

## Food and Nutrition Service, USDA

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month shall include only lunches and meal supplements served in that month except if the first or last month of Program operations for any school year contains 10 operating days or less, such month may be combined with the Claim for Reimbursement for the appropriate adjacent month. However, Claims for Reimbursement may not combine operations occurring in two fiscal years. If a single State agency administers any combination of the Child Nutrition Programs, a school food authority shall be able to use a common claim form with respect to claims for reimbursement for meals served under those programs.

(2) *October data.* For the month of October, the State agency shall also obtain, either through the Claim for Reimbursement or other means, the total number of children approved for free lunches and meal supplements, the total number of children approved for reduced price lunches and meal supplements, and the total number of children enrolled in the school food authority as of the last day of operation in October. The school food authority shall submit this data to the State agency no later than December 31 of each year. State agencies may establish shorter deadlines at their discretion. In addition, the State agency may require school food authorities to provide this data for a more current month if for use in the State agency claims review process under paragraph (c)(2) of this section.

(d) *Advance funds.* The State agency may advance funds available for the Program to a school food authority in an amount equal to the amount of reimbursement estimated to be needed for one month's operation. Following the receipt of claims, the State agency shall make adjustments, as necessary, to ensure that the total amount of payments received by the school food authority for the fiscal year does not exceed an amount equal to the number of lunches and meal supplements by reimbursement type served to children times the respective payment rates assigned by the State in accordance with §210.7(b). The State agency shall recover advances of funds to any school food authority failing to comply with

the 60-day claim submission requirements in paragraph (b) of this section.

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12581, Mar. 28, 1989; 56 FR 32940, July 17, 1991; 58 FR 42487, Aug. 10, 1993; 60 FR 31207, June 13, 1995; 64 FR 50740, Sept. 20, 1999; 81 FR 50185, July 29, 2016]

### Subpart C—Requirements for School Food Authority Participation

#### §210.9 Agreement with State agency.

(a) *Application.* An official of a school food authority shall make written application to the State agency for any school in which it desires to operate the Program. Applications shall provide the State agency with sufficient information to determine eligibility. The school food authority shall also submit for approval a Free and Reduced Price Policy Statement in accordance with part 245 of this chapter.

(b) *Agreement.* Each school food authority approved to participate in the program shall enter into a written agreement with the State agency that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State agency to suspend or terminate the agreement in accordance with §210.25. If a single State agency administers any combination of the Child Nutrition Programs, that State agency shall provide each school food authority with a single agreement with respect to the operation of those programs. The agreement shall contain a statement to the effect that the "School Food Authority and participating schools under its jurisdiction, shall comply with all provisions of 7 CFR parts 210 and 245." This agreement shall provide that each school food authority shall, with respect to participating schools under its jurisdiction:

(1) Maintain a nonprofit school food service and observe the requirements for and limitations on the use of nonprofit school food service revenues set forth in §210.14 and the limitations on any competitive school food service as set forth in §210.11;

(2) Limit its net cash resources to an amount that does not exceed 3 months average expenditures for its nonprofit school food service or such other

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amount as may be approved in accordance with §210.19(a);

(3) Maintain a financial management system as prescribed under §210.14(c);

(4) Comply with the requirements of the Department's regulations regarding financial management (2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415);

(5) Serve lunches, during the lunch period, which meet the minimum requirements prescribed in §210.10;

(6) Price the lunch as a unit;

(7) Serve lunches free or at a reduced price to all children who are determined by the local educational agency to be eligible for such meals under 7 CFR part 245;

(8) Claim reimbursement at the assigned rates only for reimbursable free, reduced price and paid lunches served to eligible children in accordance with 7 CFR part 210. Agree that the school food authority official signing the claim shall be responsible for reviewing and analyzing meal counts to ensure accuracy as specified in §210.8 governing claims for reimbursement. Acknowledge that failure to submit accurate claims will result in the recovery of an overclaim and may result in the withholding of payments, suspension or termination of the program as specified in §210.25. Acknowledge that if failure to submit accurate claims reflects embezzlement, willful misapplication of funds, theft, or fraudulent activity, the penalties specified in §210.26 shall apply;

(9) Count the number of free, reduced price and paid reimbursable meals served to eligible children at the point of service, or through another counting system if approved by the State agency;

(10) Submit Claims for Reimbursement in accordance with §210.8;

(11) Comply with the requirements of the Department's regulations regarding nondiscrimination (7 CFR parts 15, 15a, 15b);

(12) Make no discrimination against any child because of his or her eligibility for free or reduced price meals in accordance with the approved Free and Reduced Price Policy Statement;

(13) Enter into an agreement to receive donated foods as required by 7 CFR part 250;

(14) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations, and comply with the food safety requirements of §210.13;

(15) Accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by the Department;

(16) Maintain necessary facilities for storing, preparing and serving food;

(17) Upon request, make all accounts and records pertaining to its school food service available to the State agency and to FNS, for audit or review, at a reasonable time and place. Such records shall be retained for a period of 3 years after the date of the final Claim for Reimbursement for the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the 3 year period as long as required for resolution of the issues raised by the audit;

(18) Maintain files of currently approved and denied free and reduced price certification documentation.

(19) Maintain direct certification documentation obtained directly from the appropriate State or local agency, or other appropriate individual, as specified by FNS, indicating that:

(i) A child in the *Family*, as defined in §245.2 of this chapter, is receiving benefits from *SNAP*, *FDPIR* or *TANF*, as defined in §245.2 of this chapter; if one child is receiving such benefits, all children in that family are considered to be directly certified;

(ii) The child is a homeless child as defined in §245.2 of this chapter;

(iii) The child is a runaway child as defined in §245.2 of this chapter;

(iv) The child is a migrant child as defined in §245.2 of this chapter;

(v) The child is a Head Start child as defined in §245.2 of this chapter; or

(vi) The child is a foster child as defined in §245.2 of this chapter.

(20) Retain eligibility documentation submitted by families for a period of 3 years after the end of the fiscal year to

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which they pertain or as otherwise specified under paragraph (b)(17) of this section.

(21) No later than March 1, 1997, and no later than December 31 of each year thereafter, provide the State agency with a list of all schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day the preceding October. The State agency may designate a month other than October for the collection of this information, in which case the list must be provided to the State agency within 60 calendar days following the end of the month designated by the State agency. In addition, each school food authority shall provide, when available for the schools under its jurisdiction, and upon the request of a sponsoring organization of day care homes of the Child and Adult Care Food Program, information on the boundaries of the attendance areas for the schools identified as having 50 percent or more of enrolled children certified eligible for free or reduced price meals.

(c) *Afterschool care requirements.* Those school food authorities with eligible schools (as defined in § 210.10(n)(1)) that elect to serve meal supplements during afterschool care programs, shall agree to:

(1) Serve meal supplements which meet the minimum requirements prescribed in § 210.10;

(2) Price the meal supplement as a unit;

(3) Serve meal supplements free or at a reduced price to all children who are determined by the school food authority to be eligible for free or reduced price school meals under 7 CFR part 245;

(4) If charging for meals, the charge for a reduced price meal supplement shall not exceed 15 cents;

(5) Claim reimbursement at the assigned rates only for meal supplements served in accordance with the agreement;

(6) Claim reimbursement for no more than one meal supplement per child per day;

(7) Review each afterschool care program two times a year; the first review shall be made during the first four

weeks that the school is in operation each school year, except that an afterschool care program operating year round shall be reviewed during the first four weeks of its initial year of operation, once more during its first year of operation, and twice each school year thereafter; and

(8) Comply with all requirements of this part, except that, claims for reimbursement need not be based on "point of service" meal supplement counts (as required by § 210.9(b)(9)).

[53 FR 29147, Aug. 2, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 210.9, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

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

(a) *General requirements*—(1) *General nutrition requirements.* Schools must offer nutritious, well-balanced, and age-appropriate meals to all the children they serve to improve their diets and safeguard their health.

(i) *Requirements for lunch.* School lunches offered to children age 5 or older must meet, at a minimum, the meal requirements in paragraph (b) of this section. Schools must follow a food-based menu planning approach and produce enough food to offer each child the quantities specified in the meal pattern established in paragraph (c) of this section for each age/grade group served in the school. In addition, school lunches must meet the dietary specifications in paragraph (f) of this section. Schools offering lunches to children ages 1 through 4 and infants must meet the meal pattern requirements in paragraphs (p) and (q), as applicable, of this section. Schools must make potable water available and accessible without restriction to children at no charge in the place(s) where lunches are served during the meal service.

(ii) *Requirements for afterschool snacks.* Schools offering afterschool snacks in afterschool care programs must meet the meal pattern requirements in paragraph (o) of this section. Schools must plan and produce enough food to offer each child the minimum quantities

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under the meal pattern in paragraph (c) of this section.

(2) *Unit pricing.* Schools must price each meal as a unit. Schools need to consider participation trends in an effort to provide one reimbursable lunch and, if applicable, one reimbursable afterschool snack for each child every school day. If there are leftover meals, schools may offer them to the students but cannot get Federal reimbursement for them. Schools must identify, near or at the beginning of the serving line(s), the food items that constitute the unit-priced reimbursable school meal(s). The price of a reimbursable lunch does not change if the student does not take a food item or requests smaller portions.

(3) *Production and menu records.* Schools or school food authorities, as applicable, must keep production and menu records for the meals they produce. These records must show how the meals offered contribute to the required food components and food quantities for each age/grade group every day. Labels or manufacturer specifications for food products and ingredients used to prepare school meals must indicate zero grams of *trans* fat per serving (less than 0.5 grams). Schools or school food authorities must maintain records of the latest nutritional analysis of the school menus conducted by the State agency. Production and menu records must be maintained in accordance with FNS guidance.

(b) *Meal requirements for school lunches.* School lunches for children

ages 5 and older must reflect food and nutrition requirements specified by the Secretary. Compliance with these requirements is measured as follows:

(1) On a daily basis:

(i) Meals offered to each age/grade group must include the food components and food quantities specified in the meal pattern in paragraph (c) of this section;

(ii) Food products or ingredients used to prepare meals must contain zero grams of *trans* fat per serving or a minimal amount of naturally occurring *trans* fat; and

(iii) The meal selected by each student must have the number of food components required for a reimbursable meal and include at least one fruit or vegetable.

(2) Over a 5-day school week:

(i) Average calorie content of meals offered to each age/grade group must be within the minimum and maximum calorie levels specified in paragraph (f) of this section;

(ii) Average saturated fat content of the meals offered to each age/grade group must be less than 10 percent of total calories; and

(iii) Average sodium content of the meals offered to each age/grade group must not exceed the maximum level specified in paragraph (f) of this section.

(c) *Meal pattern for school lunches.* Schools must offer the food components and quantities required in the lunch meal pattern established in the following table:

TABLE 1 TO PARAGRAPH (c) INTRODUCTORY TEXT—LUNCH MEAL PATTERN

Food components	Lunch meal pattern		
	Grades K–5	Grades 6–8	Grades 9–12
	Amount of Food <sup>a</sup> per Week (minimum per day)		
Fruits (cups) <sup>b</sup> .....	2½ (½)	2½ (½)	5 (1)
Vegetables (cups) <sup>b</sup> .....	3¾ (¾)	3¾ (¾)	5 (1)
Dark green <sup>c</sup> .....	½	½	½
Red/Orange <sup>c</sup> .....	¾	¾	1¼
Beans and peas (legumes) <sup>c</sup> .....	½	½	½
Starchy <sup>c</sup> .....	½	½	½
Other <sup>c,d</sup> .....	½	½	¾
Additional Vegetables to Reach Total <sup>a</sup> .....	1	1	1½
Grains (oz eq) <sup>f</sup> .....	8–9 (1)	8–10 (1)	10–12 (2)
Meats/Meat Alternates (oz eq) .....	8–10 (1)	9–10 (1)	10–12 (2)
Fluid milk (cups) <sup>g</sup> .....	5 (1)	5 (1)	5 (1)
<b>Other Specifications: Daily Amount Based on the Average for a 5-Day Week</b>			
Min-max calories (kcal) <sup>h</sup> .....	550–650	600–700	750–850

TABLE 1 TO PARAGRAPH (c) INTRODUCTORY TEXT—LUNCH MEAL PATTERN—Continued

	Lunch meal pattern		
	Grades K–5	Grades 6–8	Grades 9–12
Saturated fat (% of total calories) <sup>h</sup> .....	<10	<10	<10
Sodium Interim Target 1 (mg) <sup>h</sup> .....	≤1,230	≤1,360	≤1,420
Sodium Interim Target 1A (mg) <sup>h i</sup> .....	≤1,110	≤1,225	≤1,280
<i>Trans</i> fat <sup>h</sup> .....	Nutrition label or manufacturer specifications must indicate zero grams of <i>trans</i> fat per serving.		

<sup>a</sup>Food items included in each group and subgroup and amount equivalents. Minimum creditable serving is ½ cup.

<sup>b</sup>One quarter-cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.

<sup>c</sup>Larger amounts of these vegetables may be served.

<sup>d</sup>This category consists of “Other vegetables” as defined in paragraph (c)(2)(iii)(E) of this section. For the purposes of the NSLP, the “Other vegetables” requirement may be met with any additional amounts from the dark green, red/orange, and beans/peas (legumes) vegetable subgroups as defined in paragraph (c)(2)(iii) of this section.

<sup>e</sup>Any vegetable subgroup may be offered to meet the total weekly vegetable requirement.

<sup>f</sup>At least 80 percent of grains offered weekly (by ounce equivalents) must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched.

<sup>g</sup>All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk may be unflavored or flavored, provided that unflavored milk is offered at each meal service.

<sup>h</sup>Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, *trans* fat, and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent are not allowed.

<sup>i</sup>Sodium Interim Target 1A must be met no later than July 1, 2023 (SY 2023–2024).

(1) *Age/grade groups.* Schools must plan menus for students using the following age/grade groups: Grades K–5 (ages 5–10), grades 6–8 (ages 11–13), and grades 9–12 (ages 14–18). If an unusual grade configuration in a school prevents the use of these established age/grade groups, students in grades K–5 and grades 6–8 may be offered the same food quantities at lunch provided that the calorie and sodium standards for each age/grade group are met. No customization of the established age/grade groups is allowed.

(2) *Food components.* Schools must offer students in each age/grade group the food components specified in paragraph (c) of this section.

(i) *Meats/meat alternates component.* Schools must offer meats/meat alternates daily as part of the lunch meal pattern. The quantity of meats/meat alternates must be the edible portion as served. This component must be served in a main dish or in a main dish and only one other food item. Schools without daily choices in this component should not serve any one meat alternate or form of meat (for example, ground, diced, pieces) more than three times in the same week. If a portion size of this component does not meet the daily requirement for a particular age/grade group, schools may supplement it with another meats/meat alternates to meet the full requirement. Schools may adjust the daily quan-

ties of this component provided that a minimum of one ounce is offered daily to students in grades K–8 and a minimum of two ounces is offered daily to students in grades 9–12, and the total weekly requirement is met over a five-day period.

(A) *Enriched macaroni.* Enriched macaroni with fortified protein as defined in appendix A to this part may be used to meet part of the meats/meat alternates requirement when used as specified in appendix A to this part. An enriched macaroni product with fortified protein as defined in appendix A to this part may be used to meet part of the meats/meat alternates component or the grains component but may not meet both food components in the same lunch.

(B) *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. Nuts or seeds may be used to meet no more than one-half (50 percent) of the meats/meat alternates component with another meats/meat alternates to meet the full requirement.

(C) *Yogurt*. Yogurt may be used to meet all or part of the meats/meat alternates component. Yogurt may be plain or flavored, unsweetened or sweetened. Noncommercial and/or non-standardized yogurt products, such as frozen yogurt, drinkable yogurt products, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruits and/or nuts or similar products are not creditable. Four ounces (weight) or ½ cup (volume) of yogurt equals one ounce of the meats/meat alternates requirement.

(D) *Tofu and soy products*. Commercial tofu and soy products may be used to meet all or part of the meats/meat alternates component in accordance with FNS guidance. Noncommercial and/or non-standardized tofu and soy products are not creditable.

(E) *Beans and Peas (legumes)*. Cooked dry beans and peas (legumes) may be used to meet all or part of the meats/meat alternates component. Beans and peas (legumes) are identified in this section and include foods such as black beans, garbanzo beans, lentils, kidney beans, mature lima beans, navy beans, pinto beans, and split peas.

(F) *Other Meat Alternates*. Other meat alternates, such as cheese and eggs, may be used to meet all or part of the meats/meat alternates component in accordance with FNS guidance.

(ii) *Fruits component*. Schools must offer fruits daily as part of the lunch menu. Fruits that are fresh; frozen without added sugar; canned in light syrup, water or fruit juice; or dried may be offered to meet the requirements of this paragraph. All fruits are credited based on their volume as served, except that ¼ cup of dried fruit counts as ½ cup of fruit. Only pasteurized, full-strength fruit juice may be used, and may be credited to meet no more than one-half of the fruits component.

(iii) *Vegetables component*. Schools must offer vegetables daily as part of the lunch menu. Fresh, frozen, or canned vegetables and dry beans and peas (legumes) may be offered to meet this requirement. All vegetables are credited based on their volume as served, except that 1 cup of leafy greens counts as ½ cup of vegetables and tomato paste and puree are cred-

ited based on calculated volume of the whole food equivalency. Pasteurized, full-strength vegetable juice may be used to meet no more than one-half of the vegetables component. Cooked dry beans or peas (legumes) may be counted as either a vegetable or as a meat alternate but not as both in the same meal. Vegetable offerings at lunch over the course of the week must include the following vegetable subgroups, as defined in this section in the quantities specified in the meal pattern in paragraph (c) of this section:

(A) *Dark green vegetables*. This subgroup includes vegetables such as bok choy, broccoli, collard greens, dark green leafy lettuce, kale, mesclun, mustard greens, romaine lettuce, spinach, turnip greens, and watercress;

(B) *Red-orange vegetables*. This subgroup includes vegetables such as acorn squash, butternut squash, carrots, pumpkin, tomatoes, tomato juice, and sweet potatoes;

(C) *Beans and peas (legumes)*. This subgroup includes vegetables such as black beans, black-eyed peas (mature, dry), garbanzo beans (chickpeas), kidney beans, lentils, navy beans pinto beans, soy beans, split peas, and white beans;

(D) *Starchy vegetables*. This subgroup includes vegetables such as black-eyed peas (not dry), corn, cassava, green bananas, green peas, green lima beans, plantains, taro, water chestnuts, and white potatoes; and

(E) *Other vegetables*. This subgroup includes all other fresh, frozen, and canned vegetables, cooked or raw, such as artichokes, asparagus, avocado, bean sprouts, beets, Brussels sprouts, cabbage, cauliflower, celery, cucumbers, eggplant, green beans, green peppers, iceberg lettuce, mushrooms, okra, onions, parsnips, turnips, wax beans, and zucchini.

(iv) *Grains component*— (A) *Enriched and whole grains*. All grains must be made with enriched and whole grain meal or flour, in accordance with the most recent grains FNS guidance. Whole grain-rich products must contain at least 50 percent whole grains and the remaining grains in the product must be enriched. The whole grain-rich criteria included in FNS guidance may be updated to reflect additional

information provided by industry on the food label or a whole grains definition by the Food and Drug Administration.

(B) *Daily and weekly servings.* The grains component is based on minimum daily servings plus total servings over a 5-day school week. Schools serving lunch 6 or 7 days per week must increase the weekly grains quantity by approximately 20 percent ( $\frac{1}{5}$ ) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent ( $\frac{1}{5}$ ) for each day less than 5. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in FNS guidance. Eighty (80) percent of grains offered weekly must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched.

(C) *Desserts.* Schools may count up to two grain-based desserts per week towards meeting the grains requirement as specified in FNS guidance.

(v) *Fluid milk component.* Fluid milk must be offered daily in accordance with paragraph (d) of this section.

(3) *Food components in outlying areas.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve vegetables such as yams, plantains, or sweet potatoes to meet the grains component.

(4) *Adjustments to the school menus.* Schools must adjust future menu cycles to reflect production and how often the food items are offered. Schools may need to change the foods offerings given students' selections and may need to modify recipes and other specifications to make sure that meal requirements are met.

(5) *Standardized recipes.* All schools must develop and follow standardized recipes. A standardized recipe is a recipe that was tested to provide an established yield and quantity using the same ingredients for both measurement and preparation methods. Standardized recipes developed by USDA/FNS are in the Child Nutrition Database. If a school has its own recipes, they may seek assistance from the State agency or school food authority to standardize the recipes. Schools must add any local recipes to their

local database as outlined in FNS guidance.

(6) *Processed foods.* The Child Nutrition Database includes a number of processed foods. Schools may use purchased processed foods that are not in the Child Nutrition Database. Schools or the State agency must add any locally purchased processed foods to their local database as outlined in FNS guidance. The State agencies must obtain the levels of calories, saturated fat, and sodium in the processed foods.

(7) *Menu substitutions.* Schools should always try to substitute nutritionally similar foods.

(d) *Fluid milk requirement*—(1) *Types of fluid milk.* (i) Schools must offer students a variety (at least two different options) of fluid milk. All milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk with higher fat content is not allowed. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered. Milk may be unflavored or flavored, provided that unflavored milk is offered at each meal service.

(ii) 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.

(2) *Inadequate fluid milk supply.* If a school cannot get a supply of fluid milk, it can still participate in the Program under the following conditions:

(i) If emergency conditions temporarily prevent a school that normally has a supply of fluid milk from obtaining delivery of such milk, the State agency may allow the school to serve meals during the emergency period with an alternate form of fluid milk or without fluid milk.

(ii) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may approve the service of meals without fluid milk if the school uses an equivalent amount of canned milk or dry milk in the preparation of the meals. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, and the Virgin Islands, if a sufficient supply of fluid

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milk cannot be obtained, “fluid milk” includes reconstituted or recombined fluid milk, or as otherwise allowed by FNS through a written exception.

(3) *Fluid milk substitutes.* If a school chooses to offer one or more substitutes for fluid milk for non-disabled students with medical or special dietary needs, the nondairy 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 need only offer the nondairy 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.

(4) *Restrictions on the sale of fluid milk.* A school participating in the Program,

or a person approved by a school participating in the Program, must not directly or indirectly restrict the sale or marketing of fluid milk (as identified in paragraph (d)(1) of this section) at any time or in any place on school premises or at any school-sponsored event.

(e) *Offer versus serve for 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 components at lunch, *except that* the students must select at least ½ 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.

(f) *Dietary specifications—(1) Calories.* School lunches offered to each age/grade group must meet, on average over the school week, the minimum and maximum calorie levels specified in the following table:

	Calorie ranges for lunch		
	Grades K–5	Grades 6–8	Grades 9–12
Min-max calories (kcal) <sup>a,b</sup> .....	550–650	600–700	750–850

<sup>a</sup> The average daily amount for a 5-day school week must fall within the minimum and maximum levels.

<sup>b</sup> Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, *trans* fat, and sodium.

(2) *Saturated fat.* School lunches offered to all age/grade groups must, on average over the school week, provide less than 10 percent of total calories from saturated fat.

(3) *Sodium.* School lunches offered to each age/grade group must meet, on average over the school week, the levels of sodium specified in the following table within the established deadlines:

TABLE 4 TO PARAGRAPH (f)(3)—NATIONAL SCHOOL LUNCH PROGRAM SODIUM TIMELINE & LIMITS

Age/grade group	Target 1: effective July 1, 2022 (mg)	Interim target 1A: effective July 1, 2023 (mg)
K–5 .....	≤1,230	≤1,110
6–8 .....	≤1,360	≤1,225
9–12 .....	≤1,420	≤1,280



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(4) *Trans fat.* Food products and ingredients used to prepare school meals must contain zero grams of *trans* fat (less than 0.5 grams) per serving. Schools must add the *trans* fat specification and request the required documentation (nutrition label or manufacturer specifications) in their procurement contracts. Documentation for food products and food ingredients must indicate zero grams of *trans* fat per serving. Meats that contain a minimal amount of naturally-occurring *trans* fats are allowed in the school meal programs.

(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), (p), and (q) of this section as applicable. Compliance assistance may be offered during trainings, onsite visits, and/or administrative reviews.

(h) *Monitoring dietary specifications.*—  
(1) *Calories, saturated fat and sodium.* When required by the administrative review process set forth in §210.18, the State agency must conduct a weighted nutrient analysis to evaluate the average levels of calories, saturated fat, and sodium of the lunches offered to students in grades K and above during one week of the review period. The nutrient analysis must be conducted in accordance with the procedures established in paragraph (i)(3) of this section. If the results of the nutrient analysis indicate that the school lunches are not meeting the specifications for calories, saturated fat, and sodium specified in paragraph (f) of this section, the State agency or school food authority must provide technical assistance and require the reviewed school to take corrective action to meet the requirements.

(2) *Trans fat.* State agencies must review product labels or manufacturer specifications to verify that the food products or ingredients used by the reviewed school(s) contain zero grams of *trans* fat (less than 0.5 grams) per serving.

(i) *Nutrient analyses of school meals*—  
(1) *Conducting the nutrient analysis.* Any nutrient analysis, whether conducted by the State agency under §210.18 or by the school food authority, must be performed in accordance with the procedures established in paragraph (i)(3) of this section. The purpose of the nutrient analysis is to determine the average levels of calories, saturated fat, and sodium in the meals offered to each age grade group over a school week. The weighted nutrient analysis must be performed as required by FNS guidance.

(2) *Software elements*—(i) *The Child Nutrition Database.* The nutrient analysis is based on the USDA Child Nutrition Database. This database is part of the software used to do a nutrient analysis. Software companies or others developing systems for schools may contact FNS for more information about the database.

(ii) *Software evaluation.* FNS or an FNS designee evaluates any nutrient analysis software before it may be used in schools. FNS or its designee determines if the software, as submitted, meets the minimum requirements. The approval of software does not mean that FNS or USDA endorses it. The software must be able to perform a weighted average analysis after the basic data is entered. The combined analysis of the lunch and breakfast programs is not allowed.

(3) *Nutrient analysis procedures*—(i) *Weighted averages.* The nutrient analysis must include all foods offered as part of the reimbursable meals during one week within the review period. Foods items are included based on the portion sizes and serving amounts. They are also weighted based on their proportionate contribution to the meals offered. This means that food items offered more frequently are weighted more heavily than those not offered as frequently. The weighted nutrient analysis must be performed as required by FNS guidance.

(ii) *Analyzed nutrients.* The analysis determines the average levels of calories, saturated fat, and sodium in the meals offered over a school week. It includes all food items offered by the reviewed school over a one-week period.

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(4) *Comparing the results of the nutrient analysis.* Once the procedures in paragraph (i)(3) of this section are completed, State agencies must compare the results of the analysis to the calorie, saturated fat, and sodium levels established in §210.10 or §220.8, as appropriate, for each age/grade group to evaluate the school's compliance with the dietary specifications.

(j) *Responsibility for monitoring meal requirements.* Compliance with the meal requirements in paragraph (b) of this section, including dietary specifications for calories, saturated fat, sodium and *trans* fat, and paragraphs (o), (p), and (q) of this section, as applicable, will be monitored by the State agency through administrative reviews authorized in §210.18.

(k) *Menu choices at lunch—(1) Availability of choices.* Schools may offer children a selection of nutritious foods within a reimbursable lunch to encourage the consumption of a variety of foods. Children who are eligible for free or reduced price lunches must be allowed to take any reimbursable lunch or any choices offered as part of a reimbursable lunch. Schools may establish different unit prices for each reimbursable lunch offered provided that the benefits made available to children eligible for free or reduced price lunches are not affected.

(2) *Opportunity to select.* Schools that choose to offer a variety of reimbursable lunches, or provide multiple serving lines, must make all required food components available to all students, on every lunch line, in at least the minimum required amounts.

(1) *Requirements for lunch periods—(1) Timing.* Schools must offer lunches meeting the requirements of this section during the period the school has designated as the lunch period. Schools must offer lunches between 10 a.m. and 2 p.m. Schools may request an exemption from these times from the State agency. With State agency approval, schools may serve lunches to children under age 5 over two service periods. Schools may divide quantities and food items offered each time any way they wish.

(2) *Adequate lunch periods.* FNS encourages schools to provide sufficient lunch periods that are long enough to

give all students adequate time to be served and to eat their lunches.

(m) *Exceptions and variations allowed in reimbursable meals—(1) Exceptions for disability reasons.* Schools must make substitutions in lunches and after-school snacks for students 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 written statement of the need for substitution(s) that includes recommended alternate foods, unless otherwise exempted by FNS. Such statement must be signed by a licensed physician.

(2) *Exceptions for non-disability reasons.* Schools may make substitutions for students without disabilities who cannot consume the regular lunch or afterschool snack because of medical or other special dietary needs. Substitutions must be made on a case by case basis only when supported by a written statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FNS. Except with respect to substitutions for fluid milk, such a statement must be signed by a recognized medical authority.

(i) *Fluid milk substitutions for non-disability reasons.* Schools may make substitutions for fluid milk for non-disabled students who cannot consume fluid milk due to medical or special dietary needs. A school that selects this option may offer the nondairy beverage(s) of its choice, provided the beverage(s) meets the nutritional standards established under paragraph (d) of this section. Expenses incurred when providing substitutions for fluid milk that exceed program reimbursements must be paid by the school food authority.

(ii) *Requisites for fluid milk substitutions.* (A) A school food authority must inform the State agency if any of its schools choose to offer fluid milk substitutes other than for students with disabilities; and

(B) A medical authority or the student's parent or legal guardian must submit a written request for a fluid milk substitute identifying the medical or other special dietary need that restricts the student's diet.

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(iii) *Substitution approval.* The approval for fluid milk substitution must remain in effect until the medical authority or the student's parent or legal guardian revokes such request in writing, or until such time as the school changes its substitution policy for non-disabled students.

(3) *Variations for ethnic, religious, or economic reasons.* Schools should consider ethnic and religious preferences when planning and preparing meals. Variations on an experimental or continuing basis in the food components for the meal pattern in paragraph (c) of this section may be allowed by FNS. Any variations must be consistent with the food and nutrition requirements specified under this section and needed to meet ethnic, religious, or economic needs.

(4) *Exceptions for natural disasters.* If there is a natural disaster or other catastrophe, FNS may temporarily allow schools to serve meals for reimbursement that do not meet the requirements in this section.

(n) *Nutrition disclosure.* To the extent that school food authorities identify foods in a menu, or on the serving line or through other communications with program participants, school food authorities must identify products or dishes containing more than 30 parts fully hydrated alternate protein products (as specified in appendix A of this part) to less than 70 parts beef, pork, poultry or seafood on an uncooked basis, in a manner which does not characterize the product or dish solely as beef, pork, poultry or seafood. Additionally, FNS encourages schools to inform the students, parents, and the public about efforts they are making to meet the meal requirements for school lunches.

(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 grades K through 12.* Afterschool snacks must contain two different components from the following four:

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

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

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

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

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

(iv) A serving of whole-grain or enriched bread; or an equivalent serving of a bread product, such as cornbread, biscuits, rolls, or muffins made with whole-grain or enriched meal or flour; or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as enriched rice, bulgur, or enriched corn grits; or an equivalent quantity of any combination of these foods.

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

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

TABLE 5 TO PARAGRAPH (o)(3)(ii)—PRESCHOOL SNACK MEAL PATTERN

Food components and food items <sup>1</sup>	Minimum quantities	
	Ages 1–2	Ages 3–5
Fluid Milk <sup>2</sup> .....	4 fluid ounces .....	4 fluid ounces.
Meat/meat alternates (edible portion as served):		
Lean meat, poultry, or fish .....	½ ounce .....	½ ounce.
Tofu, soy products, or alternate protein products <sup>3</sup> .....	½ ounce .....	½ ounce.
Cheese .....	½ ounce .....	½ ounce.
Large egg .....	½ .....	½.
Cooked dry beans or peas .....	½ cup .....	½ cup.
Peanut butter or soy nut butter or other nut or seed butters.	1 Tbsp .....	1 Tbsp.
Yogurt, plain or flavored unsweetened or sweetened <sup>4</sup> .	2 ounces or ¼ cup .....	2 ounces or ¼ cup.
Peanuts, soy nuts, tree nuts, or seeds .....	½ ounce .....	½ ounce.
Vegetables <sup>5</sup> .....	½ cup .....	½ cup.
Fruits <sup>5</sup> .....	½ cup .....	½ cup.
Grains (oz eq) <sup>6,7,8</sup> .....	½ ounce equivalent .....	½ ounce equivalent.

**Endnotes:**

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

<sup>3</sup>Alternate protein products must meet the requirements in Appendix A to Part 226 of this chapter.

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

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

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

<sup>7</sup>Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

<sup>8</sup>Refer to FNS guidance for additional information on crediting different types of grains.

(4) *Afterschool snack requirements for infants*—(i) *Snacks served to infants*. Schools serving afterschool snacks to infants ages birth through 11 months must serve the food components and quantities required in the snack meal pattern established for the Child and Adult Care Food Program, under §226.20(a), (b), and (d) of this chapter.

In addition, schools serving afterschool snacks to infants must comply with the requirements set forth in paragraphs (a), (c)(3), (4), and (7), (g), and (m) of this section.

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

TABLE 6 TO PARAGRAPH (o)(4)(ii)—INFANT SNACK MEAL PATTERN

Birth through 5 months	6 through 11 months
4–6 fluid ounces breastmilk <sup>1</sup> or formula <sup>2</sup> .....	2–4 fluid ounces breastmilk <sup>1</sup> or formula; <sup>2</sup> and 0–½ ounce equivalent bread; <sup>3,4</sup> or 0–¼ ounce equivalent crackers; <sup>3,4</sup> or 0–½ ounce equivalent infant cereal; <sup>2,4</sup> or 0–¼ ounce equivalent ready-to-eat breakfast cereal; <sup>3,4,5,6</sup> and 0–2 tablespoons vegetable or fruit, or a combination of both. <sup>5,7</sup>

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

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

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

<sup>4</sup>Refer to FNS guidance for additional information on crediting different types of grains.

<sup>5</sup>Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

<sup>6</sup>A serving of this component is required when the infant is developmentally ready to accept it.

<sup>7</sup>Fruit and vegetable juices must not be served.

(5) *Monitoring afterschool snacks*. Compliance with the requirements of this paragraph is monitored by the State agency as part of the administrative

review conducted under §210.18. If the snacks offered do not meet the requirements of this paragraph, the State agency or school food authority must

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provide technical assistance and require corrective action. In addition, the State agency must take fiscal action, as authorized in §§210.18(1) and 210.19(c).

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

Adult Care Food Program, under § 226.20(a), (c)(2), and (d) of this chapter. In addition, schools serving lunches to this age group must comply with the requirements set forth in paragraphs (a), (c)(3), (4), and (7), (d)(2) through (4), (g), (k), (l), and (m) of this section.

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

TABLE 7 TO PARAGRAPH (p)(2)—PRESCHOOL LUNCH MEAL PATTERN

Food components and food items <sup>1</sup>	Minimum quantities	
	Ages 1–2	Ages 3–5
Fluid Milk <sup>2</sup> .....	4 fluid ounces .....	6 fluid ounces.
Meat/meat alternates (edible portion as served):		
Lean meat, poultry, or fish .....	1 ounce .....	1½ ounces.
Tofu, soy products, or alternate protein products <sup>3</sup> .....	1 ounce .....	1½ ounces.
Cheese .....	1 ounce .....	1½ ounces.
Large egg .....	½ .....	¾.
Cooked dry beans or peas .....	¼ cup .....	¾ cup.
Peanut butter or soy nut butter or other nut or seed butters.	2 Tbsp .....	3 Tbsp.
Yogurt, plain or flavored unsweetened or sweetened <sup>4</sup> .	4 ounces or ½ cup .....	6 ounces or ¾ cup.
The following may be used to meet no more than 50% of the requirement: Peanuts, soy nuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternates (1 ounce of nuts/seeds = 1 ounce of cooked lean meat, poultry, or fish).	½ ounce = 50% .....	¾ ounce = 50%.
Vegetables <sup>5,6</sup> .....	½ cup .....	¼ cup.
Fruits <sup>5,6</sup> .....	½ cup .....	¼ cup.
Grains (oz eq) <sup>7,8,9</sup> .....	½ ounce equivalent .....	½ ounce equivalent.

### Endnotes:

<sup>1</sup> Must serve all five components for a reimbursable meal.

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

<sup>3</sup> Alternate protein products must meet the requirements in Appendix A to Part 226 of this chapter.

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

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

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

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

<sup>8</sup> Refer to FNS guidance for additional information on crediting different types of grains.

<sup>9</sup> Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

(q) *Lunch requirements for infants*—(1) *Lunches served to infants*. Schools serving lunches to infants ages birth through 11 months under the National School Lunch Program must serve the food components and quantities required in the lunch meal pattern established for the Child and Adult Care Food Program, under § 226.20(a), (b),

and (d) of this chapter. In addition, schools serving lunches to infants must comply with the requirements set forth in paragraphs (a), (c)(3), (4), and (7), (g), (l), and (m) of this section.

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

TABLE 8 TO PARAGRAPH (q)(2)—INFANT LUNCH MEAL PATTERN

Birth through 5 months	6 through 11 months
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> and 0–½ ounce equivalent infant cereal; <sup>2,3</sup> or 0–4 tablespoons meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0–2 ounces of cheese; or 0–4 ounces (volume) of cottage cheese; or 0–4 ounces or ½ cup of yogurt; <sup>4</sup> or a combination of the above; <sup>5</sup> and 0–2 tablespoons vegetable or fruit, or a combination of both. <sup>5,6</sup>

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

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

<sup>3</sup> Refer to FNS guidance for additional information on crediting different types of grains.

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

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

<sup>6</sup> Fruit and vegetable juices must not be served.

[77 FR 4143, Jan. 26, 2012, as amended at 78 FR 13448, Feb. 28, 2013; 78 FR 39090, June 28, 2013; 81 FR 24372, Apr. 25, 2016; 81 FR 50185, July 29, 2016; 81 FR 75671, Nov. 1, 2016; 82 FR 56713, Nov. 30, 2017; 83 FR 63789, Dec. 12, 2018; 84 FR 50289, Sept. 25, 2019; 85 FR 7853, Feb. 12, 2020; 85 FR 74847, Nov. 24, 2020; 86 FR 57544, Oct. 18, 2021; 87 FR 4126, Jan. 27, 2022; 87 FR 7005, Feb. 7, 2022; 87 FR 47331, Aug. 3, 2022; 87 FR 52329, Aug. 25, 2022]

### §210.11 Competitive food service and standards.

(a) *Definitions.* For the purpose of this section:

(1) *Combination foods* means products that contain two or more components representing two or more of the recommended food groups: fruit, vegetable, dairy, protein or grains.

(2) *Competitive food* means all food and beverages other than meals reimbursed under programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 available for sale to students on the *School campus* during the *School day*.

(3) *Entrée item* means an item that is intended as the main dish and is either:

(i) A combination food of meat or meat alternate and whole grain rich food; or

(ii) A combination food of vegetable or fruit and meat or meat alternate; or

(iii) A meat or meat alternate alone with the exception of yogurt, low-fat or reduced fat cheese, nuts, seeds and nut or seed butters, and meat snacks (such as dried beef jerky); or

(iv) A grain only, whole-grain rich entrée that is served as the main dish of the School Breakfast Program reimbursable meal.

(4) *School campus* means, for the purpose of competitive food standards implementation, all areas of the property under the jurisdiction of the school that are accessible to students during the school day.

(5) *School day* means, for the purpose of competitive food standards implementation, the period from the midnight before, to 30 minutes after the end of the official school day.

(6) *Paired exempt foods* mean food items that have been designated as exempt from one or more of the nutrient requirements individually which are packaged together without any additional ingredients. Such “paired exempt foods” retain their individually designated exemption for total fat, saturated fat, and/or sugar when packaged together and sold but are required to meet the designated calorie and sodium standards specified in §§210.11(i) and (j) at all times.

(b) *General requirements for competitive food.* (1) *State and local educational agency policies.* State agencies and/or local educational agencies must establish such policies and procedures as are necessary to ensure compliance with this section. State agencies and/or local educational agencies may impose additional restrictions on competitive foods, provided that they are not inconsistent with the requirements of this part.

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(2) *Recordkeeping.* The local educational agency is responsible for the maintenance of records that document compliance with the nutrition standards for all competitive food available for sale to students in areas under its jurisdiction that are outside of the control of the school food authority responsible for the service of reimbursable school meals. In addition, the local educational agency is responsible for ensuring that organizations designated as responsible for food service at the various venues in the schools maintain records in order to ensure and document compliance with the nutrition requirements for the foods and beverages sold to students at these venues during the school day as required by this section. The school food authority is responsible for maintaining records documenting compliance with these for foods sold under the auspices of the nonprofit school food service. At a minimum, records must include receipts, nutrition labels and/or product specifications for the competitive food available for sale to students.

(3) *Applicability.* The nutrition standards for the sale of competitive food outlined in this section apply to competitive food for all programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 operating on the school campus during the school day.

(4) *Fundraiser restrictions.* Competitive food and beverage items sold during the school day must meet the nutrition standards for competitive food as required in this section. A special exemption is allowed for the sale of food and/or beverages that do not meet the competitive food standards as required in this section for the purpose of conducting an infrequent school-sponsored fundraiser. Such specially exempted fundraisers must not take place more than the frequency specified by the State agency during such periods that schools are in session. No specially exempted fundraiser foods or beverages may be sold in competition with school meals in the food service area during the meal service.

(c) *General nutrition standards for competitive food.* (1) *General requirement.* At a minimum, all competitive food sold to students on the school campus dur-

ing the school day must meet the nutrition standards specified in this section. These standards apply to items as packaged and served to students.

(2) *General nutrition standards.* To be allowable, a competitive food item must:

(i) Meet all of the competitive food nutrient standards as outlined in this section; and

(ii) Be a grain product that contains 50 percent or more whole grains by weight or have as the first ingredient a whole grain; or

(iii) Have as the first ingredient one of the non-grain major food groups: fruits, vegetables, dairy or protein foods (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.); or

(iv) Be a combination food that contains  $\frac{1}{4}$  cup of fruit and/or vegetable; or

(v) If water is the first ingredient, the second ingredient must be one of the food items in paragraphs (c)(2)(ii), (iii) or (iv) of this section.

(3) *Exemptions.* (i) *Entrée items offered as part of the lunch or breakfast program.* Any entrée item offered as part of the lunch program or the breakfast program under 7 CFR Part 220 is exempt from all competitive food standards if it is offered as a competitive food on the day of, or the school day after, it is offered in the lunch or breakfast program. Exempt entrée items offered as a competitive food must be offered in the same or smaller portion sizes as in the lunch or breakfast program. Side dishes offered as part of the lunch or breakfast program and served à la carte must meet the nutrition standards in this section.

(ii) *Sugar-free chewing gum.* Sugar-free chewing gum is exempt from all of the competitive food standards in this section and may be sold to students on the school campus during the school day, at the discretion of the local educational agency.

(d) *Fruits and vegetables.* (1) Fresh, frozen and canned fruits with no added ingredients except water or packed in 100 percent fruit juice or light syrup or extra light syrup are exempt from the nutrient standards included in this section.

(2) Fresh and frozen vegetables with no added ingredients except water and

canned vegetables that are low sodium or no salt added that contain no added fat are exempt from the nutrient standards included in this section.

(e) *Grain products.* Grain products acceptable as a competitive food must include 50 percent or more whole grains by weight or have whole grain as the first ingredient. Grain products must meet all of the other nutrient standards included in this section.

(f) *Total fat and saturated fat.* (1) *General requirements.* (i) The total fat content of a competitive food must be not more than 35 percent of total calories from fat per item as packaged or served, except as specified in paragraphs (f)(2) and (3) of this section.

(ii) The saturated fat content of a competitive food must be less than 10 percent of total calories per item as packaged or served, except as specified in paragraph (f)(3) of this section.

(2) *Exemptions to the total fat requirement.* Seafood with no added fat is exempt from the total fat requirement, but subject to the saturated fat, trans fat, sugar, calorie and sodium standards.

(3) *Exemptions to the total fat and saturated fat requirements.* (i) Reduced fat cheese and part skim mozzarella cheese are exempt from the total fat and saturated fat standards, but subject to the trans fat, sugar, calorie and sodium standards. This exemption does not apply to combination foods.

(ii) Nuts and Seeds and Nut/Seed Butters are exempt from the total fat and saturated fat standards, but subject to the trans fat, sugar, calorie and sodium standards. This exemption does not apply to combination products that contain nuts, nut butters or seeds or seed butters with other ingredients such as peanut butter and crackers, trail mix, chocolate covered peanuts, etc.

(iii) Products that consist of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat are exempt from the total fat, saturated fat and sugar standards, but subject to the trans fat, calorie and sodium standards.

(iv) Whole eggs with no added fat are exempt from the total fat and saturated fat standards but are subject to

the trans fat, calorie and sodium standards.

(g) *Trans fat.* The trans fat content of a competitive food must be zero grams trans fat per portion as packaged or served (not more than 0.5 grams per portion).

(h) *Total sugars.* (1) *General requirement.* The total sugar content of a competitive food must be not more than 35 percent of *weight* per item as packaged or served, except as specified in paragraph (h)(2) of this section.

(2) *Exemptions to the total sugar requirement.* (i) Dried whole fruits or vegetables; dried whole fruit or vegetable pieces; and dehydrated fruits or vegetables with no added nutritive sweeteners are exempt from the sugar standard, but subject to the total fat, saturated fat, trans fat, calorie and sodium standards. There is also an exemption from the sugar standard for dried fruits with nutritive sweeteners that are required for processing and/or palatability purposes;

(ii) Products that consist of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat are exempt from the total fat, saturated fat, and sugar standards, but subject to the calorie, trans fat, and sodium standards; and

(i) *Calorie and sodium content for snack items and side dishes sold as competitive foods.* Snack items and side dishes sold as competitive foods must have not more than 200 calories and 200 mg of sodium per item as packaged or served, including the calories and sodium contained in any added accompaniments such as butter, cream cheese, salad dressing, etc., and must meet all of the other nutrient standards in this section. Effective July 1, 2016, these snack items and side dishes must have not more than 200 calories and 200 mg of sodium per item as packaged or served.

(j) *Calorie and sodium content for entrée items sold as competitive foods.* Entrée items sold as competitive foods, other than those exempt from the competitive food nutrition standards in paragraph (c)(3)(i) of this section, must have not more than 350 calories and 480 mg of sodium per item as packaged or served, including the calories and sodium contained in any added accompaniments such as butter, cream



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cheese, salad dressing, etc., and must meet all of the other nutrient standards in this section.

(k) *Caffeine*. Foods and beverages available to elementary and middle school-aged students must be caffeine-free, with the exception of trace amounts of naturally occurring caffeine substances. Foods and beverages available to high school-aged students may contain caffeine.

(l) *Accompaniments*. The use of accompaniments is limited when competitive food is sold to students in school. The accompaniments to a competitive food item must be included in the nutrient profile as a part of the food item served in determining if an item meets all of the nutrition standards for competitive food as required in this section. The contribution of the accompaniments may be based on the average amount of the accompaniment used per item at the site.

(m) *Beverages*—(1) *Elementary schools*. Allowable beverages for elementary school-aged students are limited to:

- (i) Plain water or plain carbonated water (no size limit);
- (ii) Low fat milk, flavored or unflavored (no more than 8 fluid ounces);
- (iii) Non fat milk, flavored or unflavored (no more than 8 fluid ounces);
- (iv) Nutritionally equivalent milk alternatives as permitted in §210.10 and §220.8 of this chapter (no more than 8 fluid ounces); and
- (v) 100 percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water (with or without carbonation and with no added sweeteners) (no more than 8 fluid ounces).

(2) *Middle schools*. Allowable beverages for middle school-aged students are limited to:

- (i) Plain water or plain carbonated water (no size limit);
- (ii) Low fat milk, flavored or unflavored (no more than 12 fluid ounces);
- (iii) Non fat milk, flavored or unflavored (no more than 12 fluid ounces);
- (iv) Nutritionally equivalent milk alternatives as permitted in §210.10 and

§220.8 of this chapter (no more than 12 fluid ounces); and

(v) 100 percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water (with or without carbonation and with no added sweeteners) (no more than 12 fluid ounces).

(3) *High schools*. Allowable beverages for high school-aged students are limited to:

- (i) Plain water or plain carbonated water (no size limit);
- (ii) Low fat milk, flavored or unflavored (no more than 12 fluid ounces);
- (iii) Non fat milk, flavored or unflavored (no more than 12 fluid ounces);
- (iv) Nutritionally equivalent milk alternatives as permitted in §210.10 and §220.8 of this chapter (no more than 12 fluid ounces);
- (v) 100 percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water (with or without carbonation and with no added sweeteners) (no more than 12 fluid ounces);
- (vi) Calorie-free, flavored water, with or without carbonation (no more than 20 fluid ounces);
- (vii) Other beverages that are labeled to contain less than 5 calories per 8 fluid ounces, or less than or equal to 10 calories per 20 fluid ounces (no more than 20 fluid ounces); and
- (viii) Other beverages that are labeled to contain no more than 40 calories per 8 fluid ounces or 60 calories per 12 fluid ounces (no more than 12 fluid ounces).

(n) *Implementation date*. This section is to be implemented beginning on July 1, 2014.

[78 FR 39091, June 28, 2013, as amended at 81 FR 50151, July 29, 2016; 82 FR 56714, Nov. 30, 2017; 83 FR 63790, Dec. 12, 2018; 85 FR 74848, Nov. 24, 2020; 87 FR 7006, Feb. 7, 2022]

### §210.12 Student, parent, and community involvement.

(a) *General*. School food authorities shall promote activities to involve students and parents in the Program. Such activities may include menu planning, enhancement of the eating environment, Program promotion, and

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related student-community support activities. School food authorities are encouraged to use the school food service program to teach students about good nutrition practices and to involve the school faculty and the general community in activities to enhance the Program.

(b) *Food service management companies.* School food authorities contracting with a food service management company shall comply with the provisions of §210.16(a) regarding the establishment of an advisory board of parents, teachers and students.

(c) *Residential child care institutions.* Residential child care institutions shall comply with the provisions of this section, to the extent possible.

(d) *Outreach activities.* (1) To the maximum extent practicable, school food authorities must inform families about the availability breakfasts for students. Information about the School Breakfast Program must be distributed just prior to or at the beginning of the school year. In addition, schools are encouraged to send reminders regarding the availability of the School Breakfast Program multiple times throughout the school year.

(2) School food authorities must cooperate with Summer Food Service Program sponsors to distribute materials to inform families of the availability and location of free Summer Food Service Program meals for students when school is not in session.

(e) *Local school wellness policies.* Local educational agencies must comply with the provisions of §210.30(d) regarding student, parent, and community involvement in the development, implementation, and periodic review and update of the local school wellness policy.

[53 FR 29147, Aug. 2, 1988, as amended at 78 FR 13448, Feb. 28, 2013; 81 FR 50168, July 29, 2016]

### §210.13 Facilities management.

(a) *Health standards.* The school food authority shall ensure that food storage, preparation and service is in accordance with the sanitation and health standards established under State and local law and regulations.

(b) *Food safety inspections.* Schools shall obtain a minimum of two food safety inspections during each school

year conducted by a State or local governmental agency responsible for food safety inspections. They shall post in a publicly visible location a report of the most recent inspection conducted, and provide a copy of the inspection report to a member of the public upon request. Sites participating in more than one child nutrition program shall only be required to obtain two food safety inspections per school year if the nutrition programs offered use the same facilities for the production and service of meals.

(c) *Food safety program.* The school food authority must develop a written food safety program that covers any facility or part of a facility where food is stored, prepared, or served. The food safety program must meet the requirements in paragraph (c)(1) or paragraph (c)(2) of this section, and the requirements in §210.15(b)(5).

(1) A school food authority with a food safety program based on traditional hazard analysis and critical control point (HACCP) principles must:

- (i) Perform a hazard analysis;
- (ii) Decide on critical control points;
- (iii) Determine the critical limits;
- (iv) Establish procedures to monitor critical control points;
- (v) Establish corrective actions;
- (vi) Establish verification procedures; and
- (vii) Establish a recordkeeping system.

(2) A school food authority with a food safety program based on the process approach to HACCP must ensure that its program includes:

- (i) Standard operating procedures to provide a food safety foundation;
- (ii) Menu items grouped according to process categories;
- (iii) Critical control points and critical limits;
- (iv) Monitoring procedures;
- (v) Corrective action procedures;
- (vi) Recordkeeping procedures; and
- (vii) Periodic program review and revision.

(d) *Storage.* The school food authority shall ensure that the necessary facilities for storage, preparation and service of food are maintained. Facilities for the handling, storage, and distribution of purchased and donated foods

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shall be such as to properly safeguard against theft, spoilage and other loss.

[54 FR 29147, Aug. 2, 1988, as amended at 64 FR 50740, Sept. 20, 1999; 70 FR 34630, June 15, 2005; 74 FR 66216, Dec. 15, 2009; 78 FR 13448, Feb. 28, 2013]

### § 210.14 Resource management.

(a) *Nonprofit school food service.* School food authorities shall maintain a nonprofit school food service. Revenues received by the nonprofit school food service are to be used only for the operation or improvement of such food service, *except that*, such revenues shall not be used to purchase land or buildings, unless otherwise approved by FNS, or to construct buildings. Expenditures of nonprofit school food service revenues shall be in accordance with the financial management system established by the State agency under § 210.19(a) of this part. School food authorities may use facilities, equipment, and personnel supported with nonprofit school food revenues to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

(b) *Net cash resources.* The school food authority shall limit its net cash resources to an amount that does not exceed 3 months average expenditures for its nonprofit school food service or such other amount as may be approved by the State agency in accordance with § 210.19(a).

(c) *Financial assurances.* The school food authority shall meet the requirements of the State agency for compliance with § 210.19(a) including any separation of records of nonprofit school food service from records of any other food service which may be operated by the school food authority as provided in paragraph (a) of this section.

(d) *Use of donated foods.* The school food authority shall enter into an agreement with the distributing agency to receive donated foods as required by part 250 of this chapter. In addition, the school food authority shall accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by the Department. The school food authority's policies, procedures, and records must ac-

count for the receipt, full value, proper storage and use of donated foods.

(e) *Pricing paid lunches.* For each school year beginning July 1, 2011, school food authorities shall establish prices for paid lunches in accordance with this paragraph.

(1) *Calculation procedures.* Each school food authority shall:

(i) Determine the average price of paid lunches. The average shall be determined based on the total number of paid lunches claimed for the month of October in the previous school year, at each different price charged by the school food authority.

(ii) Calculate the difference between the per meal Federal reimbursement for paid and free lunches received by the school food authority in the previous school year (*i.e.*, the reimbursement difference);

(iii) Compare the average price of a paid lunch under paragraph (e)(1)(i) of this section to the difference between reimbursement rates under paragraph (e)(1)(ii) of this section.

(2) *Average paid lunch price is equal to/greater than the reimbursement difference.* When the average paid lunch price from the prior school year is equal to or greater than the difference in reimbursement rates as determined in paragraph (e)(1)(iii) of this section, the school food authority shall establish an average paid lunch price for the current school year that is not less than the difference identified in (e)(1)(iii) of this section; except that, the school food authority may use the procedure in paragraph (e)(4)(ii) of this section when establishing prices of paid lunches.

(3) *Average lunch price is lower than the reimbursement difference.* When the average price from the prior school year is lower than the difference in reimbursement rates as determined in paragraph (e)(1)(iii) of this section, the school food authority shall establish an average price for the current school year that is not less than the average price charged in the previous school year as adjusted by a percentage equal to the sum obtained by adding:

(i) 2 percent; and

(ii) The percentage change in the Consumers Price Index for All Urban Consumers used to increase the Federal

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reimbursement rate under section 11 of the Act for the most recent school year for which data are available. The percentage to be used is found in the annual notice published in the FEDERAL REGISTER announcing the national average payment rates, from the prior year.

(4) *Price Adjustments.* (i) *Maximum required price increase.* The maximum annual average price increase required under this paragraph shall not exceed ten cents.

(ii) *Rounding of paid lunch prices.* Any school food authority may round the adjusted price of the paid lunches down to the nearest five cents.

(iii) *Optional price increases.* A school food authority may increase the average price by more than ten cents.

(5) *Reduction in average price for paid lunches.* (i) Any school food authority may reduce the average price of paid lunches as established under this paragraph if the State agency ensures that funds are added to the nonprofit school food service account in accordance with this paragraph.

The minimum that must be added is the product of:

(A) The number of paid lunches claimed by the school food authority in the previous school year multiplied by

(B) The amount required under paragraph (e)(3) of this section, as adjusted under paragraph (e)(4) of this section, minus the average price charged.

(ii) *Prohibitions.* The following shall not be used to reduce the average price charged for paid lunches:

(A) Federal sources of revenue;

(B) Revenue from foods sold in competition with lunches or with breakfasts offered under the School Breakfast Program authorized in 7 CFR part 220. Requirements concerning foods sold in competition with lunches or breakfasts are found in §210.11 and §220.12 of this chapter, respectively;

(C) In-kind contributions;

(D) Any in-kind contributions converted to direct cash expenditures after July 1, 2011; and

(E) Per-meal reimbursements (non-Federal) specifically provided for support of programs other than the school lunch program.

(iii) *Allowable non-Federal revenue sources.* Any contribution that is for

the direct support of paid lunches that is not prohibited under paragraph (e)(5)(ii) of this section may be used as revenue for this purpose. Such contributions include, but are not limited to:

(A) Per-lunch reimbursements for paid lunches provided by State or local governments;

(B) Funds provided by organizations, such as school-related or community groups, to support paid lunches;

(C) Any portion of State revenue matching funds that exceeds the minimum requirement, as provided in §210.17, and is provided for paid lunches; and

(D) A proportion attributable to paid lunches from direct payments made from school district funds to support the lunch service.

(6) *Additional considerations.* (i) In any given year, if a school food authority with an average price lower than the reimbursement difference is not required by paragraph (e)(4)(ii) of this section to increase its average price for paid lunches, the school food authority shall use the unrounded average price as the basis for calculations to meet paragraph (e)(3) of this section for the next school year.

(ii) If a school food authority has an average price lower than the reimbursement difference and chooses to increase its average price for paid lunches in any school year more than is required by this section, the amount attributable to the additional voluntary increase may be carried forward to the next school year(s) to meet the requirements of this section.

(iii) For the school year beginning July 1, 2011 only, the limitations for non-Federal contributions in paragraph (e)(5)(iii) of this section do not apply.

(7) *Reporting lunch prices.* In accordance with guidelines provided by FNS:

(i) School food authorities shall report prices charged for paid lunches to the State agency; and

(ii) State agencies shall report these prices to FNS.

(f) *Revenue from nonprogram foods.* Beginning July 1, 2011, school food authorities shall ensure that the revenue generated from the sale of nonprogram foods complies with the requirements in this paragraph.

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(1) *Definition of nonprogram foods.* For the purposes of this paragraph, nonprogram foods are those foods and beverages:

(i) Sold in a participating school other than reimbursable meals and meal supplements; and

(ii) Purchased using funds from the nonprofit school food service account.

(2) *Revenue from nonprogram foods.* The proportion of total revenue from the sale of nonprogram foods to total revenue of the school food service account shall be equal to or greater than:

(i) The proportion of total food costs associated with obtaining nonprogram foods to

(ii) The total costs associated with obtaining program and nonprogram foods from the account.

(3) All revenue from the sale of nonprogram foods shall accrue to the nonprofit school food service account of a participating school food authority.

(g) *Indirect costs.* School food authorities must follow fair and consistent methodologies to identify and allocate allowable indirect costs to the nonprofit school food service account, in accordance with 2 CFR part 200 as implemented by 2 CFR part 400.

[53 FR 29147, Aug. 2, 1988, as amended at 60 FR 31215, June 13, 1995; 76 FR 35316, June 17, 2011; 81 FR 50185, July 29, 2016]

### § 210.15 Reporting and recordkeeping.

(a) *Reporting summary.* Participating school food authorities are required to submit forms and reports to the State agency or the distributing agency, as appropriate, to demonstrate compliance with Program requirements. These reports include, but are not limited to:

(1) A Claim for Reimbursement and, for the month of October and as otherwise specified by the State agency, supporting data as specified in accordance with § 210.8 of this part;

(2) An application and agreement for Program operations between the school food authority and the State agency, and a Free and Reduced Price Policy Statement as required under § 210.9;

(3) A written response to reviews pertaining to corrective action taken for Program deficiencies;

(4) A commodity school's preference whether to receive part of its donated

food allocation in cash for processing and handling of donated foods as required under § 210.19(b);

(5) A written response to audit findings pertaining to the school food authority's operation as required under § 210.22;

(6) Information on civil rights complaints, if any, and their resolution as required under § 210.23;

(7) The number of food safety inspections obtained per school year by each school under its jurisdiction;

(8) The prices of paid lunches charged by the school food authority; and

(9) For any local educational agency required to conduct a second review of free and reduced price applications as required under § 245.11 of this chapter, the number of free and reduced price applications subject to a second review, the number and percentage of reviewed applications for which the eligibility determination was changed, and a summary of the types of changes made.

(b) *Recordkeeping summary.* In order to participate in the Program, a school food authority or a school, as applicable, must maintain records to demonstrate compliance with Program requirements. These records include but are not limited to:

(1) Documentation of participation data by school in support of the Claim for Reimbursement and data used in the claims review process, as required under § 210.8(a), (b), and (c) of this part;

(2) Production and menu records as required under § 210.10 and documentation to support performance-based cash assistance, as required under § 210.7(d)(2).

(3) Participation records to demonstrate positive action toward providing one lunch per child per day as required under § 210.10(a)(2), whichever is applicable;

(4) Currently approved and denied certification documentation for free and reduced price lunches and a description of the verification activities, including verified applications, and any accompanying source documentation in accordance with 7 CFR 245.6a of this Title; and

(5) Records from the food safety program for a period of six months following a month's temperature records to demonstrate compliance with

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§210.13(c), and records from the most recent food safety inspection to demonstrate compliance with §210.13(b);

(6) Records to document compliance with the requirements in §210.14(e);

(7) Records to document compliance with the requirements in §210.14(f); and

(8) Records for a three year period to demonstrate the school food authority's compliance with the professional standards for school nutrition program directors, managers and personnel established in §210.30.

(9) Records to document compliance with the local school wellness policy requirements as set forth in §210.30(f).

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12582, Mar. 28, 1989; 56 FR 32941, July 17, 1991; 60 FR 31215, June 13, 1995; 65 FR 26912, 26922, May 9, 2000; 70 FR 34630, June 15, 2005; 74 FR 66216, Dec. 15, 2009; 76 FR 35317, June 17, 2011; 77 FR 25035, Apr. 27, 2012; 79 FR 7053, Feb. 6, 2014; 80 FR 11092, Mar. 2, 2015; 81 FR 50169, July 29, 2016; 81 FR 50185, July 29, 2016]

### §210.16 Food service management companies.

(a) *General.* Any school food authority (including a State agency acting in the capacity of a school food authority) may contract with a food service management company to manage its food service operation in one or more of its schools. However, no school or school food authority may contract with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and paid reimbursable lunches to all eligible children. Any school food authority that employs a food service management company in the operation of its nonprofit school food service shall:

(1) Adhere to the procurement standards specified in §210.21 when contracting with the food service management company;

(2) Ensure that the food service operation is in conformance with the school food authority's agreement under the Program;

(3) Monitor the food service operation through periodic on-site visits;

(4) Retain control of the quality, extent, and general nature of its food service, and the prices to be charged the children for meals;

(5) Retain signature authority on the State agency-school food authority

agreement, free and reduced price policy statement and claims;

(6) Ensure that all federally donated foods received by the school food authority and made available to the food service management company accrue only to the benefit of the school food authority's nonprofit school food service and are fully utilized therein;

(7) Maintain applicable health certification and assure that all State and local regulations are being met by a food service management company preparing or serving meals at a school food authority facility;

(8) Establish an advisory board composed of parents, teachers, and students to assist in menu planning;

(9) Obtain written approval of invitations for bids and requests for proposals before their issuance when required by the State agency. The school food authority must incorporate all State agency required changes to its solicitation documents before issuing those documents; and

(10) Ensure that the State agency has reviewed and approved the contract terms and that the school food authority has incorporated all State agency required changes into the contract or amendment before any contract or amendment to an existing food service management company contract is executed. Any changes made by the school food authority or a food service management company to a State agency pre-approved prototype contract or State agency approved contract term must be approved in writing by the State agency before the contract is executed. When requested, the school food authority must submit all procurement documents, including responses submitted by potential contractors, to the State agency, by the due date established by the State agency.

(b) *Invitation to bid.* In addition to adhering to the procurement standards under §210.21, school food authorities contracting with food service management companies shall ensure that:

(1) The invitation to bid or request for proposal contains a 21-day cycle menu developed in accordance with the provisions of §210.10, to be used as a standard for the purpose of basing bids or estimating average cost per meal. A

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school food authority with no capability to prepare a cycle menu may, with State agency approval, require that each food service management company include a 21-day cycle menu, developed in accordance with the provisions of § 210.10, with its bid or proposal. The food service management company must adhere to the cycle for the first 21 days of meal service. Changes thereafter may be made with the approval of the school food authority.

(2) Any invitation to bid or request for proposal indicate that nonperformance subjects the food service management company to specified sanctions in instances where the food service management company violates or breaches contract terms. The school food authority shall indicate these sanctions in accordance with the procurement provisions stated in § 210.21.

(c) *Contracts.* Contracts that permit all income and expenses to accrue to the food service management company and “cost-plus-a-percentage-of-cost” and “cost-plus-a-percentage-of-income” contracts are prohibited. Contracts that provide for fixed fees such as those that provide for management fees established on a per meal basis are allowed. Contractual agreements with food service management companies shall include provisions which ensure that the requirements of this section are met. Such agreements shall also include the following:

(1) The food service management company shall maintain such records as the school food authority will need to support its Claim for Reimbursement under this part, and shall, at a minimum, report claim information to the school food authority promptly at the end of each month. Such records shall be made available to the school food authority, upon request, and shall be retained in accordance with § 210.23(c).

(2) The food service management company shall have State or local health certification for any facility outside the school in which it proposes to prepare meals and the food service management company shall maintain this health certification for the duration of the contract.

(3) No payment is to be made for meals that are spoiled or unwholesome at time of delivery, do not meet detailed specifications as developed by the school food authority for each food component specified in § 210.10, or do not otherwise meet the requirements of the contract. Specifications shall cover items such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.

(4) Provisions in part 250, subpart D of this chapter must be included to ensure the value of donated foods, *i.e.*, USDA Foods, are fully used in the nonprofit food service and credited to the nonprofit school food service account.

(d) *Duration of contract.* The contract between a school food authority and food service management company shall be of a duration of no longer than 1 year; and options for the yearly renewal of a contract signed after February 16, 1988, may not exceed 4 additional years. All contracts shall include a termination clause whereby either party may cancel for cause with 60-day notification.

[53 FR 29147, Aug. 2, 1988, as amended at 60 FR 31215, June 13, 1995; 65 FR 26912, May 9, 2000; 72 FR 61491, Oct. 31, 2007; 88 FR 57845, Aug. 23, 2023]

### Subpart D—Requirements for State Agency Participation

#### § 210.17 Matching Federal funds.

(a) *State revenue matching.* For each school year, the amount of State revenues appropriated or used specifically by the State for program purposes shall not be less than 30 percent of the funds received by such State under section 4 of the National School Lunch Act during the school year beginning July 1, 1980; *provided that*, the State revenues derived from the operation of such programs and State revenues expended for salaries and administrative expenses of such programs at the State level are not considered in this computation. However, if the per capita income of any State is less than the per capita income of the United States, the matching requirements so computed shall be decreased by the percentage by which the State per capita income is below the per capita income of the United States.