



Food and
Nutrition
Service

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DATE: April 29, 2016

MEMO CODE: SP33-2016

SUBJECT: Extension Notice: Requests for Exemption from the School Meals' Whole Grain-Rich Requirement for School Year 2016-2017

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

This memorandum extends the ability, previously authorized by Section 751 of Public Law 113-234, for school food authorities (SFAs) to request exemptions from the whole grain-rich requirements in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) through school year 2016-2017. This memorandum supersedes the following previously issued memorandum:

- SP 20-2015, *Requests for Exemption from the School Meals' Whole Grain-Rich Requirement for School Years 2014-2015 and 2015-2016.*

All temporary flexibilities approved by a State agency under this superseded memorandum may continue under the terms by which they were approved, through school year 2016-2017, at the discretion of the State agency. However, State agencies may choose to require SFAs to re-apply for the exemption to ensure that the requirements of the exemption continue to be met.

In Section 733 of the Consolidated Appropriations Act, 2016 (Public Law 114-113), Congress directed the Secretary of Agriculture to allow State agencies that administer the NSLP and SBP to grant an exemption from the regulatory whole grain-rich requirement in the meal programs, through school year (SY) 2016-2017, to SFAs that demonstrate a hardship in procuring compliant whole grain-rich products that are acceptable to students. Under the terms of the legislation, State agencies have the option to grant exemptions to the whole grain-rich requirement. The legislation requires that State agencies that choose to offer exemptions to their SFAs establish a process for evaluating and responding to the requests for exemptions. The provision further requires that SFAs that are approved for an exemption from the current whole grain-rich requirement must continue, at a minimum, to meet the whole grain-rich requirement that was in effect for SY 2013-2014.

This memorandum reissues the previous guidance intended to help State agencies establish their own processes to evaluate and respond to exemption requests from interested SFAs for one additional school year.

Whole Grain-Rich Requirement - Background

NSLP and SBP regulations at 7 CFR 210.10 and 7 CFR 220.8 require that effective July 1, 2014, all grains offered in the NSLP and SBP be whole grain-rich. This requirement is intended to help school children increase their intake of whole grains, which provide nutrients beneficial for children's health and development. Based on the criteria, grain products offered in the school meal programs must contain at least 50 percent whole-grain meal and/or flour. The remaining 50 percent or less of grains, if any, must be enriched. Foods containing between 50 and 100 percent whole grains are allowable. Schools are not required to offer 100 percent whole grain products. For additional information on the whole grain-rich requirement, including how to evaluate if a grain product meets the whole grain-rich criteria, see the *Whole Grain Resource for the National School Lunch and Breakfast Programs: A Guide to Meeting the Whole Grain-Rich Criteria*, available at: <http://www.fns.usda.gov/sites/default/files/WholeGrainResource.pdf>.

The implementation of the whole grain-rich requirement was phased in over a period of three school years. Half of the grains offered in the NSLP were required to be whole grain-rich effective July 1, 2012 (SY 2012-2013). Half of the grains offered in the SBP were required to be whole grain-rich effective July 1, 2013 (SY 2013-2014). All grains offered in the NSLP and SBP were required to be whole grain-rich effective July 1, 2014 (SY 2014-2015).

FNS appreciates the efforts of school nutrition professionals to offer healthier meals that meet regulatory requirements and are appealing to children. FNS has facilitated each phase of implementation of the whole grain-rich requirement. Our efforts have included providing training, developing technical assistance resources, and allowing flexibility to offer enriched pasta in SY 2014-2015 and SY 2015-2016 to SFAs that demonstrate hardship in obtaining compliant whole grain-rich pasta products that meet the established criteria and are accepted by students. In addition, The U.S. Department of Agriculture (USDA) Foods has offered a variety of whole grain and whole grain-rich options to support schools that experience challenges obtaining these items in their area. However, some SFAs have continued to experience difficulty procuring and/or serving whole grain-rich foods, in general. Additionally, industry may need additional time to develop a more expansive range of whole grain-rich products that are widely accepted by students.

Exemption from Whole Grain-Rich Requirement in School Year 2016-2017

The progression to offer all whole grain-rich grains in school meals represents a significant transition for industry, Program operators, and students. The authority provided to the Secretary and State agencies in Public Law 114-113 offers interested State agencies the opportunity to provide SFAs that demonstrate hardship in procuring specific whole grain-rich products the ability to seek exemptions for one or more products. Therefore, for the remainder of SY 2015-2016 and for the entirety of SY 2016-2017, a State agency may approve an SFA's exemption request for specific products if the SFA can demonstrate hardship(s) in procuring, preparing, or serving compliant whole grain-rich products that are accepted by students. The temporary exemptions are allowed for any type of grain product(s), (e.g., pasta, bread, brown rice, etc.) and for one or more different products.

State agencies that elect to provide exemptions must notify their FNS Regional Office and provide a copy of their exemption process prior to implementation.

SFAs granted an exemption must work with the State agency to search for acceptable products, and must comply with the SY 2013-2014 requirement to offer at least half of the grains as whole grain-rich products. SFAs that receive an exemption should be considered compliant with the whole grain-rich requirements during an Administrative Review or a performance-based certification review if their grain offerings are consistent with the exemption granted by the State agency and at least half of the grains offered weekly are whole grain-rich.

Exemption Request Considerations

Section 733 of Public Law 114-113 specifies that each State agency that chooses to offer exemptions from the whole grain-rich requirements must establish a process for evaluating and responding, in a reasonable amount of time, to an SFA's exemption request. Further, the exemptions must be based on demonstrated hardship, such as financial hardship. Therefore, when evaluating an SFA's exemption request, the State agency should consider the written justification or other documented evidence (e.g., photos, meal count records) submitted by an SFA to demonstrate hardship(s) in procuring, preparing, or serving whole grain-rich products that are compliant with the meal requirements and accepted by students.

Hardships that may be considered by the State agency include, but are not limited to, the following examples:

Financial hardship

- The SFA's records provided to the State agency demonstrate a significant drop in meal counts after the whole grain-rich product(s) was offered.
- The SFA experienced a significant cost increase when procuring the whole grain-rich product(s).

Limited product availability

- The SFA does not have access to a compliant whole grain-rich product(s) in the local market and would like to offer enriched grain item(s) temporarily.

Unacceptable product quality

- The whole grain-rich product(s) offered by the SFA did not retain the desired texture or lost palatability during the typical holding time.

Poor student acceptability

- The whole grain-rich product(s) offered by the SFA received significant negative student/parent feedback or there was increased plate waste of that menu item when the whole grain-rich product(s) was offered multiple times and over a sustained period of time.

The State agency may also want to consider other factors such as:

- The SFA's efforts to find viable ways to comply with the whole grain-rich requirement:
 - Sought technical assistance from the State agency or the manufacturer of the whole grain-rich product(s) and followed product instructions.
 - Used alternative product types/brands (and provided product description, manufacturer, and number).
 - Used alternative cooking methods or modified the recipe (and provided a description or recipes/production records).
- The SFA's plan to achieve future compliance with the full whole grain-rich requirement once the exemption expires.

Whole Grain Rich Resources

FNS expects that for the remainder of SY 2015-2016 and for SY 2016-2017, State agencies will work closely with the SFAs receiving the exemptions to identify, evaluate, and incorporate acceptable whole grain-rich products into school menus as soon as possible. The Best Practices Sharing Center (<http://healthymeals.nal.usda.gov/best-practices>) is a convenient forum to share information about whole grain-rich products or the exemption approval process established by various State agencies. State agencies should also work with schools to maximize the use of Team Nutrition materials to provide nutrition education that will help students and parents understand the benefits and uses of whole grain-rich products. Schools should continue to conduct taste tests and incorporate whole grain-rich products into student favorites to increase acceptability. Schools are also encouraged to incorporate Smarter Lunchroom techniques that facilitate student selection and consumption of whole grain-rich products.

At the national level, FNS will continue to support States and SFAs, collaborate with industry partners to expand the selection of whole grain-rich products available to schools, and develop technical resources to assist Program operators with effective preparation and service of whole grain-rich food items. FNS will continue to communicate this information through the PartnerWeb and on the FNS public web site.

The *Whole Grain Resource for the National School Lunch and Breakfast Programs*, referenced earlier, provides information to help Program operators identify foods that meet the whole grain-rich criteria, and offers suggestions for incorporating whole grain-rich foods into school menus. Other helpful resources for SFAs include:

Regional Director

State Director

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- List of USDA Foods, available at: <http://www.fns.usda.gov/fdd/foods-expected-be-available>;
- Labeling authorized list, available at: <http://www.fns.usda.gov/cnlabeling/authorized-manufacturers-and-labels>;
- The Alliance for A Healthier Generation Web site, available at: https://schools.healthiergeneration.org/resources_tools/.
- Team Nutrition resources, available at: <http://www.fns.usda.gov/team-nutrition>; and
- Smarter Lunchrooms resources, available at: <http://smarterlunchrooms.org/>.

FNS is committed to working in partnership with State agencies and SFAs as they make these important changes in their school meals.

State agencies are reminded to distribute this memo to Program operators immediately. SFAs should contact their State agency for additional information. State agencies may direct any questions concerning this guidance to the appropriate FNS Regional Office.



Angela Kline

Director

Policy and Program Development Division

Child Nutrition Programs

Attachment

Questions and Answers:

1. Is a State agency required to offer the whole grain-rich exemptions addressed in this memorandum?

State agencies decide whether or not to offer school food authorities (SFAs) the temporary whole grain-rich exemption allowed by legislation. If a State agency wishes to do so, it must establish an approval process to evaluate an SFA's exemption request(s) and supporting documentation. The State agency's exemption request process is not subject to FNS approval.

2. Who may submit an exemption request?

An SFA may submit an exemption request to the State agency if it can demonstrate hardships in procuring, preparing, or serving a whole grain-rich product for a previously offered enriched grain item. An exemption request may be for one or more different grain products, or for a group of products, and specify the enriched grain item the SFA would like to offer temporarily.

3. Does an exemption approval relieve an SFA from offering any whole grain-rich foods?

No. SFAs that receive an exemption remain responsible for incorporating whole grain-rich products into school menus and must ensure that at least half of the grain items offered weekly is whole grain-rich. During the exemption period, the SFA must work with the State agency to identify, evaluate, and incorporate compliant whole grain-rich products into school menus as soon as possible.

4. How would the enriched grains offered under this exemption count toward the meal pattern requirements?

The enriched grain products approved for the exemption would count toward the required grains component, but the SFA would be required to offer other products that meet whole grain-rich requirements during the school week. An SFA that receives an exemption must comply with the school year (SY) 2013-2014 requirement to offer at least half of the grains as whole grain-rich products. For example, if an enriched pasta product is allowed under the exemption, other grains offered, such as rice or bread, must be whole grain-rich.

5. What documentation must an SFA submit to the State agency with the exemption request?

Acceptable documentation would include menu planning records, production/preparation records, and pictures with additional information that may assist in the determination of the exemption request. The State agency has discretion to specify required documentation.

6. Does approval of an exemption request for a single enriched grain product, such as enriched pasta, remove the SFA's responsibility to seek other acceptable whole grain-rich pasta products?

No. SFAs are expected to actively collaborate with the State agency to identify, evaluate, and incorporate acceptable whole grain-rich food products into the school menu as soon as possible. The State agency must provide technical assistance to the SFA to help overcome temporary challenges.

7. Do State agencies need to approve exemption requests within a specified time frame?

State agencies must review an SFA's request and documentation, and notify the SFA of the exemption determination as quickly as possible. All necessary documentation must be available in the event of an Administrative Review.

8. Are State agencies able to issue a blanket flexibility approval for all SFAs or include exemption requests as options in their annual renewal agreements with SFAs?

No. State agencies may not issue a blanket exemption approval for all SFAs. Exemption requests are expected to be approved on a case-by-case basis for one or more different grain products, or for a group of products based on the documented hardship(s) experienced by an SFA in procuring each compliant whole grain-rich product.

9. Should State agencies issue all exemption approvals through SY 2016-2017?

State agencies may, but are not required to, approve an SFA's exemption request through school year 2016-2017. During the exemption period, the State agency is expected to communicate periodically with the SFA to ensure steps are being taken to identify, evaluate, and incorporate other acceptable whole grain-rich products and/or preparation methods. States are also expected to help SFAs share information about new or existing whole grain-rich products that are popular with students or disseminate best practices or the successful experience of a particular SFA/school. The Best Practices Sharing Center (<http://healthymeals.nal.usda.gov/best-practices>) is a useful forum for State agencies and SFAs.

10. May a State agency require an SFA to sign a statement certifying that it has documentation to support the exemption request and review such documentation later during an Administrative Review?

No. The State agency must examine the supporting documentation prior to approving an exemption request for one or more different grain products, or for a group of products. This is necessary because only a portion of SFAs are scheduled to be reviewed in school years 2015-2016 and 2016-2017. For recordkeeping, the SFA must maintain the flexibility request approval and supporting documentation on file.

11. Do the whole grain flexibilities included in this memo impact the nutrient standards included in the interim final rule for Smart Snacks in School?

The Smart Snacks in School interim final rule at 7 CFR Part 210.11(c)(3)(i) provides for an exemption from the Smart Snacks nutrient requirements only for entrees served in the National School Lunch Program and the School Breakfast Program the day of and the day after service in the reimbursable school meal. All other grain products sold to students on the school campus during the school day shall comply with the whole grain rich standards specified in §210.11(c)(2)(ii).

12. What is the U.S. Department of Agriculture (USDA) doing to support schools in obtaining compliant whole grain and whole grain-rich food options?

USDA Foods offer a variety of whole grain and whole grain-rich products to schools to support successful implementation of the whole grain requirements. Current options include whole wheat flour, white whole wheat flour/enriched flour blend, rolled oats, whole grain-rich pancakes, whole grain-rich tortillas, brown rice, and both 100% whole grain and whole grain-rich spaghetti, macaroni, rotini, and penne pasta. USDA Foods staff continues to explore additional options and will accept suggestions for new items to support school districts' needs via email at: USDAFoods@fns.usda.gov.

13. How does this exemption affect SFAs and State agencies that have exercised the flexibilities granted under the policy memorandum that is superseded by this extension notice?

At the discretion of the State agency, SFAs may retain the previously approved exemptions and do not need to reapply. All temporary flexibilities approved by a State agency under the superseded memorandum may continue under the terms by which they were approved, through school year 2016-2017. However, State agencies may choose to require SFAs to re-apply for the exemption to ensure that the requirements of the exemption continue to be met. It is expected that State agencies are working closely with SFAs receiving exemptions to identify, evaluate, and incorporate acceptable whole grain-rich products into school menus as soon as possible.