

**DEPARTMENT OF AGRICULTURE****Food and Consumer Service****7 CFR Parts 210 and 220**

RIN 0584-AB94

**National School Lunch Program and School Breakfast Program: Compliance With the Dietary Guidelines for Americans and Food-Based Menu Systems**

AGENCY: Food and Consumer Service, USDA.

ACTIONS: Proposed rule.

**SUMMARY:** The Healthy Meals for Healthy Americans Act of 1994 requires, for purposes of the National School Lunch and School Breakfast Programs, that a variety of meal planning approaches be made available to school food authorities, including "food-based menu systems." The food-based menu systems concept is intended to supplement the nutrient-based menu planning provisions previously proposed by the Department of Agriculture on June 10, 1994. In addition, the Act requires that school meals comply with the *Dietary Guidelines for Americans*, as the Department also proposed on that date. The proposal which follows implements the requirement for a food-based menu systems planning alternative. To ensure compliance with the requirements of the Dietary Guidelines, this proposal expands the monitoring procedures in the earlier proposal to provide a system appropriate for monitoring meals served by school food authorities that chose the food-based menu systems approach.

**DATES:** To be assured of consideration, comments must be postmarked or transmitted on or before March 13, 1995.

**ADDRESSES:** Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Comments may be sent via E-mail to: healthykids@esusda.gov. If comments are sent electronically, commenters should designate "receipt requested" to be notified by E-mail that the message has been received by USDA.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Eadie at the above address or by telephone at 703-305-2620.

**SUPPLEMENTARY INFORMATION:**

Executive Order 12866

This proposed rule has been determined to be significant and was

reviewed by the Office of Management and Budget under Executive Order 12866.

**Regulatory Flexibility Act**

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Consumer Service (FCS) has certified that this rule will not have a significant economic impact on a substantial number of small entities because of the variety of options available to schools to comply with the proposed requirements. The impacts of specific provisions have been considered by the Department as part of the required Regulatory Assessment. Interested parties should refer to this document which is published at the end of this proposal.

**Catalog of Federal Assistance**

The National School Lunch Program and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.553, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and final rule-related notice at 48 FR 29112, June 24, 1983.)

**Executive Order 12778**

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect unless so specified in the *Effective Date* section of this preamble. Prior to any judicial challenge to the provisions of this proposed rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program and School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) school food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of FCS findings as a result of an administrative review must follow FCS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions

(7 CFR 235.11(b)) must follow the FCS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

**Information Collection**

This proposed rule contains no new information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

**Background**

Section 106(b) of Pub. L. 103-448, the Healthy Meals for Healthy Americans Act of 1994, signed into law on November 2, 1994, amended section 9 of the National School Lunch Act (NSLA), 42 U.S.C. 1758(b)(2)(C), to require meals that are served under the National School Lunch Program (NSLP) and School Breakfast Program (SBP) meet the *Dietary Guidelines for Americans* by July 1, 1996, unless the State agency grants a waiver under criteria established by the State agency. Section 106(b) provides that a State agency waiver cannot delay compliance with the Dietary Guidelines beyond July 1, 1998. Further, section 112(c) of Pub. L. 103-448 amended section 12(k) of the NSLA, 42 U.S.C. 1760(k), to require that the Department develop "food-based" systems for school food authorities to follow when planning and preparing meals. Food-based menu planning systems would provide local food services with a third option, supplementing the Nutrient Standard Menu Planning (NuMenus) and Assisted Nutrient Standard Menu Planning (Assisted NuMenus) systems originally included in the Department's June 10, 1994, proposal. This proposed rulemaking would implement these statutory provisions. Other provisions of Pub. L. 103-448 will be incorporated into later rulemakings, as appropriate. One such provision requires disclosure of information about the nutritional content of school meals and the consistency of the meals with the Dietary Guidelines. The Department will consider a number of options for implementing this provision. Of paramount concern is the development of an approach that provides flexibility and alternatives for school food authorities. In addition, the Department wants to ensure that any recordkeeping or reporting requirements that are associated with the requirement for nutrition disclosure are kept to a minimum.

**Current Provisions**

The NSLP was designed in 1946 to offer meals that provide foods which, over time, are sufficient to approximate

one-third of the National Academy of Sciences' Recommended Dietary Allowances (RDA) for key nutrients needed for growth and development for the 10–12 year old child. Historically, the Department has attempted to achieve this goal by requiring that school lunches contain minimum amounts of the following specific components: meat/meat alternate, breads/bread alternates, two different vegetables/fruits and fluid milk. The pattern for the SBP has the goal of providing 25 percent of the RDA and requires minimum quantities of the following components: two servings of any combination of meat/meat alternate or breads/bread alternates, one serving of fruits or vegetables and fluid milk.

#### *Proposed Updating of the Nutrition Standards*

Overall, these meal patterns succeed in providing adequate levels of key nutrients. However, they were never updated to reflect the broad array of scientific data documenting that excesses in consumption are a major concern because of their relationship to the incidence of chronic disease. Consequently, school lunches typically fail to comply with the *Dietary Guidelines for Americans*, published jointly by the Department of Agriculture and the Department of Health and Human Services. In particular, school lunches fail to meet the Dietary Guidelines recommended limits on percent of calories from fat (30%) and saturated fat (10%).

To address these deficiencies, the Department issued a proposed regulation on June 10, 1994, updating the nutrition standards of the NSLP and SBP and requiring that school meals comply with the recommendations of the Dietary Guidelines no later than July 1, 1998. Recognizing that the meal pattern did not provide sufficient flexibility to enable a school food service to comply with these requirements, that proposal also proposed to replace the current meal patterns with NuMenus and Assisted NuMenus so that meals could be evaluated and adjusted routinely through use of nutrition analysis. Finally, realizing the need for oversight and technical assistance, the Department proposed an appropriate system for State agency monitoring of school food authority compliance with the nutrition standards.

The Department received over 14,000 comment letters in response to the June 10, 1994, rulemaking. Over 5,000 commenters, primarily from persons in the school food service community, recommended that a meal pattern be

retained and that it be designed to meet the requirements of the Dietary Guidelines. A number of commenters recommended systems currently in use in their areas, such as the Minnesota Lunch Power program or the California SHAPE program. Many commenters indicated that development of a new meal pattern based on the Dietary Guidelines would result in speedier implementation of the updated nutrition standards because meal planners were familiar with the meal pattern concept.

On November 2, 1994, Pub. L. 103–448, the Healthy Meals for Healthy Americans Act of 1994, was signed into law. This law had no provisions that would require changes to the June 10, 1994, proposal other than to mandate implementation of the Dietary Guidelines two years earlier than had been proposed and to require that food-based menu planning systems be permitted as means to try to conform meals to the Dietary Guidelines. The proposed provisions involving NuMenus and Assisted NuMenus as well as the proposed nutrition standards for school meals, including compliance with the applicable Dietary Guidelines, were not affected. The Department considers, therefore, that the June 10, 1994, proposal is consistent with Congressional intent on the issues addressed in that rule.

The Department wishes to call attention to the fact that certain provisions included in the June 10, 1994, proposal will be discussed in this preamble to facilitate public review and comment on food-based menu systems within the overall context of the Department's School Meals Initiative for Healthy Children. These provisions such as NuMenus and Assisted NuMenus are not, however, being repropounded, and the Department will not consider additional comments on any provisions of the June 10, 1994, proposed rule. The Department will issue a final rule incorporating provisions from that proposal and this one, and at that time the Department will address the comments received on both proposals.

#### *Meeting the Dietary Guidelines, RDA and Energy Levels*

As originally proposed by the Department and now required by section 9(f)(2)(C) of the NSLA, all reimbursable school meals, regardless of the method used to plan those meals, will be required to meet the applicable recommendations of the Dietary Guidelines including the quantified standards established for fat and saturated fat over the course of a school week.

To summarize the earlier proposals, located at 59 FR 30234–37, school food authorities would be required to make an effort to reduce sodium and cholesterol, increase dietary fiber, and serve a variety of foods. However, the Department did not propose specific levels for these components, since numeric targets are not established by the current Dietary Guidelines. Nevertheless, progress in these areas is expected and would be assessed. The RDA for the following nutrients were proposed at minimum levels: protein, vitamin A, vitamin C, iron, and calcium as well as the recommended energy intake for the specific age/grade. It was also proposed that energy levels (calories) would be established to provide, over the school week, an average of one-third of the RDA for the NSLP and one-fourth for the SBP and the maximum levels of calories from fat and saturated fat would be limited to 30 percent and 10 percent of calories, respectively.

#### *Food-Based Menu Systems*

In developing the proposed food-based menu planning systems, the Department retained the structure of the current meal patterns for the NSLP and SBP in terms of components. However, the Department could not retain the current *quantity* requirements, because they are inadequate to meet the goal of compliance with the Dietary Guidelines. Consequently, portion sizes for some components have been realigned to place greater emphasis on providing vegetables/fruits and grains. In addition, the ways grains/breads products may contribute to the reimbursable meal would be expanded.

The Department has revised the current meal pattern to better reflect the recommendations of the Dietary Guidelines. However, in the absence of ongoing nutrient analysis, there can be no absolute assurance that simple adherence to a meal pattern will result in meals that comply with these nutrition standards. Because of the vast differences in the nutrient value of various food items, especially given different cooking methods, meal planners must keep in mind the need to modify menus, recipes, product specifications, and preparation techniques. However, the Department recognizes that there may be some meal planning approaches that are designed to reflect the recommendations of the Dietary Guidelines. As discussed later in this preamble, the Department may allow such meal planning approaches as one way of demonstrating compliance with the applicable Dietary Guidelines and proposed nutrition standards

without requiring the State agency to conduct nutrient analysis as part of its oversight responsibilities.

In designing the proposed changes, the Department employed a method that is consistent with that used to develop previous meal patterns and other food guides. Nutrient profiles were developed for each of the four food components. Then, using food consumption data from the School Nutrition Dietary Assessment (SNDA) Study (released in October, 1993), the Department estimated the type and frequency of foods consumed from each of the food components. With this information, the Department arrived at composites of estimated nutrient and caloric contributions of each component and calculated revised quantities for each component to achieve compliance with the nutrition standards for each age/grade group. (These groupings are discussed later in this preamble.)

For developmental purposes, the nutrient profiles for each meal component were calculated based on their lowest fat forms and on the assumption that they contained no added sugars. The profiles also maintained the approximate proportions of the main ingredients which, according to SNDA, were used to satisfy each component. For example, in the meat/meat alternate component, the approximate relative proportions of meat, eggs, beans, and cheese were maintained. After establishing that the vitamin, mineral and protein needs were met for each age/grade grouping, the Department determined the calorie levels of each food component and calculated the difference between these levels and the calorie needs of each age/grade group.

Data from SNDA demonstrates that typical school meals already substantially exceed the target for protein. There would be little benefit, therefore, to raising calorie levels by increasing the size of the meat/meat alternate or milk components. Instead, the additional calories needed to make up the difference between the calorie levels of the lowest-fat versions of the meal components and the required calorie levels should come from carbohydrates and by using meat/meat alternate and milk that are somewhat higher in fat than the low-fat products used in the model. Moreover, the Department's analysis shows that nutrition standards can be met while using a variety of items within each component while still remaining within the Dietary Guidelines' recommendations for limiting calories from total fat to 30 percent and to 10

percent for saturated fat and attaining the RDA for specific nutrients.

For many schools, supplying one-third of the recommended energy allowance (calories) through lunches that provide no more than 30 percent of calories from total fat and 10 percent from saturated fat will require replacement of calories from fat with calories from other sources. Fat yields nine calories of food energy per gram, more than twice the food energy per gram provided by carbohydrates and protein, which each yield four calories per gram. The Menu Modification Demonstration Projects, conducted by the Department in 1990-92, showed that a common shortcoming in efforts to provide meals with a lower percent of calories from fat is the failure to maintain total calories (Fox and St. Pierre, 1993). In this demonstration project, where Federal technical assistance was minimal, three of the four NSLP demonstration sites substantially reduced total fat, but did not replace the lost calories. As a result, they failed to achieve their target goals for percent of calories from fat for the NSLP meal, and they fell short of providing one-third of the RDA for food energy. It is therefore appropriate for food-based menu systems to include increased servings for food components which can provide additional calories from sources other than fat while calories from fat are being reduced. (REFERENCE: Fox, M.K., and R. St. Pierre (1993). Menu Modification Demonstration Grants: Evaluation Results, Volume 1: Summary. Prepared by Abt Associates, Inc, under contract to the Department of Agriculture, Food and Nutrition Service.)

#### *Age/Grade Groups for Nutrition Standards*

The Department proposes to use age/grade groupings of kindergarten through grade 6 and grades 7 through 12 with an optional grouping for kindergarten through grade 3. The two required groups are designed to reflect the grade structures of the majority of schools. But, as some schools enroll children in kindergarten through grade 3, an optional standard is also proposed.

Establishing separate standards and meal patterns for younger versus older children recognizes the need to provide adequate energy and nutrients for growth based on their particular needs. Growth and maturation changes in adolescents require higher nutrient and energy levels than those for younger children. Nutrient and calorie levels designed for younger children are inappropriate for adolescents, as they fail to provide sufficient energy for

adolescents, especially for boys, as well as sufficient iron for adolescent females. A single nutrient standard that meets the needs of the adolescent will provide too many calories and too much fat for the younger child promoting either plate waste or excessive intake. In developing the calorie levels, the Department was also mindful of the need to *balance* the reduction in energy from calories from fat and saturated fat as advised by the Dietary Guidelines, with the need to maintain energy levels overall. Energy lost from reduced fat meals must be replaced by energy from carbohydrates.

To establish these levels, a table entitled "Calorie and Nutrient Levels for School Lunch" would be included at § 210.10(c)(2) and one entitled "Calorie and Nutrient Levels for School Breakfast" in § 220.8(a)(2). As discussed further, tables for the minimum quantities of the required food components are also proposed.

#### *Changes to the NSLP Meal Components*

The following are the specific changes the Department is proposing to the current meal pattern components. The Department wishes to emphasize that the principal differences between the proposed meal patterns and the current patterns reflect increases in the quantities of vegetables/fruits and breads/grains products. The Department is proposing no reductions to the current minimum quantity requirements for any components.

#### *Meat/Meat Alternate Component*

The Department is not proposing to change the minimum amounts of this component required for children in any age group. Nor are any changes being made to what constitutes the meat/meat alternate component. However, consistent with the Food Guide Pyramid, guidance materials issued by the Department in support of food-based menu planning systems will emphasize lower fat meat/meat alternates.

#### *Vegetables/Fruits*

The Department is proposing to increase the amount of fruits and vegetables made available over the course of a week. The Dietary Guidelines and the Department's Food Pyramid recommend a diet with a variety of vegetables, fruits and grain products. Moreover, the Department recognizes that fiber levels should be increased and calories from non-protein sources must be provided to replace those lost from the reduction in fat. The Department is proposing that the minimum servings for the vegetables/fruits component would be three-fourths of a cup (currently one-half cup for

children in kindergarten through grade 3 and three-fourths cup for grades 4–12) per lunch *plus* an additional one-half cup served *over a five-day period* for children in kindergarten through grade 6. Allowing a five-day period to serve the additional one-half cup provides schools with flexibility in meal planning. Because older children have greater need for calories and other nutrients, the proposed rule would increase the minimum serving for vegetables/fruits for children in grades 7 through 12 from three-fourths of a cup per day to one cup *per day*. No changes are being proposed, however, for the portion sizes for very young and preschool children nor are changes made to what constitutes this component. The Department is proposing to revise the chart, "Minimum Quantities" in § 210.10(c) as well as the additional discussion about this component in § 210.10(d)(3) to reflect the enhanced portion sizes.

#### *Grains/Breads*

As with the fruits/vegetables component, the Department is proposing a significant increase in the amount of grains/breads made available during a school week. Both the Dietary Guidelines and the Department's Food Pyramid place emphasis on the consumption of grains. In keeping with the use of the term "grains" in the Dietary Guidelines, this proposal would amend the chart, "Minimum Quantities" in § 210.10(c) and the additional discussion about this component in § 210.10(d)(4) to rename the component currently titled "Bread/Bread Alternate." The new title would be "Grains/Breads." In addition, the Department is proposing an increase in the number of servings of grains and breads for school children to augment dietary fiber and to provide an additional low-fat source of calories to balance the loss of calories from fat. Again, it should be noted that the servings for very young and preschool children have not been changed. However, for children in kindergarten through grade 6, the number of servings *per week* of grains and breads would be increased from 8 to 12. For children in grades 7 through 12, the number of servings would be increased from 10 to 15 servings *per week*. The Department is also proposing to revise

§ 210.10(d)(4)(ii) to permit one serving *per day* of grains/breads in the form of a dessert. This proposed change is designed to provide flexibility to assist menu planners in meeting energy needs. Current guidance (FNS Instruction 783–12), issued in 1983, established the requirements and the minimum weights

for the current breads/bread alternates component. The Department plans to reissue this Instruction when final regulations are published to revise the criteria for determining acceptable grains/breads products so that some additional items may be credited to this group. However, no changes are being made in the regulations regarding what constitutes this component.

#### *Milk*

As with the meat/meat alternate component, this proposal does not change the current minimum serving sizes for fluid milk for any of the age/grade groups. Readers should note that section 107 of Pub. L. 103–448 included a provision modifying the requirement that fluid whole milk and fluid unflavored low-fat milk be offered as part of all reimbursable lunches. The new statutory milk requirement at section 9(a)(2) of the NSLA, 42 USC 1758(a)(2), will be addressed in a separate rulemaking.

#### *School Lunch Component Chart*

To reflect these proposed changes to the school lunch pattern, the proposed rule would make a number of revisions to the table entitled "School Lunch Pattern-Per Lunch Minimums" in § 210.10(c). First, the title of the chart would be renamed "Minimum Quantities," since some of the quantity requirements are cumulative over the course of the school week. Secondly, the age/grade groups are the same as discussed above for the nutrition standards, except that the minimum portions for children ages one to two who may participate are included for easy reference. (Readers should note that these minimums are the same as those now in use.) Furthermore, school-age children have been separated into two groups: (a) kindergarten through grade 6 and (b) grades 7 through 12. School food authorities also have the option of using alternate portion sizes established for children in kindergarten through grade 3. Readers should note, however, that the current recommendation to provide children in grades 7 through 12 with three ounces of meat/meat alternate would be deleted. This revision is intended to ensure that the chart reflects only the proposed regulatory revisions. It has no effect on the minimum portions that schools must offer. In addition, the chart has been revised to incorporate the proposed increases in the minimum portions of fruits and vegetables and the number of servings of grains/breads.

#### *Changes to the School Breakfast Program*

In the June 10, 1994, rulemaking, the Department also proposed to amend the nutrition requirements for the SBP. As under the NSLP, the SBP would be required to comply with the Dietary Guidelines and with the RDA and calories levels adjusted appropriately. Breakfasts would be required to meet one-fourth of the RDA (consistent with the current design of the breakfast meal pattern) and would have to provide fewer calories than lunches. The current age/grade group for breakfast is retained because of its familiarity. Again, only the chart reflecting the RDA and calorie levels for the SBP is proposed herein. The chart "Calorie and Nutrient Levels for School Breakfasts" is contained in § 220.8(a)(2).

#### *Changes to the SBP Meal Components*

As with the proposed school lunch pattern, the Department is not proposing to reduce the portion size for any of the components of school breakfasts. The following are the specific changes the Department is proposing to the current meal pattern components for school breakfasts:

#### *Meat/Meat Alternate or Grains/Breads (the New Name for Bread/Bread Alternate)*

The current requirement for two servings of meat/meat alternate or two servings of grains/breads or one serving of each remains the same. However, school food authorities are encouraged to offer children in grades 7 through 12 an additional serving of the grains/breads component per day. This optional increase in the number of servings is intended to provide sufficient calories to meet the needs of the adolescent child, especially adolescent males, when the fat content of the breakfast is modified to be consistent with the Dietary Guidelines. To this end, the Department emphasizes that meeting the nutrient requirements of the grades 7 through 12 with the single pattern for kindergarten through grade 12 will be difficult. It is important that school food authorities recognize this and make an effort to offer high calorie, nutrient dense foods in the breakfast menu.

#### *Vegetables/Fruits*

There are no proposed changes in the minimum portions currently required for children in any age group.

#### *Milk*

There are no proposed changes in the requirements for the amount of fluid

milk that is served either as a beverage or on cereal.

#### *School Breakfast Component Chart*

The table entitled "School Breakfast Pattern-Per Breakfast Minimums" currently in § 220.8(a) would be amended to reflect the above proposed revisions. As with the NSLP, no changes are being proposed to the minimum quantities for infants and young children and the title has been changed to "Minimum Quantities" to be consistent with the corresponding chart for the NSLP.

#### *Compliance Monitoring*

The Department proposes to monitor compliance with the nutritional standards of the food-based menu systems in a manner consistent with the compliance process proposed for NuMenus, Assisted NuMenus and with the current regulations. Compliance with meal components and quantities on a per-meal basis for the food-based menu systems remain unchanged. The requirements in § 210.18(g)(2) for Performance Standard 2 under the administrative review system would continue to apply to those review elements; i.e., on the day of a review, the lunch service must be observed to ensure that all required meal components are offered and that children accept the minimum number of items stipulated both under the standard meal service and the offer versus serve option.

The requirement that program meals meet all nutrition standards, including the Dietary Guidelines, necessitates an additional review methodology for State agencies. While the compliance method for NuMenus and Assisted NuMenus was addressed in the June 10, 1994, rulemaking, this proposal addresses how this same basic compliance method would apply to food-based menu systems. Since, by law, these schools may not be required to conduct their own nutrient analysis, State agencies will not have nutrient analysis records to review to verify that the meals offered actually met the nutrition standards. Therefore, the Department is proposing to amend § 210.19, General Areas, to require that State agencies conduct a nutrient analysis of one week's meals using the school's production records.

This proposal would also authorize the Department to approve alternative methodologies proposed by the States if they provide the same degree of assurance that school meals are in compliance with all nutrition standards. The proposed provision on monitoring is consistent with a statement from the Committees' Analysis accompanying S.

1614 that ". . . nutrient analysis may be used by schools, State agencies or the Secretary as part of audit and compliance activities."

In order to provide maximum flexibility for States to use an alternative methodology to nutrient analysis as part of an administrative review, the Department will review any approaches proposed by State agencies or by school food authorities with the approval of their State agency to meet both the applicable Dietary Guidelines and the standards for calories and nutrients as detailed in the June 10, 1995, proposed rule at 59 FR 30234-5 and 59 FR 30239-40, for the NSLP and SBP, respectively. If the school food authority has used an approved alternative to the food-based menu systems option and has precisely followed it to meet the Dietary Guidelines and nutrition standards, the State agency would not be required to conduct a separate nutrient analysis.

The Department solicits comments on alternative methodologies that would support the production of meals that adhere to the Dietary Guidelines. The Department is particularly interested in methodologies that are easily implemented and could be shared with other States and is prepared to facilitate the sharing of information on such methodologies among States and school food authorities.

As part of its on-going efforts to implement the Dietary Guidelines, the Department has been in contact with State agencies to determine their training and technical assistance needs. As a result of information obtained from State agencies, a plan is being developed to provide a variety of resources in the areas of training modules and materials, recipes, product specifications, menu planning guides, videos and workshops in ways that are compatible with existing State training procedures. In addition, the Department will be soliciting applications for grants totalling approximately \$4,400,000 to fund State-level activities. The Department is again requesting State and local administrators to comment on what types of training and technical assistance are needed to best implement this proposed rule.

Compliance reviews would be conducted on the meals *offered* by the school food authority and/or the schools selected for review, depending on the level at which menus are planned and meals provided. For example, if a school food authority provides meals from satellite kitchens to schools, the State agency would use information from the production records at those kitchens to prepare the nutrient analysis. However, if an individual school with its own

menu planning and food production was selected for review, the State agency would use production records from that school's kitchen for nutrient analysis.

The State agency's nutrient analysis would be conducted using the same requirements and methodology employed by school food authorities choosing to use NuMenus or Assisted NuMenus. The Department proposed criteria for menu analysis in the June 10, 1994 proposed rule and is currently considering comments on those provisions for future adoption as a final rule.

The Department also recognizes that some schools or school food authorities may choose to use food-based menu systems *and* to conduct their own nutrient analysis. In these situations, the State agency may employ the analysis prepared by the local entity in lieu of conducting a separate nutrient analysis, provided that the nutrition analysis is done in accordance with the Department's criteria.

#### *Using the Results of Nutrient Analysis To Measure Compliance*

The results of the nutrient analysis from each production source would be used to determine compliance with the Dietary Guidelines' recommendation for limiting the calories from fat and saturated fat as well as the calories and the nutrient levels for the age/grade groups. In addition, the levels of sodium, cholesterol and dietary fiber would also be determined. These figures would be used for future reviews to determine if the school food authority had progressed toward meeting the nutrition standards.

School food authorities found to be out of compliance with the nutrition standards would be required to initiate corrective action. This requirement is consistent with what was proposed for implementation of NuMenus and Assisted NuMenus in the June 10, 1994, proposed regulation. School food authorities would be required to develop an acceptable corrective action plan in collaboration with the State agency. For school food authorities making good faith efforts to comply with the terms of the corrective action plan, the State agency would provide technical assistance and training to help them meet the nutrition standards and Dietary Guidelines. However, consistent with the June 10, 1994, proposal, if the school food authority has not been acting in good faith to meet the terms of the corrective action plan and refuses to renegotiate the plan, the State agency shall determine if a disallowance of reimbursement funds is warranted.

*Miscellaneous Revisions**School Week*

Sections 106(b) and 201(a) of Pub. L. 103-448 mandate that the nutritional requirements for school meals be based on a weekly average. The use of a weekly average was proposed by the Department on June 10, 1994 to establish a time frame for analyzing nutrients under NuMenus and Assisted NuMenus. The Department is proposing to add a more general definition of "School week" to § 210.2 and to § 220.2 to clarify the appropriate time period for determining compliance with the required nutrition standards. As proposed here, "School week" would be a minimum of three days and a maximum of seven days, and the days would be consecutive.

*Food Component, Food Item*

The definitions in § 210.2 of "Food component" and "Food Item" would be revised to reflect the new title of the grains/breads component that would replace the current title of bread/bread alternate. The Department would also like to note that no changes are being proposed to the number of items that comprise a reimbursable meal. Five items will continue to be required for a reimbursable lunch, and under the offer versus serve option, three of the five items must be taken.

*Lunch*

The definition of "Lunch" in § 210.2 would be revised to incorporate a reference to the nutrition standards as part of the elements that reimbursable meals must meet. Readers should note that this proposal repeats the definition of "Lunch under NuMenus and Assisted NuMenus" and under the current meal pattern, as proposed in the June 10, 1994, rulemaking. The Department is repeating this provision in order to provide readers with a complete definition of "Lunch" under all meal planning systems. However, since the Department has already received comments on the earlier definition, the Department will not accept additional comments on the definition of lunch under NuMenus and Assisted NuMenus.

*Milk Component*

In § 210.10(d)(1) there is a special exemption for schools that, prior to May 1, 1980, served six fluid ounces instead of the currently required eight fluid ounces to children ages 5-8 in grades kindergarten through grade 3. This proposal would remove this obsolete reference.

*Effective Dates*

Section 106(b)(2) of Pub. L. 103-448 requires that schools implement the Dietary Guidelines by July 1, 1996, unless a State agency grants a waiver to postpone implementation. Waivers may delay implementation to no later than July 1, 1998.

The statute also permits the Secretary to establish a date for implementation later than July 1, 1998. The Department does not presently envision extending this deadline because of the need to begin compliance with the Dietary Guidelines in an expeditious manner.

In addition, section 112(c)(3) of Pub. L. 103-448, 42 U.S.C. 1760(k)(3), requires the Department to issue a final regulation on this subject by June 1, 1995, incorporating the results of this proposed rulemaking as well as those concerning NuMenus and Assisted NuMenus that were proposed in the June 10, 1994, rule. Further, the Department, in compliance with section 112(c)(2) of Pub. L. 103-448, 42 USC 1760(k)(2), will be issuing a notice in the Federal Register to announce a public meeting to discuss this proposed action. This meeting will be held within 45 days of publication of this rulemaking and will be open to all interested parties and organizations. The Department encourages persons reviewing this proposed rule to watch for the Federal Register announcement of the public meeting.

While compliance with the updated nutrition standards is not required until July 1, 1996 (or later if waived by the State agency), school food authorities are encouraged to work towards meeting the Dietary Guidelines as well as the appropriate levels of nutrients and calories as soon as *feasible*.

*List of Subjects**7 CFR Part 210*

Children, Commodity School Program, Food assistance programs, Grants programs-social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

*7 CFR Part 220*

Children, Food assistance programs, Grant programs—social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

Accordingly, 7 CFR Parts 210 and 220 are proposed to amended as follows:

**PART 210—NATIONAL SCHOOL LUNCH PROGRAM**

1. The authority citation for 7 CFR part 210 is revised to read as follows:

Authority: 42 U.S.C. 1751-1760, 1779.

2. In § 210.2:

- a. the definition of "Food component" is revised;
- b. the definition of "Food item" is revised;
- c. the definition of "Lunch" is revised; and
- d. a new definition of "School week" is added in alphabetical order. The revisions and addition read as follows:

**§ 210.2 Definitions.**

\* \* \* \* \*

*Food component* means one of the four food groups which compose the reimbursable school lunch, i.e., meat or meat alternate, milk, grains/breads and vegetables/fruits.

*Food item* means one of the five required foods that compose the reimbursable school lunch, i.e., meat or meat alternate, milk, grains/breads, and two (2) servings of vegetables, fruits, or a combination of both.

\* \* \* \* \*

*Lunch* means a meal which meets the nutrient and calorie levels designated in § 210.10(c) and, if applicable, the school lunch pattern for specified age/grade groups as designated in § 210.10.

\* \* \* \* \*

*School week* means the period of time used as the basis for determining compliance with the 1990 Dietary Guidelines for Americans and the calorie and nutrient levels in § 210.10(c)(2). The period shall be a minimum of three consecutive days and a maximum of consecutive seven days. Weeks in which school lunches are offered less than three times shall be combined with either the previous or the coming week.

\* \* \* \* \*

3. In § 210.10:

- a. The section heading is revised;
- b. The heading of paragraph (a) is revised;
- c. Paragraph (c) is revised;
- d. The last two sentences of the concluding text following paragraph (d)(1) are removed;
- e. A new sentence is added at the end of paragraph (d)(3);
- f. The heading of paragraph (d)(4) is revised; and
- g. The second through fifth sentences of paragraph (d)(4)(ii) are removed and one new sentence is added in their place.

The additions and revisions read as follows:

**§ 210.10 Nutrition standards for lunches and menu planning methods.**

(a) *Definitions for infant meals.* \* \* \*

\* \* \* \* \*

(c) *Minimum quantities/nutrient levels for food-based menu systems.*

(1) At a minimum, schools shall serve meals in the quantities provided in the following chart:

MINIMUM QUANTITIES					
MEAL COMPONENT:	REQUIRED FOR		OPTION FOR		
	AGES 1-2	PRESCHOOL	GRADES K-6	GRADES 7-12	GRADES K-3
MILK .....	6 OUNCES .....	6 OUNCES .....	8 OUNCES .....	8 OUNCES .....	8 OUNCES.
MEAT OR MEAT ALTERNATE .....	1 OUNCE .....	1½ OUNCES ...	2 OUNCES .....	2 OUNCES .....	1½ OUNCES.
FRUITS AND VEGETABLES .....	½ CUP .....	½ CUP .....	¾ CUP PLUS ADDITIONAL ½ CUP OVER A WEEK.	1 CUP .....	¾ CUP.
GRAINS AND BREADS .....	15 SERVINGS PER WEEK— MINIMUM OF ½ PER DAY. <sup>1</sup>	18 SERVINGS PER WEEK— MINIMUM OF 1 PER DAY. <sup>1</sup>	12 SERVINGS PER WEEK— MINIMUM OF 1 PER DAY. <sup>1,2</sup>	15 SERVINGS PER WEEK— MINIMUM OF 1 PER DAY. <sup>1,2</sup>	10 SERVINGS PER WEEK— MINIMUM OF 1 PER DAY. <sup>1,2</sup>

<sup>1</sup> FOR THE PURPOSES OF THIS CHART, WEEK EQUALS FIVE DAYS.  
<sup>2</sup> UP TO ONE GRAINS/BREADS SERVING PER DAY MAY BE A DESSERT.

(2) At a minimum, schools shall provide the following calorie and nutrient levels over a school week:

CALORIE AND NUTRIENT LEVELS FOR SCHOOL LUNCH				
	PRE-SCHOOL	GRADES K-6	GRADES 7-12	GRADES K-3 OPTION
ENERGY ALLOWANCES (CALORIES) .....	517	664	825	633
TOTAL FAT (AS A PERCENTAGE OF ACTUAL TOTAL FOOD ENERGY) .....	(1)	(1)	(1)	(1)
TOTAL SATURATED FAT (AS A PERCENTAGE OF ACTUAL TOTAL FOOD ENERGY) .....	(2)	(2)	(2)	(2)
PROTEIN (g) .....	7	10	16	9
CALCIUM (mg) .....	267	286	400	267
IRON (mg) .....	3.3	3.5	4.5	3.3
VITAMIN A (RE) .....	150	224	300	200
VITAMIN C (mg) .....	14	15	18	15

<sup>1</sup> NOT TO EXCEED 30 PERCENT OVER A SCHOOL WEEK.  
<sup>2</sup> NOT TO EXCEED 10 PERCENT OVER A SCHOOL WEEK.

(3) School food authorities shall comply with *1990 Dietary Guidelines for Americans* and the provisions in paragraph (c)(2) of this section no later than July 1, 1996 *except that* State agencies may grant waivers to postpone implementation until no later than July 1, 1998. Such waivers shall be granted by the State agency using guidance provided by the Secretary.

(d) *Lunch components.* \* \* \*

(3) *Vegetable or fruit.* \* \* \* For children in kindergarten through grade six, the requirement for this component is based on minimum daily servings and an additional 1/2 cup in any combination over a five day period.

(4) *Grains and breads.* \* \* \*

(ii) \* \* \* The requirement for this component is based on minimum daily servings *plus* total servings over a five day period. \* \* \*

\* \* \* \* \*

4. In §210.19, paragraphs (a)(1) through (a)(5) are redesignated as paragraphs (a)(2) through (a)(6) respectively, and a new paragraph (a)(1) is added to read as follows:

**§210.19 Additional responsibilities.**

(a) *General Program management.*  
\* \* \*

(1) *Compliance with nutrition standards.* Unless waived in accordance with §210.10(c)(3), beginning with School Year 1996-97, school food authorities shall comply with the *1990 Dietary Guidelines for Americans* and the calorie and nutrient levels specified in §210.10(c) for reimbursable meals.

(i) Beginning with School Year 1996-97, State agencies shall evaluate compliance with the established nutrition standards over a school week. At a minimum, these evaluations shall be conducted once every 5 years and may be conducted at the same time a

school food authority is scheduled for an administrative review in accordance with §210.18. State agencies may also conduct these evaluations in conjunction with technical assistance visits, other reviews, or separately. Except as provided in this paragraph (a)(1)(i), the State agency shall conduct nutrient analysis on the menu(s) served during the review period to determine if the *1990 Dietary Guidelines for Americans* and the calorie and nutrient levels specified in §210.10(c)(2) and §220.8(a)(2) of this chapter were met. However, the State agency may:

(A) Use the nutrient analysis of any school or school food authority that offers meals using the food-based menu systems approaches provided in §210.10(c) and/or §220.8(b) of this chapter and that conducts its own nutrient analysis under criteria established by USDA of those meals; or

(B) Develop its own method for compliance review, subject to USDA approval.

(ii) if the menu for the school week fails to comply with the *1990 Dietary Guidelines for Americans* and/or to meet the calorie and nutrient levels specified in § 210.10(c)(2) and/or § 220.8(a)(2) of this chapter, the school food authority shall develop, with the assistance and concurrence of the State agency, a corrective action plan designed to rectify those deficiencies. The State agency shall monitor the school food authority's execution of the plan to ensure that the terms of the corrective action plan are met.

(iii) If a school food authority failed to meet the terms of the corrective action plan, the State agency shall determine if the school food authority is working towards compliance in good faith and, if so, may renegotiate the corrective action plan, if warranted.

However, if the school food authority has not been acting in good faith to meet the terms of the corrective action plan and refuses to renegotiate the plan, the State agency shall determine if a disallowance of reimbursement funds as authorized under paragraph (c) of this section is warranted.

\* \* \* \* \*

**PART 220—SCHOOL BREAKFAST PROGRAM**

1. The authority citation for 7 CFR part 220 is revised to read as follows:

Authority: 42 U.S.C. 1773, 1779.

2. In § 220.2, a new paragraph (w-1) is added to read as follows:

**§ 220.2 Definitions.**

\* \* \* \* \*

(w-1) *School week* means the period of time used as the basis for determining compliance with the *1990 Dietary*

*Guidelines for Americans* and the calorie and nutrient levels in § 220.8(a)(2). The period shall be a minimum of three consecutive days and a maximum of seven consecutive days. Weeks in which school breakfasts are offered less than three times shall be combined with either the previous or the coming week.

\* \* \* \* \*

3. In § 220.8, the section heading and paragraph (a) are revised to read as follows:

**§ 220.8 Nutrition standards for school breakfasts and menu planning methods.**

(a) *Minimum quantities/nutrient levels for food-based menu systems.*

(1) At a minimum, schools shall serve meals in the quantities provided in the following chart:

MINIMUM QUANTITIES

	REQUIRED FOR			OPTION FOR
	AGES 1-2	PRESCHOOL	GRADES K-12	GRADES 7-12
MEAL COMPONENT:				
MILK (FLUID) <sup>1</sup>	1½ CUP .....	¾ CUP .....	8 OUNCES .....	8 OUNCES.
MEAT OR MEAT ALTERNATE.	½ OUNCE PLUS .....	½ OUNCE PLUS .....	1 OUNCE PLUS .....	2 OUNCES PLUS
GRAINS/BREADS.	½ SERVING EACH OF GRAINS/BREADS AND MEAT/MEAT ALTERNATE (½ OUNCE) OR. 2 GRAINS/BREADS OR ..... 2 MEAT/MEAT ALTERNATE (1 OUNCE).	½ SERVING EACH OF GRAINS/BREADS AND MEAT/MEAT ALTERNATE(½ OUNCE) OR. 2 GRAINS/BREADS OR ..... 2 MEAT/MEAT ALTERNATE (1 OUNCE).	ONE SERVING EACH OF GRAINS/BREADS AND MEAT/MEAT ALTERNATE (1 OUNCE) OR. 2 GRAINS/BREADS OR ..... 2 MEAT/MEAT ALTERNATE (2 OUNCES).	ONE SERVING EACH OF GRAINS/BREADS AND MEAT/MEAT ALTERNATE (2 OUNCES) OR 2 GRAINS/BREADS OR 2 MEAT/MEAT ALTERNATE (4 OUNCES) PLUS ADDITIONAL 1 OUNCE PER DAY OF GRAINS/BREADS.
VEGETABLES/FRUITS <sup>2</sup> .	¼ CUP .....	½ CUP .....	½ CUP .....	½ CUP.

<sup>1</sup> A SERVING OF FLUID MILK SERVED AS A BEVERAGE OR ON CEREAL OR USED IN PART FOR EACH PURPOSE.

<sup>2</sup> A SERVING OF FRUITS OR VEGETABLES OR BOTH, OR FULL-STRENGTH FRUIT OR VEGETABLE JUICE.

(2) At a minimum, schools shall provide the following calorie and nutrient levels over a school week:

CALORIE AND NUTRIENT LEVELS FOR SCHOOL BREAKFAST

	PRE-SCHOOL	GRADES K-12	OPTION FOR GRADES 7-12
ENERGY ALLOWANCES (CALORIES) .....	388	554	618
TOTAL FAT (AS A PERCENTAGE OF ACTUAL TOTAL FOOD ENERGY) .....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
TOTAL SATURATED FAT (AS A PERCENTAGE OF ACTUAL TOTAL FOOD ENERGY) .....	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
PROTEIN (g) .....	5	10	12
CALCIUM (mg) .....	200	257	300
IRON (mg) .....	2.5	3.0	3.4
VITAMIN A (RE) .....	113	197	225
VITAMIN C (mg) .....	11	13	14

<sup>1</sup> NOT TO EXCEED 30 PERCENT OVER A SCHOOL WEEK.

<sup>2</sup>NOT TO EXCEED 10 PERCENT OVER A SCHOOL WEEK.

(3) School food authorities shall comply with *1990 Dietary Guidelines for Americans* and the provisions in paragraph (c)(2) of this section at the same time such provisions are implemented for the National School Lunch Program in accordance with § 210.10 (c)(3) of this chapter.

\* \* \* \* \*

4. In § 220.13, paragraphs (f)(3) and (f)(4) are redesignated as paragraphs (f)(4) and (f)(5), respectively and a new paragraph (f)(3) is added to read as follows:

**§ 220.13 Special responsibilities of State agencies.**

\* \* \* \* \*

(f) \* \* \*

(3) For the purposes of compliance with the *1990 Dietary Guidelines for Americans* and the calorie and nutrient levels specified in § 220.8(a)(2), the State agency shall follow the provisions specified in § 210.19(a)(1) of this chapter.

\* \* \* \* \*

Dated: January 18, 1995.

Ellen Haas

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

**Appendix A—Regulatory Cost/Benefit Assessment: Food-Based Menu Systems**

1. *Title:* National School Lunch and School Breakfast Program: Food-Based Menu Systems.

2. *Background:* The proposed rule for food-based menu systems is an extension of the proposed rule on Nutrition Objectives for School Meals which was published in the June 10, 1994 Federal Register at 59 FR 30218 (USDA Food and Nutrition Service, 1994).

This cost/benefit assessment extends the cost/benefit assessment which was developed for the proposed rule on Nutrition Objectives for School Meals to encompass the proposed food-based menu systems. That analysis was published in the Federal Register along with the rule.

The Healthy Meals for Healthy Americans Act of 1994, P.L. 103-448, November 2, 1994, requires USDA to provide within the National School Lunch and School Breakfast Programs an option for planning meals using a food-based system. This proposed rule amends the current meal pattern requirements and defines the food components and the minimum quantities for each component for various ages or grade levels. It also defines the nutrient requirements for

school meals for each of the age or grade levels, using levels derived from the most recent (1989) *Recommended Dietary Allowances* (RDAs) published by the National Research Council and from the quantitative recommendations for the maximum levels of fat and saturated fat as a percent of calories contained in the most recent (1990) USDA/DHHS *Dietary Guidelines for Americans*. These changes would be implemented by July 1, 1996 as required by law.

3. *Statutory Authority:* National School Lunch Act (42 U.S.C. 1751-1760, 1779) and Child Nutrition Act of 1966 (42 U.S.C. 1773, 1779).

4. *Cost/Benefit Assessment of Economic and Other Effects:*

**Synopsis**

This assessment finds that the proposed food-based menu system requirements can be met within current food costs and with market impacts at levels presented for the Nutrient Standard Menu Planning system proposed in the June 10, 1994 Federal Register. Compared to current school food service practice, improvement in food preparation techniques and food selections within food categories would be needed to meet the proposed food-based menu system requirements and RDA/Dietary Guidelines-derived nutrient targets for NSLP. While average food cost need not change, there will be a cost at the state level for establishing and conducting nutrient analysis as a routine component of local reviews. The national total for this cost is estimated to be less than \$2 million per year, and is offset by continuation of the previously proposed 20 percent reduction in state monitoring requirements.

*a. Costs To Produce a Meal*

The cost/benefit analysis accompanying the June 10, 1994 regulatory proposal "Nutrition Objectives for Healthy School Meals" determined that by using the Nutrient Standard Menu Planning approach it is possible within the current cost to provide school meals which meet defined nutrient targets derived from RDAs and the Dietary Guidelines for Americans. Since the food-based menu planning system is being proposed as a system which may be used in lieu of Nutrient Standard Menu Planning (NSMP) and Assisted Nutrient Standard Menu Planning, school food authorities will be able to select the planning approach which best fits their needs,

including consideration of the cost of planning and providing meals under the various available methods. This document extends the previously published analysis and discussion to cover the food-based menu planning option. Since the proposed meal pattern for the School Breakfast Program retains the existing pattern, this analysis focuses on the lunch meal.

**Data**

A nationally representative sample included in the School Lunch and Breakfast Cost Study conducted for FNS by Abt Associates found an average food cost of \$0.72 for school lunch meals prepared under the current meal pattern, rounded to the nearest whole cent (Abt Associates, 1994). This includes costs for all foods served as part of the National School Lunch Program (NSLP) reimbursable meal and is not limited to the cost of items which are credited towards the current meal pattern requirement, but excludes items offered for sale as a la carte. For example, if a school included a condiment bar and a cookie dessert along with the NSLP meal without an additional charge, the cost of the ingredients in the condiment bar and the cookie dessert were included in the overall average food cost determination, even though these items were not credited towards meeting the meal pattern minimum requirements. Similarly, if a school included in its NSLP meal more than the minimum amount of vegetable and fruit required by the current meal pattern, the cost of the ingredients in the full amount included in the NSLP meal was included in the overall average food cost determination.

Data on actual foods served in the NSLP were obtained from the 1993 USDA School Nutrition Dietary Assessment (SNDA) study conducted by Mathematica Policy Research for FNS (Mathematica Policy Research, 1993). The study included a survey of about 3550 students in grades 1 through 12 in 545 schools throughout the country. The students reported detailed information on the kinds and amounts of foods and beverages they consumed during a 24-hour period. The impact analysis used only the portion of the data on foods served to children as part of credited school lunches. It included plate waste but excluded a la carte items, such as desserts, purchased in addition to the school lunch. The SNDA survey contained detailed information on over 600 food items served in the school

lunch program. These items were aggregated into 52 food groups based on the primary ingredient and the percent of calories from fat. For example, there were two beef categories: high-fat and low-fat beef; two poultry categories; etc.

Food costs were estimated from ingredient cost data obtained in the 1993 School Lunch and Breakfast Cost Study and recipes for school lunch items. The recipes were necessary for two reasons: aggregation of ingredient costs to costs of food served, and for estimating the change in usage of the various agricultural commodities.

The USDA Economic Research Service (ERS) developed a computer

model incorporating the above data to assist in estimating the possible range of market impacts from the changes in the June 10, 1994 proposed rule. For the current analysis, this model was extended to reflect the food component crediting used in food-based menu planning. Crediting for each of the 52 food groups towards the four food components of the existing NSLP meal pattern was estimated by FNS using information contained in the "Food Buying Guide for Child Nutrition Programs." This extended model was then used to determine the average NSLP crediting of the NSLP meals included in the SNDA data.

Findings

Table 1 shows in abbreviated form the current meal pattern requirements for NSLP for grades K-12. For consistency with the proposed regulation the current "Bread or Bread Alternate" component will be referred to as "Grains/Breads" as proposed. This table is accompanied in program guidance with the recommendation that "portions be adjusted by age/grade group to better meet the food and nutritional needs of children according to their ages \* \* \*. If portions are not adjusted, the Group IV portions are the portions to serve all children."

TABLE 1.—SCHOOL LUNCH MEAL PATTERNS FOR GRADES K-12 (ABBREVIATED)

Food components	Food items	Minimum quantities		Recommended quantities
		Grades K-3, ages 5-8 (group III)	Grades 4-12, age 9 and over (group IV)	Grades 7-12, age 12 and over (group V)
Meat/Meat Alternate .....	Lean meat, poultry, or fish, or cheese, or equivalent from eggs, cooked dried beans or peas, peanut butter or other nut or seed butters or certain other alternates.	1.5 oz. ....	2 oz. ....	3 oz.
Vegetables/Fruits .....	2 or more servings of vegetables or fruits or both to total ..	.5 cups .....	.75 cups .....	.75 cups.
Grains/Breads .....	Servings of grains/breads of which a minimum of 1 per day must be enriched or whole-grain.	8 per week .....	8 per week .....	10 per week.
Milk (as a beverage) .....	Fluid whole milk, and fluid unflavored lowfat milk, skim milk, or buttermilk.	8 fl.oz .....	8 fl.oz .....	8 fl.oz.

Table 2 shows the findings derived from the School Nutrition Dietary Assessment Study (SNDA) data for each of the four required food components in the units used for the school meal patterns. These SNDA data show that, on average, NSLP meals served for grades K-12 exceed the existing minimum meal pattern requirements for meat/meat alternates; grains/breads; and vegetables/fruits. The average for fluid milk is slightly below the 8 fluid ounce minimum (7.5 fl. oz.), which is expected due to NSLP offer versus serve (OVS) rules. The proposed rule maintains the current meal pattern requirements for offering 8 fluid ounces of milk as a beverage.

TABLE 2.—AVERAGE AMOUNT OF EACH POTENTIALLY CREDITABLE FOOD COMPONENT AS FOUND IN SCHOOL YEAR 1991-92

Food component	Estimated average amount in NSLP meals, school year 1991-92
Meat/Meat Alternate (oz.) .....	2.8
Vegetables/Fruits (cups) .....	1.0
Grains/Breads (servings) .....	2.5
Milk (as a beverage) (oz.) .....	7.5

Using the extended school meals model, the average cost of each food component was estimated. Under both the existing meal pattern system and the proposed food-based menu system, the oldest age/highest grade group always requires the largest quantity of food from each food component. Tables 3 and 4 compare the SNDA findings on meals served by food component to the largest quantities of the meal pattern

requirements currently in place (Table 3) and as proposed (Table 4).

These tables show that within the existing reimbursement structure, schools already provide meals which, on average:

- For Meat/meat alternate, exceed the oldest age/grade minimums of both the current and proposed rules.
- For Vegetables/fruits, exceed the minimum of the current meal pattern for the oldest age/grade group, and are on average equal to the minimum for the oldest age/grade group of the proposed rule.
- For Grains/breads, exceed the minimum of the current meal pattern for the oldest age/grade group, and are on average about 0.5 servings per day less than the minimum for the oldest age/grade group of the proposed rule.

The proposed grains/breads minimum for the largest group of NSLP participants, grades K-6, is 12 servings per week, compared to the proposed 15 servings per week for grades 7-12. When weighted by historical student participation, the overall weighted average proposed minimum for grains/breads is equal to about 2.6 servings per day. Therefore, the current NSLP meals serve only slightly less (0.1 servings per day) than the proposed weighted

average minimum. Grains/breads is the least expensive food component on a per serving basis, averaging 3.2 cents per serving.

In summary, compared to the current meal pattern minimums, the proposed food-based menu system holds milk and meat/meat alternate constant and requires an increase in the minimum grains/breads and vegetables/fruits, but does not require an increase on average over current serving practices except for 0.5 servings of bread per week.

TABLE 3.—DIFFERENCE BETWEEN ACTUAL NSLP FOOD AND THE HIGHEST MINIMUM REQUIREMENTS OF THE CURRENT MEAL PATTERN

Food component	Largest quantity required by current NSLP meal pattern	Estimated average amount in NSLP meals, school year 1991-92	Difference (actual minus required)
Meat/Meat Alternate (oz.)	2.0	2.8	+0.8
Vegetables/Fruits (cups)	.75	1.0	+0.25
Grains/Breads (average servings per day)	1.6	2.5	+0.9
Milk (as a beverage) (oz.)	8.0	7.5	-0.5

<sup>1</sup> Probably not zero due to OVS effect.

TABLE 4.—DIFFERENCE BETWEEN ACTUAL NSLP FOOD AND THE HIGHEST MINIMUM REQUIREMENTS OF THE PROPOSED FOOD-BASED MENU SYSTEM

Food component	Largest quantity required by proposed NSLP food-based menu system	Estimated average amount in NSLP meals, school year 1991-92	Difference (actual minus proposed)
Meat/Meat Alternate (oz.)	2.0	2.8	+0.8
Vegetables/Fruits (cups)	1.0	1.0	no difference

TABLE 4.—DIFFERENCE BETWEEN ACTUAL NSLP FOOD AND THE HIGHEST MINIMUM REQUIREMENTS OF THE PROPOSED FOOD-BASED MENU SYSTEM—Continued

Food component	Largest quantity required by proposed NSLP food-based menu system	Estimated average amount in NSLP meals, school year 1991-92	Difference (actual minus proposed)
Grains/Breads (average servings per day)	3.0	2.5	-0.5
Milk (as a beverage) (oz.)	8.0	7.5	-0.5 <sup>1</sup>

<sup>1</sup> Probably not zero due to OVS effect.

Reanalysis of Market Impact Scenarios

The three scenarios for potential market impacts described in the June 10, 1994 proposal were reanalyzed, incorporating the extended data on food component crediting. These three example market impact scenarios were developed using a model that constrained NSLP food cost to remain at the average per meal cost level determined by the School Lunch and Breakfast Cost Study and meet the proposed nutrient targets. The first scenario minimized change from current eating choices for specific commodities, but allows substitution among the 52 food groups. The second scenario is the same as the first, but demonstrates the effect of shifting all chicken to lower fat chicken to show how change in preparation or commercial availability can affect a particular commodity. The third scenario required that there be no change in the total quantities of the various major commodities used (except for butter), and tended to increase the relative use of the lower fat versions of the commodities (e.g., lower fat pork such as ham instead of ribs or bacon). In addition, the extended school lunch model was used to determine the average food cost for each of the four food components. The following describes the findings from these analyses.

Table 5 shows the results of applying the NSLP crediting rules to the three impact scenarios. The quantities shown in table 5 are daily averages across all grades K-12.

Meat/Meat Alternate

The proposed average minimum servings of meat/meat alternate is not

met in Scenario 1, but is exceeded in Scenarios 2 and 3. Scenario 1 provides 1.9 ounces of meat/meat alternate, which is not sufficient to meet the 2 ounces minimum requirement for grades K-6 and 7-12. This scenario was developed to show the effect of minimizing the change in current food offerings (e.g., trying to maintain the percentage of meat/meat alternate from lower fat chicken and higher fat chicken). Since the grades K-3 meat/meat alternate requirement is 1.5 ounces, the actual average minimum requirement for grades K-12 will be slightly less than 2.0 ounces. However, at least 20 percent of the school meals would need to be provided using the K-3 pattern for the overall average minimum requirement to be 1.9 ounces. While more than 20 percent of all NSLP meals are served to children in grades K-3, for administrative efficiency these are often served using the meal pattern for older students, so the overall average minimum requirement is likely to be above 1.9 ounces.

Grains/breads

The proposed average grains/breads minimum servings is met or exceeded by all three scenarios. All three scenarios exceed the minimum requirement for grains/breads for grades K-6. Scenarios 1 and 2 also exceed the minimum requirement for grades 7-12. Scenario 3 provides 2.6 servings of grains/breads, which as discussed above, is equal to the overall weighted average proposed minimum for grains/breads.

Vegetables/fruits

The proposed average vegetables/fruits minimum servings is met or exceeded by all three scenarios. Scenarios 2 and 3, which allow for somewhat larger shifts in food preparation methods, provide more than the largest minimum requirement of the proposed food-based menu systems except for vegetables/fruits in scenario 3. The amount of vegetables/fruits in scenario 3, 0.9 cups, exceeds the amount required for grades K-6 (average 0.85 cups per day), and is approximately equal to the expected average minimum requirement across all NSLP meals. Over 60 percent of the meals are served to students in grades K-6, and some of these will be served in schools using the grades K-3 pattern, which requires only 0.75 cups vegetables/fruits, so the overall average minimum requirement across all NSLP meals is approximately 0.9 cups.

TABLE 5.—AVERAGE DAILY NSLP SERVINGS: BASELINE AND THREE SCENARIOS

	Meat/ meat alter- nate (oz.)	Grains/ breads (servings)	Vege- tables/ fruits (cups)	Milk (fl. oz.)
Baseline (SNDA) .....	2.8	2.5	1.0	7.5
Scenario 1 (no change of preparation techniques) .....	1.9	4.2	1.3	7.5
Scenario 2 (lower fat chicken preparation) .....	2.1	4.1	1.2	7.5
Scenario 3 (shifts of selections within components; no change in commodity markets) .....	2.9	2.6	0.9	7.5

### Cost for Food Components

The extended school lunch model was used to estimate the average cost for each food component at baseline and for the three market impact scenarios. The cost for non-creditable foods which are sometimes served with lunch, such as non-fruit desserts, was also estimated. The average cost for a 2 ounce serving meat/meat alternate increased by about 1/2 cent in scenarios 1 and 2, and by 1 cent in scenario 3. This is consistent with the expectation of some food personnel that leaner selections from the meat/meat alternate component may increase unit cost for this component. The per serving cost also increased for vegetables/fruits. The average cost of 1/2 cup of vegetables/fruits increased by 1/2 cent in scenarios 1 and 2, and by 0.2 cents in scenario 3. The cost of 8 fluid ounces of milk remained the same in scenarios 1 and 2, and increased by 0.2 cents in scenario 3.

In contrast, the average cost of a serving of grains/breads decreased by 0.4 cents in scenarios 1 and 2 and by 0.7 cents in scenario 3. In scenarios 1 and 2, there was no change in the total 0.6 cents per meal available for non-creditable items, but in scenario 3, about 0.1 cents of this was shifted to creditable items.

This cost-per-component-serving analysis shows that the cost of food for the NSLP meals can be maintained, even when the average cost for some components increases, without severely diminishing the funds available for non-creditable foods which help flavor meals to meet individual preferences. The ability to select slightly less expensive items from the grains/breads component can effectively offset both the modest per serving cost increases in other components and the slightly increased average minimum requirement (+0.5 servings per week) for grains/breads.

By definition, the average results reported above mean that some school districts would be expected to experience food costs that vary considerably from those reported above. This is not different from the current

situation because there is already a wide range of food costs due to factors such as economies of size, geographic variation in delivery and labor costs, and local market conditions. Similarly, average quantities served also vary among schools and sometimes within schools. If a school currently serving less than the average portions of grains/breads or vegetables/fruits opts for the proposed food-based menu planning system, they may have to increase the quantities offered.

### Conclusion

In summary, the findings for the three scenarios indicate that the proposed NSLP food-based menu system requirements can be met within current food costs and with market impacts at levels presented in the June 10, 1994 Federal Register. At least some improvement in food preparation techniques and food selections within food categories would be needed to meet the proposed menu system requirements and RDA/Dietary Guidelines-derived nutrient targets for NSLP. Efforts which may influence the speed and direction of these shifts, such as training and technical assistance for school food service personnel in improved menu planning and food preparation techniques, development of improved recipes, and production of lower fat products by industry, could help to simplify implementation when the food-based menu planning system is selected.

### b. Implementation Costs

This section expands upon the Section e. Implementation Cost contained in the June 10, 1994 Federal Register cost/benefit assessment to cover the food-based menu planning system option. As stated there, initial implementation costs faced by schools will vary depending on existing capabilities and resources within districts and will take many forms. This proposal provides schools with a new option, so they would have the option of selecting among NSMP, Assisted-NSMP, or the food-based menu planning system. Schools are expected

to consider implementation costs in making their selection.

Local, State and Federal resources are available for implementation. USDA has already initiated a number of improvements which will assist in implementation, some of which apply to a specific planning system option and others which will assist schools in selecting the option best suited to their needs. These include updated and improved recipes for schools, a computerized data bank of standard nutritional values of meals served and a demonstration project on NSMP. The demonstration will incur much of the developmental cost of the basic NSMP system framework and identify cost effective strategies for implementation.

The Department believes that implementation of meal improvements will be facilitated if students are receptive to the changes in foods. A number of efforts will help encourage students to accept such changes. Central to this effort is the Department's Children's Nutrition Campaign, a multi-faceted national effort designed to motivate children to make healthier food choices by getting them excited about making choices and giving them the skills to do so. It is designed to deliver nutrition messages through multiple and reinforcing channels to maximize impact and credibility. Core components will be mass media and in-school efforts, supplemented by strategic public-private partnerships to leverage USDA investments and extend reach. The FY 1995 federal budget includes over \$20 million to launch this campaign and to provide extensive training for school meal providers on how to plan and prepare nutritious and appealing meals. The Department has awarded nutrition education cooperative agreements to develop comprehensive community-based approaches to nutrition education. The Department is also assisting school food service professionals by working with chefs, farmers and others to make school meals appealing and healthful.

States receive over \$90 million annually from the Federal level in State Administrative Expense (SAE) funds for

program oversight. A portion of these resources are available to assist in implementation. Some of the FY 1995 federal funds for training will be used to train states on implementation of the management systems needed to support food-based menu planning, including the requirement for periodic nutrient analysis of school meals by the State as a component of local reviews. In addition, since the review cycle has been extended from four years to five years, the proposed regulation would reduce the level of State resources devoted to local school food authority reviews, which is described in more detail below.

At the local level, if the proposed food-based menu planning system is selected, it may require training and technical assistance for some staff. The continuation of the historical food component definitions and crediting rules (with one improvement for grains in desserts) will simplify this implementation. However, meals must, on average over a week, meet the RDA/Dietary Guidelines-based nutrient targets, and achieving this through a food-based menu system requires a considerably greater level of nutrition knowledge than that required to fulfill a meal pattern only. For example, the meal planner must know which combinations of food choices over each week are acceptable to students and are likely to result in meals that offer at least the food component minimums and provide adequate calories, iron and other nutrients without exceeding the fat and saturated fat limits as a percent of calories.

A study of school food authorities in the mid-Atlantic region found that under the existing meal pattern system, 60 percent of school food authorities (SFAs) employ computers for some functions (Brewer, DeMicco and Conn, 1993). Over one-fourth of these districts had comprehensive systems that allowed them to do menu management and nutritional evaluations. The menu modification demonstrations found that the lack of appropriate computer software limited the feasibility of monitoring the nutritional quality of menus. More recently developed software has greatly enhanced the ability to perform these analyses, which will now be supported by a USDA developed data base. Schools with microcomputers should be able to use this software, and may opt to use it to assist in food-based menu planning, for example, to analyze the recipes of some popular entrees.

The cost analysis found that the nutrient requirements can be met at about the current cost of food in the

National School Lunch Program. Because the foods used in the market impact analysis were drawn from what is currently being served, and various adjustments in preparation practices and frequency of food use can meet the food component minimums and nutrient requirements, USDA does not anticipate the need for significant changes in meal preparation practices that would affect the cost to prepare meals. The administrative cost of conducting the proposed food-based menu planning should be about the same as current operations once the system is fully implemented in a school.

In summary, since at the local level schools should make reasonable economic decisions and this proposal serves to increase their options, the Department does not anticipate increased local implementation cost due to this proposal. At the Federal and State levels, there will be increased cost to provide training and technical assistance for an additional option and to implement systems for management of this option in the event that some locals select food-based menu planning, with the majority of this cost being State implementation. The Federal component of this will be covered through revised budgeting for the funding available for Dietary Guidelines implementation in FY 1995 and subsequent years. At the State level, the initial planning and set-up for this additional food-based menu planning option is estimated to take about 80 hours of staff time for each State administrative unit (the time for ongoing operation is addressed in the following section). Therefore, at an estimated average rate of \$25 per hour, the Department projects an average cost of \$2,000 per State for initial planning and set-up. This cost would be covered by part of the savings from the reduction in administrative burden due to the previously proposed extension of the review cycle from four to five years.

#### *c. Ongoing Costs and Other Significant Effects*

Under this proposed rule, States will be required to perform nutrient analyses as a routine component of reviews of school food authorities using the food-based menu planning system, increasing the cost of ongoing program management. It is estimated that on average an additional 12 hours will be required for nutrient analysis for each food-based menu planning school reviewed. The actual total cost for these reviews will vary depending upon the percent of school food authorities selecting the food-based menu planning option. Since this percentage is

unknown, a range of cost is projected including the upper bound of 100 percent. In consideration of the comments received from the food service community, the lower bound has been set at 25 percent. Given this range, and assuming an average rate of \$25 per hour, the Department projects an increase in national aggregate State ongoing management cost for these reviews of \$0.4 to \$1.7 million. States can reduce the percent of schools using food-based menu planning by providing enhanced levels of training and technical assistance for NSMP and Assisted-NSMP.

To provide for the resources needed, this proposal continues the twenty percent reduction in state monitoring requirements previously proposed. This reduction will enhance the level of resources available at the State level to focus on training and technical assistance efforts and nutrition reviews of food-based menu planning systems.

While implementation will require a dedicated effort on the part of the Department, the state agencies and local school food authorities, the cost of ongoing operation and maintenance of a food-based menu planning system at the local level will be indistinguishable from the current meal pattern based system.

#### *d. Benefits*

The health benefits and value due to risk reduction of improving school meals to be consistent with the principles of the Dietary Guidelines for Americans were discussed in the June 10, 1994 cost/benefit assessment. The addition of the food-based menu planning option retains the benefits as previously presented.

The SNDA study found that NSLP lunches significantly exceed the Dietary Guidelines recommendations for fat, saturated fat and sodium. Diet-related diseases accounted for almost 65 percent of all deaths in the U.S. in 1991 (National Center for Health Statistics, 1993). About 300,000 deaths per year, or about 14 percent of all deaths, has been estimated as the lower bound for deaths due to diet and activity patterns (McGinnis and Foege, 1993). The previous analysis concluded that if the reductions in fat and saturated fat intake instituted during the school years are continued into adulthood, the increase in life-years and the value in dollars based upon willingness to pay would be of a magnitude similar to or exceeding that estimated for the Food and Drug Administration (FDA) food labeling changes, which were \$4.4 to \$26.5 billion over 20 years. The lag time to realize this level of benefits over a 20

year period might be greater since FDA's estimates apply to the U.S. adult population and the proposed rule on school meals will begin to have effect with those children in school at the time of implementation. Since the food-based menu planning option requires that RDA and Dietary Guideline-based calorie and nutrient levels be provided, the health benefits should be the same as those of NSMP and Assisted-NSMP.

#### References

- Abt Associates, Inc. (1994). "School Lunch and Breakfast Cost Study." Prepared under contract to: USDA Food and Nutrition Service.
- Brewer, K.P., F.J. DeMicco and R.E. Conn (1993). "Computer Hardware and Software Use in School Food Service Operations." School Food Service Research Review, Volume 17, Number 2.
- Mathematica Policy Research (1993). "School Nutrition Dietary Assessment Study." Prepared under contract to: USDA Food and Nutrition Service.
- McGinnis, J.M. and W.H. Foege (1993). "Actual Causes of Death in the United States". Journal of the American Medical Association, Nov. 10, 1993, Vol 270, No. 16:2207.
- National Center for Health Statistics (1993). "Advance Report of Final Mortality Statistics, 1991". Monthly Vital Statistics Report, Vol. 142, No. 2 (Supplement).
- National Research Council (1989). *Recommended Dietary Allowances*, 10th Edition. National Academy of Sciences, National Academy Press.
- USDA Food and Nutrition Service (1994). "National School Lunch and School Breakfast Program: Nutrition Objectives for School Meals; Proposed Rule." Federal Register, Vol. 59, No. 111 (June 10, 1994).
- USDA/DHHS (1990). "Nutrition and Your Health: Dietary Guidelines for Americans." Third Edition. Home and Garden Bulletin No. 232.

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## DEPARTMENT OF AGRICULTURE

### Food and Consumer Service

#### 7 CFR Parts 210 and 220

#### National School Lunch Program and School Breakfast Program; Notice of Public Meeting

**AGENCY:** Food and Consumer Service, USDA.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Healthy Meals for Healthy Americans Act of 1994 amended the National School Lunch Act to require that meals served through the National School Lunch and School Breakfast Programs comply with the *Dietary Guidelines for Americans*

beginning no later than the commencement of the 1996-97 school year. Compliance with the Dietary Guidelines is to be achieved through a variety of meal planning approaches including "food-based menu systems." The food-based menu planning concept is published elsewhere in today's Federal Register. Further, the Act requires that the Department conduct a public meeting to discuss the proposed food-based menu systems. This Notice announces the meeting.

**DATES:** The meeting is scheduled for Friday, February 17, 1995, from 8:30 a.m. to 1:00 p.m. Persons who cannot attend the meeting may submit written comments on the proposed regulation. To be assured of consideration, comments must be postmarked on or before March 13, 1995, and comments transmitted via E-mail must be sent no later than 5 p.m. Eastern Standard Time on that same date.

**ADDRESSES:** The meeting will be held in the Williamsburg Room, Room #104A, Administration Building, USDA, 12th and Jefferson Drive, SW., Washington, DC 20250. Written comments should be sent to: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service (FCS), USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may be sent via E-mail to: healthykids@es USDA.gov. If comments are sent electronically, commenters should designate "receipt requested" to be notified by E-mail that the message has been received by USDA. Written submissions, the meeting transcript, and comment letters may be reviewed by the public in Room 1007 in the Alexandria office of FCS listed above during regular business hours of 8:30 a.m. to 5 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** William Wasserman, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; (703) 305-2281.

**SUPPLEMENTARY INFORMATION:** This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

The National School Lunch and School Breakfast programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553 and No. 10.555, respectively, and are subject to

the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29112, June 24, 1983.)

#### Background

Section 112(c) of Public Law (Pub. L.) 103-448, the Healthy Meals for Healthy Americans Act of 1994, enacted on November 2, 1994, amended section 9 of the National School Lunch Act (NSLA), 42 U.S.C. 1758(f), to require that the Department develop "food-based" systems for school food authorities to use in planning and preparing meals served under the National School Lunch Program (NSLP) and School Breakfast Program (SBP). Section 106(b) of Pub. L. 103-448 also amended section 9 of the NSLA, 42 U.S.C. § 1758(f)(2)(A), to require that school meals meet the Dietary Guidelines for Americans by July 1, 1996, unless the State agency permits later implementation.

Section 112(c)(2) of Pub. L. 103-448 (42 U.S.C. § 1760(k)(2)) also requires that the Department hold a public meeting to "discuss and obtain public comments on the proposed rule" not later than 45 days after the publication of the proposed regulation. The legislation states that the meeting shall be held with, among others, representatives of affected parties, such as program administrators, school food service personnel, parents, and teachers. Further, the legislation mentions inclusion of organizations, such as public interest antihunger organizations, health and consumer groups, food manufacturers and vendors, and nutritionists.

In addition to this Notice, the Department is issuing invitations to organizations and individuals who may have an interest in this proposal. Among those specifically invited are the American School Food Service Association, National PTA, Public Voice for Food and Health Policy, American Heart Association, American Dietetic Association, Center for Science in the Public Interest, the American Academy of Pediatrics, and the National Education Association, as well as organizations representing major food manufacturers or vendors that sell food products to the school meal programs. In addition to hearing comments from invitees, one hour will be reserved at the close of the meeting for observers who, on a first-come, first-serve basis and subject to time limits, wish to present their comments. Written material will also be accepted from