruit counts as ½ cup of fruit. Pasteurized, full-strength fruit juice may be used to fulfill the requirement. Fruit juices and vegetable juices may not be served at the same meal.

(4) *Grains.* At a minimum, at least one serving per day, across all eating occasions of bread, cereals, and grains, must be whole-grain or whole-grain rich. Grain-based desserts do not count towards meeting the grains requirement.

(i) *Breakfast cereals.* Breakfast cereals are those as defined by FDA in 21 CFR 170.3(n)(4) for ready-to-eat and instant and regular hot cereals. Breakfast cereals must conform to the requirements of the WIC program as outlined in § 246.10(e)(12).

(ii) *All other grains.* A serving must be made with enriched or whole grain meal or flour, in accordance with FNS guidance. A serving may contain whole grain, whole grain-rich, or enriched bread; or cornbread, biscuits, rolls, muffins, and other bread products made with whole grain or enriched meal or flour; or whole grain or enriched or fortified cereal; or cooked whole grain or enriched pasta or noodle products, such as macaroni; or cereal grains, such as rice, bulgur, or corn grits; or any combination of these foods.

(5) *Meat and meat alternates.* (i) The creditable quantity of meat/meat alternates must be the edible portion as served of lean meat, poultry or fish; alternate protein products; or cheese; or an egg; or cooked dry beans or peas; or peanut butter; or any combination of these foods. Meat/meat alternates must be served in a main dish, or in a main dish and one other menu item, to meet this requirement.

(ii) *Nuts and seeds.* Nuts and seeds and their butters are allowed as meat alternates in accordance with FNS guidance. Acorns, chestnuts, and coconuts may not be used because of their low protein and iron content. Nut and seed meals or flours may be used only if they meet the requirements for alternate protein products established in Appendix A to this part. For lunch and supper meals, nuts or seeds may be used to meet no more than one-half (50 percent) of the meat/meat alternates component. They must be combined with other meat/meat alternates to meet the full requirement for a reimbursable lunch or supper.

(iii) *Yogurt.* Yogurt may be used to meet all or part of the meat/meat alternates component. Yogurt may be plain or flavored, unsweetened or sweetened. Noncommercial or non-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. Four ounces (weight) or 1/2 cup (volume) of yogurt equals one ounce of the meat/meat alternates requirement. For adults, six ounces (weight) or 3/4 cup (volume) of yogurt may be used to fulfill the equivalent of 8 oz. of fluid milk, no more than once per day.

(iv) *Tofu and soy products.*

Commercial tofu and soy products may be used to meet all or part of the meat/meat alternates component in accordance with FNS guidance and Appendix A to this part. Non-commercial and/or 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/meat alternates component. Beans and peas may be used as the meat alternate or as part of the vegetable component, but not both, in the same meal. Beans and peas include foods such as black beans, garbanzo beans, lentils, kidney beans, mature lima beans, navy beans, pinto beans, and split peas.

(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/meat alternate component in accordance with FNS guidance.

(b) *Infant meals*—(1) *Feeding meals to infants.* Reimbursable meals served to infants ages birth through 11 months must meet the requirements described in this paragraph. Foods included in the infant meal must be of a texture and a consistency that are appropriate for the age and development of the infant being served. The foods must be served during a span of time consistent with the infant's eating habits. For those infants whose dietary needs are more individualized, exceptions to the meal pattern must be made in accordance with the requirements found in paragraph (h) of this section.

(2) *Breastmilk and iron-fortified formula.* Either breastmilk or iron-fortified infant formula, or portions of both, must be served for the entire first year. A facility that enrolls formula-fed infants must offer at least one type of iron-fortified infant formula, which the parent (or guardian) may either accept, or choose to decline and supply the infant's formula instead. Meals containing breastmilk and meals containing iron-fortified infant formula, supplied by the facility or by the parent (or guardian), are eligible for reimbursement. Meals in which a mother directly breastfeeds her child at the child care facility are also eligible for reimbursement. For infants 6 months and older, a meal is only reimbursable when the facility supplies at least two components of the infant's meal.

(3) *Solid foods.* The introduction of solid foods may begin at the age of six months, as developmentally appropriate. The facility should consult with the infant's parent (or guardian) in making the decision to introduce solid foods. Solid foods of an appropriate texture and consistency should be introduced one at a time on a gradual basis with the intent of ensuring the infant's health and nutritional well-being.

(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. For some infants who regularly consume less than the minimum amount of breastmilk or iron-fortified infant formula per feeding, a serving of less than the minimum amount of breastmilk or infant formula may be offered. In these situations, additional breastmilk or infant formula must be offered at a later time if the infant will consume more. Meals may include portions of breastmilk and iron-fortified infant formula as long as the

total number of ounces meets, or exceeds, the minimum amount required of this food component.

(i) *Birth through 5 months.* Only breastmilk or iron-fortified formula is required to meet the infant's nutritional needs.

(A) *Breakfast*—4 to 6 fluid ounces of breastmilk or iron-fortified infant formula.

(B) *Lunch or supper*—4 to 6 fluid ounces of breastmilk or iron-fortified infant formula.

(C) *Snack*—4 to 6 fluid ounces of breastmilk or iron-fortified infant formula.

(ii) *6 through 11 months.* Breastmilk or iron-fortified formula is required. Solid foods of an appropriate texture and consistency are required as developmentally appropriate. Meals are reimbursable when facilities provide all of the components in the meal pattern that the infant is developmentally ready to accept.

(A) *Breakfast, lunch, or supper*—6 to 8 fluid ounces of breastmilk or iron-fortified infant formula; and 1 to 4 tablespoons of iron-fortified dry infant cereal meat, fish, poultry, egg yolk, cooked dry beans, or cooked dry peas; and 1 to 2 tablespoons of vegetable fruit, or portions of both. Fruit and vegetable juices may not be served.

(B) *Snack*—2 to 4 fluid ounces of breastmilk or iron-fortified infant formula; and 1/4 to 1/2 ounce bread, crackers, or ready-to-eat breakfast cereals; and 1 to 2 tablespoons of vegetable or fruit, or portions of both. Fruit and vegetable juices may not be served. A serving of grains must be whole grain, 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:

Infants	Birth through 5 months	6 through 11 months
Breakfast, Lunch, or Supper	4–6 fluid ounces breastmilk <sup>1</sup> or formula <sup>2</sup> .....	6–8 fluid ounces breastmilk <sup>1</sup> or formula <sup>2</sup> . 1–4 tablespoons infant cereal <sup>2</sup> meat, fish, poultry, egg yolk, cooked dry beans, or cooked dry peas, or a combination of the above. 1–2 tablespoons vegetable <sup>3</sup> or fruit <sup>3</sup> or a combination of both.
Snack .....	2–4 fluid ounces breastmilk <sup>1</sup> or formula <sup>2</sup> .....	2–4 fluid ounces breastmilk <sup>1</sup> or formula <sup>2</sup> . 1/4–1/2 ounce bread, <sup>4</sup> cracker <sup>4</sup> , or ready-to-eat breakfast cereal <sup>4</sup> . 1–2 tablespoons vegetable <sup>3</sup> or fruit <sup>3</sup> or a combination of both.

<sup>1</sup> Breastmilk or formula, or portions of both, may 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.

<sup>2</sup> Infant formula and dry infant cereal must be iron-fortified.

<sup>3</sup> Fruit or vegetable, or portions of both, may be served. Fruit and vegetable juices may not be served.

<sup>4</sup> A serving of grains must be whole grain, whole grain-rich, enriched meal, or enriched flour.

(c) *Meal patterns for children ages 1 through 18 and adult participants.* Facilities must serve the food components and quantities specified in the following meal pattern for children ages 1 through 2, 3 through 5, 6 through

12, 13 through 18, and adult participants in order to qualify for reimbursement.  
 (1) *Breakfast.* Fluid milk, vegetables and/or fruit, and grains are required components of the breakfast meal. Meat/

meat alternate may be used to meet no more than one-half (fifty percent) of the grains requirement. The minimum amounts of food components to be served at breakfast are as follows:

**BREAKFAST MEAL PATTERN FOR CHILDREN AND ADULT PARTICIPANTS**

Food Components and Food Items <sup>1</sup>	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18	Adult
	Minimum quantities				
Fluid milk <sup>2</sup> .....	4 fluid ounces .....	6 fluid ounces .....	8 fluid ounces .....	8 fluid ounces .....	8 fluid ounces.
Vegetables, fruits, or portions of both <sup>3</sup>	¼ cup .....	½ cup .....	½ cup .....	½ cup .....	½ cup.
Grains <sup>4 5</sup> :					
Whole grain or enriched bread ....	½ slice .....	½ slice .....	1 slice .....	1 slice .....	2 slices.
Whole grain or enriched bread product, such as biscuit, roll, muffin.	½ serving .....	½ serving .....	1 serving .....	1 serving .....	2 servings.
Whole grain, enriched or fortified Cereal <sup>6</sup> , cereal grain, and/or pasta.	¼ cup .....	¼ cup .....	½ cup .....	½ cup .....	1 cup.

<sup>1</sup> Must serve all three components for a reimbursable meal. Offer versus serve is an option for only adult and at-risk participants.  
<sup>2</sup> Must be unflavored whole milk for children age one. Multiple options related to flavored milk are presented for public comment for children age 2 years and older. 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 no more than once per day.  
<sup>3</sup> Pasteurized full-strength juice may be used to meet the requirement. Fruit and vegetable juices may not be served at the same meal.  
<sup>4</sup> At least one serving per day, across all eating occasions, must be whole grain or whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.  
<sup>5</sup> Meat/meat alternates may be used to meet up to 50 percent of the grains requirement. One ounce of meat/meat alternates is equivalent to one cup/serving of grains.  
<sup>6</sup> Breakfast cereals must conform to the requirements of the WIC program as outlined in 7 CFR 246.10(e)(12).

(2) *Lunch and supper.* The minimum amounts of food components to be served as lunch or supper are as follows:

**LUNCH AND SUPPER MEAL PATTERN FOR CHILDREN AND ADULT PARTICIPANTS**

Food Components and Food Items <sup>1</sup>	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18	Adult
	Minimum quantities				
Fluid milk <sup>2</sup> .....	4 fluid ounces .....	6 fluid ounces .....	8 fluid ounces .....	8 fluid ounces .....	8 fluid ounces. <sup>3</sup>
Meat/meat alternates.					
Edible portion as served:					
Lean meat, poultry, or fish .....	1 ounce .....	1½ ounces .....	2 ounces .....	2 ounces .....	2 ounces.
Tofu, soy products, or alternate protein products <sup>4</sup> .	1 ounce .....	1½ ounces .....	2 ounces .....	2 ounces .....	2 ounces.
Cheese .....	1 ounce .....	1½ ounces .....	2 ounces .....	2 ounces .....	2 ounces.
Large egg .....	½ .....	¾ .....	1 .....	1 .....	1.
Cooked dry beans or peas .....	¼ cup .....	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.	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 <sup>5</sup> .....	⅓ cup .....	¼ cup .....	½ cup .....	½ cup .....	½ cup.
Fruits <sup>5</sup> .....	⅓ cup .....	¼ cup .....	¼ cup .....	¼ cup .....	½ cup.
Grains <sup>6</sup> :					
Whole grain or enriched bread ....	½ slice .....	½ slice .....	1 slice .....	1 slice .....	2 slices.

LUNCH AND SUPPER MEAL PATTERN FOR CHILDREN AND ADULT PARTICIPANTS—Continued

Food Components and Food Items <sup>1</sup>	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18	Adult
	Minimum quantities				
Whole grain or enriched bread product, such as biscuit, roll, muffin.	½ serving .....	½ serving .....	1 serving .....	1 serving .....	2 servings.
Whole grain, enriched or fortified Cereal <sup>7</sup> , cereal grain, and/or pasta.	¼ cup .....	¼ cup .....	½ cup .....	½ cup .....	1 cup.

<sup>1</sup> Must serve all five components for a reimbursable meal. “Offer versus serve” is an option for only adult and at-risk participants.  
<sup>2</sup> Must be unflavored whole milk for children age one. Multiple options related to flavored milk are presented for public comment for children age 2 years and older. 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 no more than once per day.  
<sup>3</sup> A serving of fluid milk is optional for suppers served to adult participants.  
<sup>4</sup> Alternate protein products must meet the requirements in Appendix A to part 226.  
<sup>5</sup> Pasteurized full-strength juice may be used to meet the requirement. Fruit and vegetable juices may not be served at the same meal.  
<sup>6</sup> At least one serving per day, across all eating occasions, must be whole grain or whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.  
<sup>7</sup> Breakfast cereals must conform to the requirements of the WIC program as outlined in 7 CFR 246.10(e)(12).

(3) *Snack*. Select two of the following five components. Fruit juice, vegetable juice, and milk may comprise no more than one component of the snack. The minimum amounts of food components to be served as snack as set forth in this paragraph are as follows:

SNACK MEAL PATTERN FOR CHILDREN AND ADULT PARTICIPANTS

Food Components and Food Items <sup>1</sup>	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18	Adult
	Minimum quantities				
Fluid milk <sup>2,3</sup> .....	4 fluid ounces .....	4 fluid ounces .....	8 fluid ounces .....	8 fluid ounces .....	8 fluid ounces.
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 <sup>4</sup> .	½ ounce .....	½ ounce .....	1 ounce .....	1 ounce .....	1 ounce.
Cheese .....	½ ounce .....	½ ounce .....	1 ounce .....	1 ounce .....	1 ounce.
Large egg .....	½ .....	½ .....	½ .....	½ .....	½.
Cooked dry beans or peas .....	⅛ cup .....	⅛ cup .....	¼ cup .....	¼ cup .....	¼ cup.
Peanut butter or soy nut butter or other nut or seed butters.	1 Tbsp .....	1 Tbsp .....	2 Tbsp .....	2 Tbsp .....	2 Tbsp.
Yogurt, plain or flavored unsweetened or sweetened.	2 ounces or ¼ cup.	2 ounces or ¼ cup.	4 ounces or ½ cup.	4 ounces or ½ cup.	4 ounces or ½ cup.
Peanuts, soy nuts, tree nuts, or Seeds.	½ ounce .....	½ ounce .....	1 ounce .....	1 ounce .....	1 ounce.
Vegetables <sup>3</sup> .....	½ cup .....	½ cup .....	¾ cup .....	¾ cup .....	½ cup.
Fruits <sup>3</sup> .....	½ cup .....	½ cup .....	¾ cup .....	¾ cup .....	½ cup.
Grains <sup>5</sup> :					
Whole grain or enriched bread ....	½ slice .....	½ slice .....	1 slice .....	1 slice .....	1 slice.
Whole grain or enriched bread product, such as biscuit, roll, muffin.	½ serving .....	½ serving .....	1 serving .....	1 serving .....	1 serving.
Whole grain, enriched or fortified Cereal <sup>6</sup> , cereal grain, and/or pasta.	¼ cup .....	⅓ cup .....	¾ cup .....	¾ cup .....	¾ cup.

<sup>1</sup> Select two of the five components for a reimbursable snack. Only one of the two components may be a beverage.  
<sup>2</sup> Must be unflavored whole milk for children age one. Multiple options related to flavored milk are presented for public comment for children age 2 years and older. 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 no more than once per day.  
<sup>3</sup> Only one beverage (fluid milk, vegetable juice or fruit juice) may be served. Pasteurized full-strength juice must be used to meet the requirement.  
<sup>4</sup> Alternate protein products must meet the requirements in Appendix A to part 226.  
<sup>5</sup> At least one serving per day, across all eating occasions, must be whole grain or whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.  
<sup>6</sup> Breakfast cereals must conform to the requirements of the WIC program as outlined in 7 CFR 246.10(e)(12).

(d) *Food preparation*. Frying may not be used as a method of onsite preparation for foods served as part of the reimbursable meal. Foods that have been pre-fried, flash-fried, or par-fried by the manufacturer may be served but must be heated by a method other than frying.

(e) *Best practices*. Facilities willing to go further in providing healthier options may follow the best practices, as outlined below, when serving meals and

snacks. Best practices are suggestions only and may not be required to be followed in order to receive reimbursement for the meal nor may noncompliance with the best practice standards be used as a serious deficiency finding (§ 226.6(c) of this part) or as the basis for other disciplinary actions for homes or centers.

(1) *Infants.* Facilities should support mothers who choose to breastfeed their infants by encouraging mother to supply breastmilk for their infants while in day care and providing a quiet, private area for mothers who come to day care facility to breastfeed.

(2) *Fruits and vegetables.* Facilities should:

(i) Limit the consumption of fruit juice to no more than one serving per day for children one and older.

(ii) Make at least one of the two required components of snack a fruit or a vegetable.

(iii) Limit fried and pre-fried foods to no more than one serving per week, across all eating occasions.

(iv) Provide at least one serving each of dark green vegetables, red/orange vegetables, and legumes once per week.

(3) *Grains.* Facilities should:

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

(ii) Serve breakfast cereals that contain no more than 6 grams of sugar per serving.

(4) *Milk.* Facilities should serve only unflavored milk to all participants.

(5) *Meat and meat alternates.*

Facilities should:

(i) Serve only lean meats, nuts, and legumes.

(ii) Limit the service of processed meats to no more than once per week, across all eating occasions.

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

(iv) Serve only natural cheeses.

(f) *Temporary unavailability of milk.* If emergency conditions prevent an institution normally having a supply of milk from temporarily obtaining milk deliveries, the State agency may approve the service of breakfasts, lunches, or suppers without milk during the emergency period.

(g) *Continuing unavailability of milk.* The inability of an institution to obtain a supply of milk on a continuing basis should not bar it from participation in the Program. In such cases, the State agency may approve service of meals without milk, provided that 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 paragraphs (a)(1) through (3) of this section.

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

(i) *Individual substitutions.* For substitutions due to medical reasons (not reaching the level of a disability) or special dietary needs, a parent or guardian may supply up to one component of the reimbursable meal, so long as the facility provides the remaining components.

(1) *Fluid milk substitutions.* Non-dairy fluid milk substitutions may be provided for non-disabled children with medical or special dietary needs so long as requests are submitted in writing from the child's parent or guardian or the adult participant. The non-dairy beverage(s) must provide the nutrients listed in the following table. Milk substitutions must be fortified in accordance with fortification guidelines issued by the Food and Drug Administration.

Nutrient	Per cup
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.

(2) *Food substitutions—(i) Food substitutions for disability reasons.* Substitutions must be made for foods listed in paragraphs (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. Substitutions must be made on a case-by-case basis only when supported by a statement from a licensed physician that includes recommended alternate foods, unless otherwise exempted by FNS.

(ii) *Food substitutions for non-disability reasons.* Substitutions may be made for foods listed in paragraphs (b) and (c) of this section for individual participants without disabilities who cannot consume the regular meal because of medical or special dietary needs. Substitutions may be made on a case-by-case basis only when supported by a statement from a recognized medical authority that includes recommended alternate foods, unless otherwise exempted by FNS.

(j) *Special variations.* FNS may approve variations in the food

components of the meals on an experimental or a continuing basis in any institution where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(k) *Meal planning.* Institutions should plan for and order meals on the basis of current participation trends, with the objective of providing only one meal per participant at each meal service. Records of participation and of ordering or preparing meals should 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 has failed to plan and prepare or order meals with the objective of providing only one meal per participant at each meal service.

(l) *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.

(m) *Sanitation.* Institutions should 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 should ensure that adequate facilities are available to store food or hold meals.

(n) *Donated commodities.* Institutions should efficiently use in the Program any foods donated by the Department and accepted by the institution.

(o) *Family-style meal service.* Family-style is a type of meal service which allows children to serve themselves from common platters of food with the assistance of supervising adults. 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 food components, as outlined in paragraphs (c)(1) and (2) of this section, for all children at the table and to accommodate supervising adult(s) if they eat with the children.

(2) Children must self-serve the meal components, with the exception of fluids (milk, juice, etc). During the course of the meal, it is the responsibility of the supervising adults to actively encourage each child to serve themselves the full required portion for

each food component of the meal pattern. Supervising adults who choose to serve the fluids directly to the children must serve the required minimum quantity to each child.

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

(p) *Offer versus serve.* (1) Each adult day care center and at-risk after school program must offer its participants all of the required food servings as set forth in paragraph (c)(1)(i) and (ii) 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 milk, one serving of fruit and/or vegetable, and two servings of grains or grain alternate and/or meat/meat alternate) required at breakfast;

(B) *Two of the six* food items (one serving of milk, one servings of vegetable, one serving of fruit, two servings of grain or grain alternate, 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 or grain alternate, and one serving of meat or meat alternate) required at supper.

(ii) For children participating in at-risk after school programs: *Two of the five* food items (one serving of vegetables, one serving of fruits, one serving of grain or grain alternate, one serving of meat or meat alternate, and one serving of fluid milk) required at supper.

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

(q) *Prohibition on using food as a punishment or reward.* Meals served under this part must contribute to the development and socialization of children by providing food that is not used as a punishment or reward.

(r) *Sugar limitations—(1) Flavored milk for children 2 through 4 years—(i) Alternative A1.* The service of flavored milk to children 2 through 4 years of age is prohibited; or

(ii) *Alternative A2.* To be creditable as part of a reimbursable meal under paragraph (a)(1) of this section, flavored milk served to children 2 through 4 years of age must contain no more than 22 grams of sugar per 8 fluid ounce serving.

(2) *Flavored milk for children 5 years and older—(i) Alternative B1.* To be creditable as part of a reimbursable meal under paragraph (a)(1) of this section, flavored milk served must contain no

more than 22 grams of sugar per 8 fluid ounce serving; or

(ii) *Alternative B2.* Facilities willing to go further in providing healthier options may follow the best practices as outlined under paragraph (e) of this section, which may include limiting the sugar in flavored milk to no more than 22 grams per 8 fluid ounce serving.

(3) *Yogurt for all age groups—(i) Alternative C1.* To be creditable as part of a reimbursable under paragraph (a)(1)(iv) or (a)(5) of this section, yogurt served must contain no more than 30 grams of sugar per 6 ounce serving; or

(ii) *Alternative C2.* Facilities willing to go further in providing healthier options may follow the best practices as outlined under paragraph (e) of this section, which may include limiting the sugar in yogurt to no more than 30 grams per 6 ounce serving.

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

**§ 226.25 Other provisions.**

\* \* \* \* \*

(i) *Water availability.* A child care facility must make potable drinking water available to children upon their request, throughout the day.

Dated: January 8, 2015.

**Kevin W. Concannon,**

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

[FR Doc. 2015-00446 Filed 1-14-15; 8:45 am]

**BILLING CODE 3410-30-P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 900, 1150, 1160, 1205, 1206, 1207, 1208, 1209, 1210, 1212, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1230, 1250, 1260, and 1280**

**[Document Number AMS-FV-14-0032]**

**Exemption of Organic Products From Assessment Under a Commodity Promotion Law**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Extension of comment period.

**SUMMARY:** Notice is hereby given that the comment period on proposed modifications to the organic assessment exemption regulations under 23 Federal marketing orders and 22 research and promotion programs is extended until February 17, 2015. The proposed rule would expand the organic assessment exemption to cover all “organic” and “100 percent organic” products certified under the National Organic Program

regardless of whether the person requesting the exemption also produces, handles, markets, or imports conventional or nonorganic products. The authority for this proposal is in section 10004 of the Agricultural Act of 2014.

**DATES:** Comments must be received by February 17, 2015.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue and the December 16, 2014, issue of the **Federal Register**. Comments will be included in the record and made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Barry Broadbent, Senior Marketing Specialist, or Michelle Sharrow, Branch Chief, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938; or email: [Barry.Broadbent@ams.usda.gov](mailto:Barry.Broadbent@ams.usda.gov), or [Michelle.Sharrow@ams.usda.gov](mailto:Michelle.Sharrow@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** A proposed rule was published in the **Federal Register** on December 16, 2014 (79 FR 75006). The proposed rule would expand the organic assessment exemption, currently only available to entities that produce or market solely 100 percent organic products, to cover all “organic” and “100 percent organic” products certified under the National Organic Program regardless of whether the person requesting the exemption also produces, handles, markets, or imports conventional or nonorganic products. The action is authorized by the Agricultural Act of 2014. The comment period established in the proposed rule closes January 15, 2015.

USDA received comments from affected programs and industry members requesting that the comment period be extended beyond January 15, 2015. The comments expressed concern that the original December 16 to January