



Proposed Rule on School Meal Flexibilities *Summary*

On Friday, January 17, 2020, USDA released a proposed rule “*Simplifying Meal Service and Monitoring Requirements in the National School Lunch and National School Breakfast Programs.*” The full proposed regulation and supporting resources are available online on [USDA’s website](#), with summary charts beginning on page 76 [at this link](#). The proposed changes and flexibilities are summarized below:

Proposals to Simplify Monitoring

- **Establish 5-year Administrative Review Cycle & Targeted, Follow-up Reviews of High Risk School Food Authorities (SFAs):** This rule proposes to allow State agencies the option to transition from the current 3-year review cycle back to a 5-year review cycle. State agencies opting for a 5-year review cycle would conduct a comprehensive administrative review of each SFA participating in the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) at least once during a 5-year cycle and identify high-risk SFAs for additional oversight. High-risk SFAs would receive a targeted follow-up review within two years of being designated high-risk. State agencies would continue to have the option to review SFAs more frequently.
- **Align Administrative Review and Food Service Management Company Review Cycles within the 5-year cycle.**
- **Address Significant Performance Standard 1 Noncompliance Early in Review Cycle:** “Significant noncompliance” is a term used in Federal regulations that USDA has not defined previously. USDA proposes to define this term and seeks public input on the definition of “significant noncompliance.”
- **Allow Expanded Use of Third-Party Audits.**
- **Allow Completion of Review Requirements Outside of the Administrative Review:** This proposed rule would allow State agencies to satisfy sections of the administrative review through equivalent State monitoring or oversight activities outside of the formal administrative review process. For example, State agencies may already annually review SFAs’ financial documentation, such as reviewing a “Statement of Revenues and Expenses” or similar documentation, in order to monitor impacted Program areas, such as allowable costs, throughout the year. This proposal would allow State agencies to omit specific redundant areas of the review if States conduct sufficient oversight elsewhere.
- **Provide Incentives to Invest in Integrity-Focused Process Improvements:** This rule proposes a framework for waiving or bypassing certain review requirements for State agencies or SFAs as an incentive to invest in one or more USDA-designated systems or process improvements that can reduce or eliminate Program errors.
- **Omit the On-site Breakfast Review in Extenuating Circumstances.**
- **Add Flexibility to Completion of the Resource Management Module.**
- **Set Consistent Fiscal Action for Repeated Meal Pattern Violations:** This proposed rule would no longer require fiscal action for repeated violations of milk type and vegetable subgroup requirements. Instead, State agencies would have discretion to take fiscal action for repeated violations of milk type and vegetable subgroup requirements.
- **Add Buy American to the General Areas of the Administrative Review.**

Proposals to Simplify Meal Service

- **Facilitate the Service of Vegetable Subgroups in the NSLP:**
 - Allow all five subgroups in the same minimum weekly amount for all age/grade groups. The proposal would also facilitate the service of vegetables and minimize food waste by allowing schools to offer the same weekly minimum amount from each subgroup: ½ cup weekly from each subgroup for all grades.
 - Allow legumes offered as a meat alternate to count toward weekly legume vegetable requirement. This proposal would allow menu planners who offer at least ½ cup of legumes as a meat alternate to also count the same ½ cup legumes toward the weekly legumes requirement.
- **Add Flexibility to Established Age/Grade Groups:**
 - Allow schools with unique grade configurations to use the same meal pattern for a broader group of students by adding or subtracting one grade on either or both ends of an established age/grade group.
 - Allow schools with unique grade configurations in small SFAs (i.e., SFAs serving fewer than 2,500 students) to use one or two meal patterns to plan meals for students in all grades.
- **Increase Flexibility to Offer Meats/Meat Alternates at Breakfast:** This rule proposes to allow schools to offer meats/meat alternates and/or grains interchangeably in the SBP, with no minimum grain requirement.
- **Flexibility in SBP Fruit Component:** To help reduce food waste and encourage breakfast service outside the cafeteria, this rule proposes to allow SBP operators to offer ½ cup of fruit in reimbursable breakfasts served outside the cafeteria, with State agency approval.
- **Remove Synthetic Trans Fat Limit as a Dietary Specification:** Food and Drug Administration regulations are removing synthetic trans fats from the food supply.
- **Change the Performance-based Reimbursement (7 cents) Quarterly Report to an Annual Report.**
- **Update Meal Modifications for Disability and Non-Disability Reasons:** This proposal aligns the documentation with the Americans with Disabilities Act (ADA).
- **Expand Potable Water Requirement to Include Calorie-Free, Noncarbonated, Naturally Flavored Water.**

Proposals to Simplify Competitive Foods

- **Extend the Entrée Exemption Timeframe:** The rule proposes that SBP and NSLP entrées be exempt from the competitive food standards on the day the entrée is offered on the school meal menu, and for two school days after.
- **Expand Flexibility for the Sale of Calorie-Free, Naturally Flavored Waters during the School Day to all students.**

Clarifications, Updates, and Technical Corrections

- **Add Flexibility to State Administrative Expense (SAE) Funds:** This rule proposes to update language, changing the word “unexpended” to “unobligated” to give States more flexibility to spend SAE funds.
- **Correct NSLP Afterschool Snack Eligibility Erroneous Citations & Definition:** This rule proposes to modify the definition of “child” to be consistent with the National School Lunch Act and clarify that children, through age 18, are eligible to receive snacks via the NSLP Afterschool Snack Service.

- **Expand List of Outlying Areas:** Based on their use of traditional foods, this rule proposes adding Guam and Hawaii to the list of outlying areas permitted to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains component.
- **Change Vitamin A and Vitamin D Units for Fluid Milk Substitutions.**

Seeking Public Input on Specific Items

- **Substituting Vegetables for Fruits in the SBP:** USDA seeks public comments on making permanent current flexibility that allows school breakfast programs to credit any vegetable offered, including potatoes and other starchy vegetables, in place of fruit without including vegetables from the designated subgroups in the weekly menus.
- **Competitive Foods:** Definition of Entrée and Expanding Entrée Exemption to All SBP/NSLP Foods: USDA is soliciting public input on whether the whole grain-rich/whole grain as a first ingredient requirement should be removed from the definition of “Entrée” and whether or not to extend the competitive food entrée exemption to all food items offered in SBP and NSLP reimbursable meals.
- **Transparency for Administrative Review Results:** USDA is seeking comments to simplify the transparency requirement, including the process of posting a summary of the Administrative Review report, the content of that summary, and the 30-day timeline. Comments are requested on how to address any challenges or unintended burden in this requirement, and what resources or updated guidance would be helpful.
- **Grain-based Desserts in the Child and Adult Care Food Program:** USDA seeks comments on allowing up to 2 ounce equivalents (oz. eq.) of grain-based desserts per week in the CACFP; and/or other approaches that would permit grain-based desserts to credit toward the grains requirement in CACFP and support healthy nutrition standards.