

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program: School Meals Initiative for Healthy Children

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule

SUMMARY: This final rule amends the regulations governing the nutrition standards for the National School Lunch and School Breakfast Programs. It is part of an integrated, comprehensive plan for promoting the health of the Nation's school children by updating the nutrition standards for school meals and by providing State agencies and local food service operators with the technical assistance and tools to meet these standards. On June 10, 1994, the Department proposed improvements, including a provision to incorporate the *Dietary Guidelines for Americans* into the program regulations. The *Dietary Guidelines for Americans* set forth medical and scientific consensus on proper nutrition as a vital element in disease prevention and long-term health promotion. That proposal would have also established a method of meal planning and preparation based on computerized nutrient analysis. On January 27, 1995, the Department published a supplemental proposal to provide local food authorities with an additional meal planning option—a food-based menu system. This final rule implements provisions of both proposals and reflects the Department's review of the comments received on those proposals. The foundation of this final rule is the requirement that, by School Year 1996/1997, school lunches and breakfasts comply with the recommendations of the *Dietary Guidelines for Americans*. This rule also establishes specific minimum standards for key nutrients and calories which school meals must meet. To facilitate implementation of the updated standards, the regulation provides schools with three meal planning options and streamlines some administrative requirements to enhance flexibility for schools and State agencies. This rule also incorporates some provisions of the Healthy Meals for Healthy Americans Act of 1994. The effect of this rule will be to provide

more healthful and nutritious meals to the Nation's school children.

EFFECTIVE DATE: July 13, 1995

FOR FURTHER INFORMATION CONTACT: 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; telephone: 703-305-2620.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

This final 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 final 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. In the interest of furthering efforts to reinvent government, this rule reduces current State agency administrative burdens and makes a technical adjustment in the recordkeeping burdens. In addition, the Department of Agriculture (the Department or USDA) does not anticipate any adverse fiscal impact on local schools. Analyses by FCS and the Department's Economic Research Service found that the menu planning aspects can be met at the current cost of food in the National School Lunch and School Breakfast Programs. Further, these analyses indicate that the reimbursement structure of the Programs, along with student payments for meals served, provide sufficient subsidy.

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 **Federal Register** (FR) 29112, June 24, 1983.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil

Justice Reform. This final 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 final 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 final 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 final rule contains 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). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: National School Lunch Program and School Breakfast Program: School Meals Initiative for Healthy Children.

Description: Under this final rule, some existing recordkeeping activities contained in 7 CFR parts 210 and 220 would be affected. The OMB control numbers are 0584-0006 and 0584-0012, respectively.

Description of Respondents: State agencies, school food authorities and schools doing on-site preparation of meals.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

7 CFR 210.8 (a)(3)	Annual number of respondents	Annual frequency	Average burden per response (hours)	Annual burden hours
Existing	20,249	12	2	485,976
New	* 3,442	12	2	82,608
Difference				- 403,368

* These respondents represent the 17% of school food authorities which are found through administrative reviews conducted under § 210.18 to have counting and claiming deficiencies and therefore must continue using the current edit checks.

7 CFR 210.10/nutrient analysis menu planning	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing				
New	* 14,235	180	.333	853,246
Difference				+853,246

* This estimate uses approximately 20% of schools. Please note that the current OMB approved burden is based on 70,455 schools. However, for the purposes of a more accurate comparison, the current burden has been adjusted here to include the same number of schools used to determine the new burden.

7 CFR 210.10/ food-based menu planning	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing	* 71,176	180	.25	3,202,920
New	** 56,941	180	.25	2,562,345
Difference				- 640,575

* Please note that the current OMB approved burden is based on 70,455 schools. However, for the purposes of a more accurate comparison, the current burden has been adjusted here to include the same number of schools used to determine the new burden.

** This estimate uses approximately 80% of schools.

7 CFR 210.15(b)(4)	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing	20,249	12	52.333	12,716,291
New				
Difference				- 12,716,291

7 CFR 220.8/nutrient analysis	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing				
New	* 12,117	180	.117	255,184
Difference				+255,184

* This estimate uses approximately 20% of schools. Please note that the current OMB approved burden is based on 49,962 schools. However, for the purposes of a more accurate comparison, the current burden has been adjusted here to include the same number of schools used to determine the new burden.

7 CFR 220.8/food-based menu planning	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing	* 60,585	180	.083	905,140
New	** 48,468	180	.083	724,112
Difference				- 181,028

* Please note that the current OMB approved burden is based on 49,962 schools. However, for the purposes of a more accurate comparison, the current burden has been adjusted here to include the same number of schools used to determine the new burden.

** This estimate uses approximately 80% of schools.

7 CFR 220.13(i)	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing	5,658	12	34	2,308,464
New				
Difference				- 2,308,464

As required by section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), FCS has submitted a copy of this final rule to OMB for review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burdens, should direct them to the Policy and Program Development Branch, Child Nutrition Division, (address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Laura Oliven, Desk Officer for FCS.

Background

The primary purpose of the National School Lunch Program (NSLP), as instituted by Congress in 1946, was "to safeguard the health and well-being of the Nation's children. * * *" (Section 2 of the National School Lunch Act (NSLA), 42 U.S.C. 1751). At that time, nutritional concerns in the United States centered on nutrient deficiencies and issues of underconsumption. Therefore, over time, meal requirements for the NSLP (7 CFR 210.10) were designed to provide foods sufficient to approximate one-third of the National Academy of Sciences' Recommended Dietary Allowances (RDA). Participating schools were required to offer meals that complied with general patterns established by the Department. These patterns were developed to provide balanced meals by focusing on minimum amounts of specific components (meat/meat alternate, bread/bread alternate, vegetables, fruits and milk) rather than on the nutrient content of the entire meal. Virtually no substantive changes have been made to these patterns since the program's inception.

Over the past 50 years, an array of scientific knowledge has been developed which documents that excesses in consumption are a major concern because of their relationship to the incidence of chronic disease. The typical diet in the United States is high in fat, saturated fat and sodium and low in complex carbohydrates and fiber. As a result of this accumulating body of scientific research, dietary recommendations for the population of the United States were developed in the late 1970's. These recommendations were followed in 1980 by the *Dietary Guidelines for Americans* (or Dietary Guidelines), issued jointly by the Department of Agriculture and the

Department of Health and Human Services. These Dietary Guidelines were subsequently updated in 1985 and again in 1990. Also in that year, Title III of the National Nutrition Monitoring and Related Research Act of 1990 (Public Law (Pub. L.) 101-445, 7 U.S.C. 5301, *et. seq.*) was enacted. This law requires that the Dietary Guidelines be reviewed by a panel of experts every five years to determine whether the existing standards need to be altered and, if so, to recommend changes. As a result of this process, the Dietary Guidelines are based on the best available scientific and medical knowledge. (Readers wishing a more detailed discussion of the development of the Dietary Guidelines should refer to the preamble of the June 10, 1994, proposal at 59 FR 30219.)

The current Dietary Guidelines recommend that people eat a variety of foods; maintain a healthy weight; choose a diet with plenty of vegetables, fruits, and grain products; and use sugar and sodium in moderation. The Dietary Guidelines also recommend diets that are low in fat, saturated fat, and cholesterol so that over time, fat comprises 30 percent or less of caloric intake and saturated fat less than 10 percent of total calories for persons two years of age and older.

Information available to the Department consistently shows that children's diets, including meals served in schools, do not conform to the recommendations of the Dietary Guidelines. Especially significant were the findings of a nationally representative USDA study entitled the *School Nutrition Dietary Assessment (SNDA)* study. Released in October, 1993, the SNDA study presented findings on the nutrients and foods provided in school meals and described the dietary intakes of students on a typical school day. The study compared nutrients provided in school meals with the recommendations of the Dietary Guidelines on fat and saturated fat, the National Research Council's (NRC) *Diet and Health* recommendations on sodium, cholesterol and carbohydrate intake, and the current objectives that the nutrients provided in the NSLP meet one-third of the RDA and that the School Breakfast Program (SBP) meet one-fourth of the RDA.

The findings from the SNDA study showed that school lunches meet the nutrition standards established at the start of the NSLP in the late 1940's, but the study also showed that school lunches exceed the recommended levels of fat and saturated fat established by the Dietary Guidelines. Specifically, the average percentage of calories from total

fat was 38 per cent compared with the recommended goal of 30 per cent or less; and the percentage from saturated fat was 15 per cent, compared with the recommended goal of less than 10 per cent. The study also found that children who ate the school lunch consumed a significantly higher amount of calories from fat than children who brought their lunch from home or obtained a lunch from vending machines or elsewhere at school. The SNDA study also showed that while school meals met the NRC recommendation on cholesterol, the meals did not meet the NRC recommendations on sodium or carbohydrate levels. In fact, the level for sodium, at 1,479 milligrams, was nearly two times the NRC lunch target of 800 milligrams. Even though the SBP did meet most of the recommendations in the Dietary Guidelines, the number of lunches served in schools far exceeds the number of breakfasts served. It is clear, therefore, that school meals do not conform overall to current scientific knowledge of what constitutes a healthful diet.

The SNDA study underscored the fact that the meal patterns have not kept up over the years with scientific knowledge about diet. This situation is cause for concern because it demonstrates the need for significant improvement if the school nutrition programs are to meet the objective of the NSLA to safeguard the health and well-being of the nation's children.

As the first step toward achieving meaningful improvement in children's diets and, thus, their health and future well being, the Department considers it necessary to update the regulations by setting specific nutrition criteria for reimbursable school meals including incorporating the RDA for key nutrients, energy allowances for calories, and the most current nutritional standards as outlined in the Dietary Guidelines as requirements for the NSLP and SBP. Before proceeding with a rulemaking, however, the Department recognized the importance of public input. To obtain this input, the Department solicited comments on nutrition objectives for school meals through public hearings and written comments. In a notice published in the **Federal Register** (58 FR 47853, September 13, 1993), the Department announced a series of four public hearings. Any person who was interested could register to speak at any of the hearings. Persons unable to testify in person were invited to submit written comments.

A total of 363 witnesses testified at the hearings, and an additional 2,013 written comments were received by the Department, representing medical

professionals, nutritionists or dietitians, public health, nutrition or food organizations (21%); the general public (21%); parents and students (21%); school food service personnel, school food service organizations and State education/child nutrition agencies (16%); teachers, school officials and school associations (11%); food industry (7%); and other State or Federal agencies or members of Congress.

In general, commenters voiced support for the goal of more nutritious meals which meet the current Dietary Guidelines. However, the comments also raised some concerns about paperwork burden, the quality of USDA donated commodities and the need for enhanced training and education. (Readers wishing a complete analysis of the themes and concerns raised by commenters should refer to the preamble of the June 10, 1994, proposal at 59 FR 30221-30225.)

From the testimony and written comments, the Department developed Guiding Principles and a Framework for Action to address the need for a comprehensive, integrated plan to improve school meals. The five Guiding Principles are:

Healthy children—Our goal is to provide our Nation's children with access to school meal programs that promote their health, prevent disease, and meet the *Dietary Guidelines for Americans*.

Customer appeal—We understand that if food doesn't look good or taste good, children will not eat it. We must involve students, parents, teachers and the food and agriculture community in any change through a national nutrition education campaign, using the media that children and parents understand and the language that they speak.

Flexibility—We have to reduce paperwork, streamline reporting systems, recognize regional and economic differences and offer schools different approaches to designing menus that meet the Dietary Guidelines. To do this, we must use technology more effectively.

Investing in people—We must provide schools and school food service directors with the training and technical assistance they need to bring about nutrition changes in the school meal programs and build the nutrition skills of our nation's children, and thereby improve their health.

Building partnerships—To meet our national health responsibility to American children and to increase cost effectiveness, we must forge partnerships throughout the public and private sectors. This includes continuing collaborative efforts with our

Federal partners at the Departments of Education and Health and Human Services and building bridges to consumer and industry groups.

Guided by these five principles, USDA constructed a comprehensive, integrated framework for action:

I. Eating for Health: Meeting the Dietary Guidelines. School meals' nutrition standards will be updated and expanded to include the *Dietary Guidelines for Americans* with standards for fat and saturated fat as well as required nutrients.

II. Making Food Choices: Nutrition Education, Training and Technical Assistance. It is not enough to change the food on the plate. We must also provide the knowledge and the skills that enable children to make choices that lead to a nutritious diet and improved health. It also is vital that local meal providers receive training on how to improve meal quality. This dual initiative to educate children and assist meal providers offers many opportunities to influence both what foods are offered by schools and what foods are eaten by children.

III. Maximizing Resources: Getting the Best Value. By marshalling all available resources and strengthening partnerships with our State and local cooperators, we will stretch food dollars and cut costs while improving the nutritional profile of commodities. We will enhance access to locally grown commodities and better use regional agricultural resources. And we will provide assistance, training and the power of Federal purchases to help school administrators manage school meal programs in a more cost-effective way.

IV. Managing for the Future: Streamlined Administration. It is necessary to reduce the paperwork and administrative burdens of local administrators. We will streamline procedures and emphasize administrative flexibility to free State and local food program managers to concentrate on nutrition.

June 10, 1994, Proposed Rulemaking

As an important part of this overall initiative, the Department published a proposed rule on June 10, 1994, to update and expand the nutrition standards for the school meal programs, to incorporate the Dietary Guidelines into the NSLP and SBP regulations and to require that school meals meet the applicable recommendations of the Dietary Guidelines, including the quantified standards established for fat and saturated fat. This proposal also sought to establish new menu planning systems that would facilitate

compliance with the proposed updated nutrition standards, and it included proposals to reduce paperwork and streamline program administration at both the State and local levels.

Under this proposal, school lunches would be required to provide, over a school week's menu cycle, one-third of the RDA for protein, vitamin A, vitamin C, iron and calcium as well as one-third of the energy allowances for calories for the appropriate age/grade group. Breakfasts would be required to provide one-fourth of the RDA for the same nutrients and for calories over a school week's menu cycle. In addition, under the June 10th proposal, by School Year 1998/1999, at the latest, both breakfasts and lunches would have been required to comply with the recommendations of the Dietary Guidelines, including the limitations on fat (30% of total calories) and saturated fat (less than 10% of total calories).

To provide local food service directors with flexibility to meet these nutrition goals, the Department proposed to replace the current rigid meal patterns with a method of menu planning and preparation called Nutrient Standard Menu Planning (NuMenus). Under NuMenus, a nutrient analysis is conducted on all foods offered as part of reimbursable meals over a school week, and appropriate adjustments are made to ensure that the meals meet the nutrition standards. In recognition of the fact that some school food authorities may not have the computer capability or the access to technical support necessary to conduct NuMenus independently, the proposal allowed school food authorities to use a modified form of NuMenus, called Assisted NuMenus, under which schools could arrange for menu development and nutrition analysis by other entities, such as State agencies, consortiums of school food authorities or consultants.

Since meals would no longer have had to conform to the traditional five-item meal pattern structure, the Department proposed that a reimbursable lunch must include a minimum of three menu items, one of which had to be an entree and another which had to be fluid milk. (Fluid milk is required by section 9(a)(2)(A) of the NSLA, 42 U.S.C. 1758(a)(2)(A).) Moreover, if a school participates in "offer-versus-serve" (defined in current regulations at 7 CFR 210.10(e) and 220.8(a)(3)), the child must select at least two menu items, one of which would be an entree. (The Department did not propose to extend the requirement concerning entrees to the breakfast program.) Under the proposed

rule, the nutrients in all menu items or other foods offered as part of the reimbursable meal would be analyzed to determine whether or not the nutrition standards were being met. However, the nutrient analysis would have to be weighted to reflect the nutrient and calorie levels that each menu item or food offered actually contributed to the meals. Weighting is necessary to indicate the proportion the menu items and foods actually represent in the meal service offered, rather than simply being an average of the nutrients in all of the items listed on the menu.

The Department also proposed to establish a nutrition monitoring system for State agencies which would be coordinated with other oversight activities. Under this system, State agency reviewers would assess the school's nutrient analysis for the last completed school week to determine if the school was applying the correct methodology and was properly conducting the analysis. If the State agency's review indicated that the school was not conducting NuMenus accurately or was not applying Assisted NuMenus properly, or if the meals, as offered, did not comply with nutrition standards, the school food authority would be required to take appropriate corrective action to achieve compliance. The State agency would monitor the school's corrective action efforts to ensure that progress was being made toward compliance. The State agency would be required to impose fiscal sanctions *only* if the school's violation was intentional or the school refused to comply with the corrective action plan.

Finally, the Department proposed three provisions to streamline program administration. The first of these would extend the Coordinated Review Effort (CRE) review cycle from four to five years, thereby providing State agencies with additional flexibility to undertake technical assistance and corrective action efforts. The second provision would eliminate the regulatory requirement for a specific type of edit check on daily meal counts if no meal counting or claiming problems were identified on the most recent CRE review. Instead, a school food authority could develop and implement its own system of internal controls to ensure the accuracy of claims. Lastly, the Department proposed removing the regulatory requirement that school food authorities maintain records specifically to document the nonprofit status of their food service. Rather, the records kept as a normal part of operating a business would suffice.

The Department established a 90-day comment period on this proposal,

which expired on September 8, 1994. During this period, the Department received over 14,000 comments. The following shows the number of commenters by class which were received on the June 10, 1994, proposed rule as well as those received on the January 27, 1995, proposal which is discussed in more detail below:

	June 10, 1994, proposed rule	January 27, 1995, proposed rule
General public/others	1,112	9
Parents/Grandparents/students	1,967	0
School food service	9,894	199
Medical/Registered dietitians/Public health/Food organizations	262	26
Teachers/Professors/School organizations	661	79
Food industry/Chefs	180	50
Federal agencies/Congress	16	0
Totals	14,092	363

All of these comments were considered, and a detailed discussion of the major issues and concerns raised by commenters occurs later in this preamble.

Public Law 103-448 and the January 27, 1995, Proposed Rulemaking

Before the Department could finalize the June 10, 1994, proposal, Pub. L. 103-448, the Healthy Meals for Healthy Americans Act of 1994, was enacted on November 2, 1994. This law essentially codified the major provisions of the June 10th proposed rule. However, the law did mandate compliance with the Dietary Guidelines by School Year 1996/1997—two years earlier than the Department had proposed—although State agencies are authorized to waive implementation on a case-by-case basis until School Year 1998/1999. Public Law 103-448 also provided that schools could elect to use a "food-based" system of menu planning and preparation in lieu of NuMenus or Assisted NuMenus. The law further directed the Department to hold a public meeting with affected parties within 45 days of publication of a proposed rule to implement the nutrition-related provisions of Pub. L. 103-448. Because of the need to expedite the rulemaking activity, the law (section 112(c) of Pub. L. 103-448, 42 U.S.C. 1760(k)(2)) specifically exempted this meeting from the procedures normally required under the Administrative Procedure Act.

On January 27, 1995, the Department published a rule (60 FR 5514) proposing to incorporate the statutory requirement of section 106(b) of Pub. L. 103-448 (42 U.S.C. 1758(f)(1)) that school meals conform to the Dietary Guidelines by School Year 1996/1997, unless a waiver of up to two years is authorized by the State agency. The rule also proposed revisions to the existing meal pattern to enable schools using a "food-based" menu planning system to comply with the updated nutrition standards including the recommendations of the Dietary Guidelines. Finally, the proposal included a provision for State agency monitoring of food-based menu planning systems to ensure compliance with the nutrition standards, similar to the monitoring provisions proposed for NuMenus and Assisted NuMenus.

In developing the proposed food-based menu planning system, the Department retained the component structure of the current meal patterns for lunches and breakfasts because their familiarity would facilitate implementation at the local level. However, the Department proposed revisions to the age/grade groups: Two mandatory age/grade groupings: kindergarten through grade 6, and grade 7 through grade 12, with an optional grouping for kindergarten through grade 3. These groups are designed to reflect the need to distinguish the nutrient and caloric needs of younger and older children while also accommodating the grade structures of the majority of schools.

Moreover, the Department did not propose any reductions to the current minimum quantity requirements for any components. The principal differences between the proposed food-based menu planning system and the current meal patterns reflect increases in the quantities of vegetables/fruits and breads/grains products for reimbursable lunches. This change was intended to maintain calories while reducing fat. For children in kindergarten through grade 6, the Department proposed that the serving of fruits/vegetables be three-quarters of a cup per lunch *plus* an additional one-half cup served over a *five-day period*. The proposal set the minimum quantity of vegetables/fruits to one cup per lunch for children in grades 7 through 12.

With respect to grains/breads, the proposal would require that the number of lunch period servings per week for children in kindergarten through grade 6 be increased from the current 8 to 12. For children in grades 7 through 12, the number of servings would be increased from 8 (10 recommended) to 15 per week. To provide schools with

flexibility in meeting this requirement, the proposal further allowed one serving per day to be in the form of a grain-based dessert, such as rice pudding.

The Department proposed no changes to the quantity and component requirements for breakfasts. However, the proposal encouraged school food authorities to offer children in grades 7 through 12 an additional serving of the grains/breads component each day. This optional increase was intended to provide sufficient calories to meet the needs of adolescent children, especially males, when the fat content was modified to conform to the Dietary Guidelines.

Finally, to provide sufficient State agency oversight of meal services employing a food-based menu planning system, the Department proposed to have State agencies conduct a nutrient analysis of one week's meals using the school's menus and supporting production records. Under the proposal, the State agency would be required to do the nutrient analysis once every five years and could combine the analysis with administrative review activity. As noted above, all school food authorities will be required, beginning with School Year 1996/1997, unless the requirement is temporarily waived, to comply with the Department's nutrition standards, including the Dietary Guidelines. Since schools using a food-based planning system will not generally be conducting routine analyses of their meals and, therefore, will have no records documenting compliance, it will be necessary for the State agency to determine whether or not the way the school is using the food-based menu planning system actually produces meals that meet the nutrition standards. In the interests of flexibility, however, the proposal also would have authorized the Department to approve alternative review methodologies proposed by a State agency if they provided the same degree of assurance that school meals are in compliance with all nutrition standards.

The Department allowed a 45-day comment period, during which 363 comment letters were received. (See chart earlier in this preamble for a detailed list of the number of commenters by type.) Moreover, on February 17, 1995, the Department conducted a public meeting and invited representatives of the health, nutrition, education, food service and food industry communities to participate. Members of the general public were also invited to attend and address the meeting. Twenty-six persons spoke at this meeting, and their comments were

also analyzed and considered in developing this final regulation.

Development of the Final Rule

This final rule incorporates provisions from both the June 10, 1994, and the January 27, 1995, proposed rules. In finalizing the two proposals, the Department established the same nutrition standards for all menu planning approaches, including the key nutrients that must be met. In essence, this rule provides an array of menu planning methods for school food authorities to choose from to meet the Dietary Guidelines. The remainder of this preamble addresses the key issues raised by commenters on both proposals.

Nutrition Standards: Dietary Guidelines, RDA and Calories

As mentioned earlier, both proposals would have incorporated the Dietary Guidelines as well as specific standards for RDA and calories into the NSLP and SBP regulations. Under the proposals, school lunches would be required to meet one-third of the RDA for protein, vitamin A, vitamin C, iron and calcium as well as one-third of the Recommended Energy Intake (calories). School breakfasts would be required to provide one-fourth of the RDA for the same nutrients and calories. Moreover, in the June 10, 1994, rulemaking, the Department proposed incorporation of the recommendations of the 1990 Dietary Guidelines appropriate for school meals and announced its intention to review modifications or additions in subsequent issues of the Dietary Guidelines for possible future inclusions in the applicable program regulations. The proposed rulemaking also would have required full implementation by School Year 1998/1999.

However, section 106(b) of Pub. L. 103-448, the Healthy Meals for Healthy Americans Act of 1994, amended section 9 of the NSLA, 42 U.S.C. 1758(f)(2)(C), to *require* that school meals meet the recommendations of the Dietary Guidelines in School Year 1996/97. The January 27, 1995, proposal, therefore, included this requirement along with the statutory authority for State agencies (provided by section 106(b) (42 U.S.C. 1758(f)(2)(B)) to waive implementation on a case-by-case basis until no later than School Year 1998/1999. Section 106(b) of Pub. L. 103-448 (42 U.S.C. 1758(f)(1)(B)) also requires compliance with the Dietary Guidelines as they evolve. That is, the Department will adjust the nutritional standards of the NSLP and SBP if and when changes are made to the Dietary Guidelines.

Over 2,000 of the more than 14,000 commenters on the June 10, 1994, proposal addressed the Dietary Guidelines; of these, nearly 1,800 supported their use as the basis for the nutrition standards for school meals. In addition, over 900 commenters from the school food service community felt that the Dietary Guidelines could be implemented faster if they had the option to plan and prepare meals using a food-based menu planning system. Also, these commenters felt that a food-based menu planning system would support the goal of the Dietary Guidelines to increase consumption of fruits and vegetables. The basis for this latter comment was a perception that nutrient analysis seemed to focus on the nutrient content of individual foods rather than emphasizing the food groups, especially as depicted by the Food Guide Pyramid, jointly issued by the Department of Health and Human Services and USDA. The Department wishes to note that both proposals, as well as this final rule, reflect the Dietary Guidelines which the Food Guide Pyramid presents visually. The Department fully intends to continue using the Pyramid to promote nutritionally sound diets for the American people, and the Department expects the Pyramid to continue making a major contribution to nutrition education in the school meal programs and among the general public.

In view of the support by commenters, the scientific consensus recommending the Dietary Guidelines and the subsequent statutory provisions, the Department is incorporating the appropriate recommendations of the Dietary Guidelines into this final rule at § 210.10(b) (3) and (b)(4) and § 220.8(a) (3) and (4), and is requiring compliance with these recommendations by School Year 1996/97 unless a waiver not to exceed two years (to School Year 1998/99 at the latest) is authorized by the State agency (§ 210.10(o) and § 220.8(m)). The law does provide the Department with the authority to establish a later date for compliance (42 U.S.C. 1758(f)(2)(B)), but the Department does not consider a general extension appropriate given the importance of implementing the Dietary Guidelines as expeditiously as possible. As noted above, the statute (42 U.S.C. 1758(f)(1)(B)) also requires compliance with the most recent Dietary Guidelines. Therefore, this final regulation specifies compliance with the 1990 Dietary Guidelines, the most recent version to date. The Department will revise the school nutrition standards as necessary in the future to incorporate any

appropriate updates to the Dietary Guidelines.

Over 1,700 commenters specifically addressed the proposed provisions to implement the Dietary Guidelines' recommendation on limiting the levels of calories from fat and saturated fat. The majority of these commenters were parents and students. Many parents were concerned that the levels established by the Dietary Guidelines were too low for children and that overemphasizing the need to limit fat would lead to eating disorders. Other commenters suggested that the level for fat be set at 32 per cent, not 30 per cent, because they believed that student participation might decline if fat is reduced too much. The Department notes, however, that approximately three-quarters of the comments received from the public health sector agreed with the proposed levels.

The final regulation includes the current recommendations of the Dietary Guidelines for fat and saturated fat as proposed because the Dietary Guidelines represent the best scientific knowledge on nutrition currently available for everyone above the age of two. Moreover, Congress mandated that school meals comply with the Dietary Guidelines in recognition of the fact that they represent scientific consensus. Given this statutory mandate, the Department has no authority to alter the current recommendations regarding limits on fat and saturated fat.

The Department recognizes the importance of encouraging children to accept meals with reduced fat content. Merely enacting policies will not accomplish change. That is why USDA established Team Nutrition to implement "Making Food Choices," our nutrition education, training and technical assistance effort. The mission of Team Nutrition is to improve the health of children by creating innovative public and private partnerships that promote healthy food choices through the media, schools, at home and the community.

As part of this overall effort, the Department has established the Children's Nutrition Campaign—a multi-faceted education program delivered through the media, in schools and at home that builds skills and motivates children to make healthy food choices. The campaign will bring proven, focused, science-based nutrition messages to children in a language that they understand while strengthening social support for children's healthy food choices among parents, educators and food service professionals. To accomplish this goal, the Department is building partnerships with public and

private sector organizations, such as the Walt Disney Company, Scholastic Inc. and the National PTA to name only a few.

The Department is also promoting a Training Plan for Healthy School Meals—a strategic plan for "change-driven" training to provide support to school food service personnel implementing the Dietary Guidelines. Through this plan, the Department will ensure that school nutrition and food service personnel have the education, motivation, training, and skills necessary to provide healthy meals that are appealing to the children and meet the nutrition standards established by this rule. As initial steps in this approach, the Department has developed improved recipes for schools and is working with the American Culinary Federation to share recipes and techniques in food preparation with the school food service community.

In Fiscal Year 1995, the Department is also awarding \$4.4 million in Team Nutrition Grants to enable States to start or expand training and technical assistance activities for local food service personnel. The Department expects these grants to result in more expeditious compliance with the Dietary Guidelines.

The Department considers that providing accurate information about nutrition through the Children's Nutrition Campaign, as well as assistance with meal planning and preparation offered through the Training Plan for Healthy School Meals, will go far toward maintaining, or even increasing, participation in more healthful school meal programs.

To comply with the Dietary Guidelines, schools will also need to decrease the levels of sodium and cholesterol and increase the amount of dietary fiber and total carbohydrates in school meals. The Department did not propose specific levels for these components because numeric targets are not established by the current Dietary Guidelines. However, progress in this area will be assessed in a variety of ways including gradual reductions in sodium, and if necessary, cholesterol levels, and increased use of vegetables, fruits and grain products.

In addition, the Department did not propose measuring sugar or carbohydrate levels or the school's success in offering a variety of foods. As stated in the June 10th proposal, specific levels are not established by the current Dietary Guidelines for these components. The Department believes, however, that the provisions of this final rule actively promote an increase in the

amount and variety of fruits, vegetables and grain products in school meals.

Approximately 2,600 comments addressed one or more of the above issues. The large majority of these were from school food service personnel, although more than 250 were from the public health community, with the majority of these agreeing with the Department's decision not to establish numeric levels. With respect to the recommendations on sodium, dietary fiber, and cholesterol, the number who supported including the recommendations without specific limits was about the same as the number who wanted a specific limit. For sugar and other carbohydrates, the majority suggested that the Department establish numeric levels. At this time, the Dietary Guidelines do not recommend quantitative levels of sodium, fiber, cholesterol, sugar or carbohydrates. Therefore, the final rule does not establish any numeric standards for any of these nutrients or dietary components. The provisions on the Dietary Guidelines are found at § 210.10(b) and § 220.8(a).

Additional RDA/Tolerances for RDA

Over 300 commenters, approximately half from the school food service community, addressed the minimum standards for RDA and calories. Some commenters recommended additional nutrients that should be measured such as: potassium, thiamine, riboflavin, copper, magnesium, zinc and B vitamins. Others asked that tolerance levels for meeting the required nutrients and calorie levels be established. As stated in the June 10th proposal, the included nutrients were chosen because they are the key nutrients that promote growth and development. Moreover, the presence of some of these nutrients is an indication that other important nutrients such as those suggested by commenters are present as well. Further, they are consistent with those required in the Nutrition Labeling and Education Act of 1990 (Pub. L. 101-535) and, thus, are clearly identified on labels or food specifications. The Department considers that measurement of nutrients would be too complex and burdensome if they are not included on labels. Therefore, the Department does not intend to add any other nutrients to those already proposed. Finally, with respect to tolerances, the Department does not consider it appropriate to include them as part of the regulatory standards, since those standards represent minimums which school food authorities should always strive to meet. The Department also notes that, as will be discussed later in this preamble,

schools which are making good faith efforts to comply will not be held fiscally accountable if they do not meet the standard precisely. The RDA requirements are found at § 210.10(b) and § 220.8(a).

Menu Planning Systems

As discussed above, the June 10, 1994, proposal would have required all school food authorities to plan and prepare meals using Nutrient Standard Menu Planning (NuMenus) or its corollary, Assisted Nutrient Standard Menu Planning (Assisted NuMenus). Over 8,600 commenters addressed the concept of NuMenus. The large majority were from school food service personnel. Many of these comments stated that the NuMenus concept was too complex and inflexible and that it, and Assisted NuMenus, should just be options for menu planning. Some commenters felt that the proposed system would have the effect of reducing choices for students and would lower the quality of meals served because of perceived increases in costs associated with implementation and training.

Further, over 2,500 commenters addressed the concept of Assisted NuMenus. Approximately half of these commenters were from the school food service area, while more than 700 were students or their families, over 250 were teachers or other school officials, and over 300 from other sources. Nearly 900 commenters believed Assisted NuMenus was inflexible, and about 450 found the system too complex. More than 200 commenters specifically recommended that schools without the resources for NuMenus be allowed to continue using a meal pattern. Other significant issues involved concerns about costs, possible outside control over menus and lack of responsiveness to local needs. Finally, a few commenters requested that the Department provide a set of menus, recipes, procurement specifications and preparation techniques.

In addition to the issues raised about menu choices and costs, the Department notes that many commenters were primarily concerned about being *required* to adopt NuMenus or Assisted NuMenus. The Department would like to point out that many commenters underestimated the flexibility of nutrient standard menu planning. In fact, this system is inherently flexible since meals would no longer be restricted to specific components and quantities. In addition, nutrient standard menu planning supports accommodation of ethnic, regional, and vegetarian choices. The concern about

limiting menu planning options was addressed by the January 27, 1995, proposal that allows schools to elect a food-based menu planning system in lieu of NuMenus or Assisted NuMenus. The Department is retaining NuMenus and Assisted NuMenus in this final regulation (at § 210.10 (i) and (j) and § 220.8 (e) and (f)) because it continues to believe that these two systems can be valuable menu planning options in that they allow maximum flexibility. In fact, these are the only systems that the Department has identified which allow menu planners to assess their actual compliance with the quantified recommendations of the Dietary Guidelines and the other nutrition standards. The Department also notes that section 9(f)(2)(C)(i)(II) of the NSLA, as amended by section 106(b) of Pub. L. 103-448, requires that these two systems be available to local school food authorities. The Department acknowledges that Assisted NuMenus may be less responsive to local conditions than NuMenus, but it still provides a viable option for schools which are unable to conduct nutrient analysis themselves, but do not wish to continue with a more rigid meal pattern approach. Furthermore, unlike the food-based system, Assisted NuMenus will provide schools with accurate analyses of the nutrient content of the meals they are serving so that schools will be better able to determine their level of compliance with the Dietary Guidelines and other nutrition standards, thus alerting schools to needed menu adjustments. A more detailed discussion of the proposed methodology occurs later in this preamble.

National Nutrient Database for the Child Nutrition Programs

Successful conduct of nutrient analysis requires accurate information about the nutrient content of foods. To meet this need, the Department has developed a centralized National Nutrient Database that provides standard reference information on the foods and recipes used in the NSLP and SBP. As described in the preamble to the June 10, 1994, proposal (59 FR at 30229-30), this database contains information on the nutritional composition of (1) commodities supplied by the Department, (2) standard reference food items used in the NSLP and SBP, (3) Quantity Recipes for School Food Service developed by the Department and (4) commercial products for which the manufacturer has submitted nutrient analysis. The proposal, at § 210.10(k)(1) and § 220.8(j)(1), required that this database be incorporated into all software

systems used to support NuMenus and Assisted NuMenus, and the Department gave assurance that the database would be made available free of charge to software companies and would be regularly updated to ensure that the database is as accurate and current as possible.

The Department received about 150 comments specifically on the database, primarily from school food service personnel. Most of the commenters were concerned that it might be too difficult to add local recipes to the database, while a few believed it would prove difficult to add locally available processed foods. Finally, there was some concern that food processors might be required to pay a fee to have their products included in the database.

The Department recognizes that the effectiveness of this database is partially dependent on the willingness of the food industry to submit data about their processed products. To ensure that processed foods are well represented in the database, the Department has met with food industry representatives to resolve issues related to the submission of processed food information. As a result of these meetings, the Department has taken a number of actions to improve the submission process. For example, the data submission disk has been revised to make data entry easier, and the Department is accepting unrounded data generated by the food industry and some provisional data. The Department has also reduced the details which must be reported for quality control purposes and has given industry greater flexibility in submitting samples of their laboratory results. The Department will continue to work with the food industry to improve the system for including processed foods in the database. The Department also wishes to emphasize that, while processors may pay to have their products analyzed, there is no fee for having the product included in the database. Finally, while the Department's database will not include local recipes and locally available processed foods, the software being developed for schools to use in nutrient analysis will have a feature allowing the incorporation of local recipes and products.

School Food Service Software Systems

The Department acknowledges that computer software is essential to NuMenus and Assisted NuMenus, since without effective software it would be nearly impossible for school food authorities to conduct the mathematical and analytical tasks associated with nutrient analysis. Therefore, the June 10, 1994, proposal required school food

authorities to use a software system that FCS had determined met a set of minimum requirements. The Department is undertaking software evaluation as a means of providing technical assistance to local schools seeking to implement NuMenus or Assisted NuMenus. While the determination would not constitute an endorsement by either FCS or the Department, it would ensure that the software used by local school food authorities has been proven to support the program requirements for NuMenus and Assisted NuMenus. All approved software will perform the following specific operations: (1) Compute a weighted nutritional analysis of meals, (2) weight and average the RDA to establish new nutrient standards, (3) convert the nutritional analysis information on any label to 100 grams, (4) create and analyze recipes and (5) print a calendar format. Also, the software will provide for a local database into which local recipes and locally available processed foods can be loaded for analysis. The Department intends to continue working with the computer software industry to develop and improve software applications for nutrient analysis. The Department is also currently working with the software industry to modify their packages to allow for a combined weighted breakfast/lunch analysis for those schools wishing to take advantage of this menu planning option. The database requirements are found at § 210.10(i)(4) and § 220.8(e)(4).

The Department received approximately 4,800 comments on the software requirements. Nearly 3,700 commenters, primarily from those in school food service, raised concerns about the cost of computers and software needed for NuMenus and Assisted NuMenus. Over 950 commenters believed the Department should provide or pay for the software, while over 2,700 maintained that the equipment and software would be too costly for local schools. The remainder raised concerns about the complexity of these systems and the need for adequate training.

The Department appreciates these concerns but does not believe it would be appropriate or practical for the Department to develop software because local schools must have flexibility to select the software that is best for their particular circumstances. If the Department were to provide a specific package, it would not be compatible with the variety of computer systems currently in use, and in many cases would not include additional applications which the local school

might want. The Department notes that the price of computer hardware and software will vary widely, depending on several factors, including the ability of the software to perform additional functions such as maintaining inventory. Nevertheless, some approved software is already available at nominal cost. The Department anticipates that, as competition in this field increases, market forces will make approved software even more affordable. It also must be recognized that, when averaged over the life of the software and the number of meals being served, the acquisition cost should be quite modest.

Finally, given the range of software which the Department anticipates being available for local schools to choose from, it would not be possible for the Department to provide uniform training. However, software companies routinely provide detailed training as part of the cost of software, so local schools should not experience any significant extra cost for training.

Weighted Averages

Sections 210.10(k)(2) and 220.8(j)(2) of the June 10, 1994, proposal would have required school food authorities to determine compliance with the nutrition standards by conducting a *weighted* analysis of all foods served to children as part of their reimbursable meals. Thus, if children are offered a choice of more than one entree (e.g., pizza and fish sticks) the analysis would give more weight to the nutrients in the more popular item and correspondingly less weight to those in the less popular item. For example, if 75 percent of the children select pizza and 25 percent select fish sticks, the nutrients, calories and other components of the pizza would count for three times as much as those in the fish sticks. The purpose of this procedure is to ensure that the menu planner receives an accurate picture of the entire food service's compliance with the nutrition standards and to avoid situations in which token items on a menu could make the meal service appear to be in compliance even though these items are rarely selected.

The Department received nearly 3,000 comments on this provision, over 2,700 from school food service personnel. While a few commenters agreed with the proposal, nearly 1,300 maintained that the procedure would be too complex, and nearly 100 specifically cited the difficulty of separating out the a la carte service of items that are also part of a reimbursable meal. Approximately 1,000 commenters raised concerns about potential increases in paperwork and meal costs as well as the possibility that schools would limit

choices, thereby reducing participation. Many commenters contended that school food authorities would be held accountable for children's food preferences, but that children frequently do not select foods that are best for them. Some commenters recommended alternatives to weighted analysis, such as averaging the nutrients in all of the menu items regardless of whether or not the items are routinely selected or averaging the nutrients in the most popular entrees (up to a maximum of three if more than three are offered), the method employed in a Nutrient Standard Menu Planning demonstration project in California.

The Department appreciates commenters concerns and recommendations. With respect to concerns about cost and complexity, the Department notes that the software designed to accommodate NuMenus and Assisted NuMenus will have the capacity to perform a weighted nutrient analysis just as it performs other calculations. Food service personnel, therefore, should experience much less difficulty with weighted nutrient analyses than they predicted in their comments. Moreover, while it may be necessary in some cases for schools to account for menu and a la carte items separately, in most cases school food service personnel will be able to make reliable *estimates* of the proportion of menu items that will be sold a la carte based on their experience. The Department does acknowledge that menu planners in centralized food services may experience some complexity in dealing with different preference patterns in different schools. The Department is confident, however, that school districts will be able to work out appropriate procedures that will not be overly burdensome to individual schools.

In addition, the Department stresses that the value of nutrient analysis is that it provides a tool for accurately measuring the degree to which the meals provided to children meet the nutrition standards. This measurement does not, in itself, penalize the schools. In fact, the Department believes that it is in the school's interest to have an accurate picture of its meal service. Without a weighted average, schools will be unable to track the relationship between what they offer and what is accepted, or the effects of introducing new foods or using modified cooking techniques. In the absence of the complete picture that weighted analysis provides, there is little incentive for the school to make changes in its menus or to know how best to undertake nutrition education.

Finally, the Department does not consider that the alternatives proposed by commenters would represent improvements over the proposed methodology. While a straight average of the nutrient values of all menu items would measure the nutrients in the foods available to the children, there would be little, if any, correlation between the nutrient analysis and the actual nutrition value of the meals consumed by the children. The Department's experience with the Nutrient Standard Menu Planning pilot project conducted during School Years 1983-1985 suggests that an unweighted analysis can, in fact, bias the results. Although that project did not track fat or saturated fat, certain foods with high iron content were sometimes offered but were rarely taken by students. Consequently, an unweighted analysis of menu items made it appear that children were receiving meals that met the standards for iron when, in fact, they were not.

These disadvantages apply equally to an analysis which averages the three most popular entrees. While on the surface, this method appears to provide a middle ground between weighting everything that is produced and averaging everything that is on the menu, in fact it does not provide accurate information about the overall meal service. For example, if a school served 100 helpings of pizza, 25 helpings of fish sticks and 5 chef salads, a simple averaging of the three items would not accurately reflect the actual meal service. Moreover, schools using this method would need to develop a way of accounting for the nutrients in side dishes and milk. Finally, it would not enable schools to track changes in children's food habits and would provide no incentive for introducing new foods or modifying cooking methods.

Nutrition analysis is significantly weakened without a weighting component. It is only through weighting that schools can develop more healthful and nutritious meals and track improvements in children's diets. The Department believes approved software packages will alleviate many of the concerns of local personnel, especially as they become more familiar with the software applications over time. Therefore, this final rule incorporates, at § 210.10(i)(5) for the NSLP and § 220.8(e)(5) for the SBP, the proposed requirements that NuMenus and Assisted NuMenus be based upon a weighted analysis of the foods produced.

Menu Adjustments Under Assisted NuMenus

The Department also wishes to address a proposed provision of Assisted NuMenus which was widely misunderstood. This provision (§ 210.10(l)(4) and § 220.8(k)(4) of the proposed rule) required a reanalysis of the Assisted NuMenus cycles when adjustments to menu offerings are needed to reflect changes in student preferences and participation or increased emphasis on meeting nutrition standards. It is important that the school food authority be alert to shifts in participation trends, as well as such factors as modifications to USDA commodities or food purchased in the market, since these changes can affect the degree to which menus continue to meet the nutrition standards. This information must be conveyed to whomever prepares the menus so that the recipes and menus can be reanalyzed and appropriate adjustments made. In accepting a set of menus from an outside source, the school food authority needs to confirm that there is a ready mechanism for making the necessary adjustments to the menu cycle and its accompanying segments. The Department emphasizes, however, that such adjustments do not have to be made routinely to reflect minor changes in participation or preference. On the contrary, the Department believes that adjustments would be necessary only when the school experiences significant fluctuations in student consumption patterns or as the school continues to improve meal quality by changing its menus. Therefore, this proposed provision is retained at § 210.10(j)(4) and § 220.8(f)(4).

Finally, the Department recognizes that Assisted NuMenus may not be suitable for all schools. However, for those schools whose circumstances lend themselves to this menu planning option, the Department will be providing technical assistance materials. In accordance with section 9(f)(2)(C)(i)(II) of the NSLA (as amended by section 106(b) of Pub. L. 103-448), the Department is developing a cycle menu with accompanying recipes, food product specifications and recommended food preparation methods. These guidance materials will enable local schools to prepare meals which meet the nutrition standards.

Combining Analysis of Breakfasts and Lunches

The June 10, 1994, proposal would have required school food authorities to conduct separate analyses of lunches and breakfasts. This requirement was

based on the fact that breakfasts, as documented by the SNDA study, are generally in compliance with the Dietary Guidelines. A combined analysis, therefore, might tend to disguise situations in which no significant improvements were being made to the nutritional quality of lunches. Moreover, since the number of children participating in the breakfast program is a fraction of the children eating school lunches, a straight average of the two meal services would not provide an accurate reflection of the food service for the majority of children.

The Department received nearly 900 comments on this proposed provision. Over two-thirds came from school food service professionals, although more than 130 of the comments were from the general public. All but three comments recommended combining the analyses of breakfast and lunch, generally on the grounds that the Dietary Guidelines are intended to apply to total consumption rather than to individual meals.

The Department agrees that it can be useful to measure the compliance of the entire food service. Therefore, the final rule is being revised to give schools *the option* of conducting a combined analysis provided the meal services are properly weighted for participation (§ 210.10(i)(5)(iii) and § 220.8(e)(5)(iii)). The Department notes, however, that even though the software will handle the additional calculations, menu planners may find that this method does not have any significant practical effect on their ability to achieve the required nutrition standards, since breakfast represents a relatively small portion of the overall meal service.

Reimbursable Meals Under NuMenus and Assisted NuMenus

Currently, school food authorities receive reimbursement for each meal served to children that meets the meal pattern requirements for lunch or breakfast. Basically, the minimum quantity of all the required components (meat/meat alternate, bread/bread alternate, two different fruits/vegetables and fluid milk) must be offered, and a minimum number of items (at least three if the school employs "offer-versus-serve" (OVS)) must be selected. In order to determine if the meal chosen by the child is reimbursable, the cashier observes, at the point of service, if the proper number of components has been taken.

Under NuMenus and Assisted NuMenus, however, schools will have the flexibility to vary the amounts and quantities of individual foods as needed to achieve compliance with the nutrition standards. Nevertheless, it will

still be important that each reimbursable meal include a minimum number of food items for the following reasons. First, there needs to be a reasonable standard for Federal reimbursement. Secondly, a reimbursable meal must be easily recognizable at the point of service so that it can be counted accurately. Finally, it is preferable that children receive a minimum amount of nutrients from every meal rather than experiencing large fluctuations from day to day.

Therefore, the Department proposed that under NuMenus and Assisted NuMenus, a lunch would be reimbursable if at least three menu items (one must be an entree and one fluid milk) were offered, and, if the school does not participate in OVS, all menu items are taken. If the school participates in OVS, a lunch would be reimbursable if at least three menu items were offered (again, one must be an entree and one must be fluid milk), and at least two menu items (including the entree) were selected. For the SBP, at least three menu items had to be offered and at least two taken under OVS. The entree requirement was not extended to the SBP. The proposal ensured that children would receive appropriate daily levels of nutrition and that cashiers would continue to be able to determine easily if the meal selected by the child was reimbursable.

The Department received nearly 1,300 comments stating that a minimum of two items for OVS was not adequate. About 700 of these commenters were concerned that allowing children to take as few as two items would not support nutrition education efforts or provide sufficient calories. Further, they felt that only two items under OVS would undermine efforts to have meals comply with the Dietary Guidelines.

The Department agrees that the number of items which children may decline should be limited. Therefore, this final rule revises the proposed definition of a reimbursable lunch when schools using NuMenus or Assisted NuMenus also participate in OVS. For lunches in these situations (at § 210.10(i)(2)(ii)), the child must select at least two items (the entree and one other) *and* may decline no more than two items. Thus, when a school offers a meal with five or more items, the student may decline only two items and must take three or more. Under the proposal, the student would have been required to accept only two items and could have declined three or four items in a five or six item meal. The entree, of course, could not have been declined. For the SBP, the current requirement that the child may decline only one item

is retained at § 220.8(e)(2)(ii). Consequently, the amount of food taken by the child under NuMenus and Assisted NuMenus will at least equal, and in many cases will exceed, the amount taken under the old meal pattern requirements.

The Department does wish to address what appears to be a misunderstanding on the part of some commenters regarding the term "menu item" as it is used in NuMenus and Assisted NuMenus. Under a meal pattern system, food items are generally viewed as satisfying one or more components. For example, a helping of spaghetti and meatballs will supply the meat/meat alternate and grain/bread components of the meal as well as one of the fruit/vegetable components. The same holds true for many popular foods, such as lasagna, pizza or chef salads. If schools use a meal pattern menu system and participate in OVS, the child would have to take the spaghetti and meatballs, since collectively that dish includes three components, but could decline the second vegetable/fruit item or the milk.

Under a system of nutrient analysis, however, spaghetti and meatballs is a single menu item (in this case, an entree) which contributes specific nutrients. If, therefore, the school offered this dish along with two other items (e.g., milk and fruit), the meal would actually provide more nutrients than under OVS in schools using a meal pattern, since the child would have to select the entree and at least one other item. If the school offered this dish along with three other items (e.g., green beans, fruit and milk), the child would also receive a more substantial meal than under the meal pattern since s/he could decline only two of the remaining three items.

The proposed requirement (at § 210.10(e)(4)(ii)) that the child select the entree stemmed from the Department's concern that the school lunches children consume provide an adequate amount of calories and other essential nutrients. Traditionally, the most significant nutrition contribution in a school lunch has come from the entree. Therefore, this provision was proposed as a way of ensuring that children participating in OVS receive the most nutritious lunch possible.

The Department recognized that the proposal deviated from current requirements which do not stipulate any particular item that the child must select. Therefore, the Department specifically solicited comments on this requirement. Only about 30 commenters supported the requirement, while 644 commenters expressed some objection. Some commenters were concerned that

requiring students to select an entree would lead to reduced participation since students would have less opportunity for personal choice. Others thought that fewer fruits and vegetables would be selected. Finally there was concern that requiring selection of the entree would increase meal service costs.

The Department appreciates the concerns expressed by the commenters but continues to believe that it is necessary to require that the entree be selected for lunch in order for the meal to be reimbursable. Because the meal is built around the entree, that dish will generally make the most significant calorie contribution to the meal and also will be likelier than other items to provide a variety of nutrients. The Department also notes that schools have considerable flexibility in determining what the entree will be. For example, a school could serve a chef's salad or a vegetable and fruit platter as an entree. The Department emphasizes that the final provisions on NuMenus and Assisted NuMenus require the child to take the entree *and* at least one other item. Therefore, the child may actually receive more food than would necessarily be the case under the former meal pattern. Finally, data from the SNDA study shows that children overwhelmingly select entrees under the current system. Therefore, the Department does not believe that requiring children to select the entree will result in greater plate waste. For these reasons, this final regulation, at § 210.10(i)(2)(ii), requires that one of the items selected by the child under OVS be an entree.

While the Department believes that the OVS requirement for an entree is necessary to ensure that children receive proper nutrition from school meals, it is concerned about the possibility of plate waste. Consequently, the Department requests that school food service personnel submit comments based on their operational experience with OVS under NuMenus and Assisted NuMenus. If operational experience with OVS as required by this rule indicates an increase in plate waste, the Department will consider future rulemaking, including issuance of a proposed rule, to change the regulatory requirement.

Complexity/Inflexibility of NuMenus/ Assisted NuMenus

Over 2,200 commenters maintained that NuMenus and Assisted NuMenus were too complex, and more than 3,400 believed these menu planning systems would be inflexible. The Department notes that, since NuMenus is not bound

by the component and quantity requirements of a food-based menu planning system, it gives schools more flexibility to vary their menus and to introduce different foods than they have under a meal pattern. The Department does agree that some additional effort will be necessary when NuMenus is initially implemented. As schools acquire more experience with the software and learn to take full advantage of NuMenus, this alternative can actually reduce the amount of time spent on menu planning.

Many commenters were specifically concerned about what they viewed as the inflexibility of Assisted NuMenus. Most of these commenters believed that Assisted NuMenus would impose outside controls over local menus, would be unresponsive to local preferences and would result in limited food choices which, in turn, would lead to reduced participation. The Department agrees that Assisted NuMenus is less flexible than NuMenus because the basic analysis is not performed on site, but that Assisted NuMenus still provides a better method to determine compliance with the Dietary Guidelines and other nutrition standards and provides more flexibility than the current meal pattern approach. This option was proposed in response to concerns that some schools may not have the resources to conduct NuMenus themselves. The Department notes, however, that schools electing to use Assisted NuMenus will still be able to control the kinds and variety of foods they serve. To account for local preferences or the purchase of local foods, schools will provide the appropriate information or specifications to whomever conducts the analysis. Subsequent modifications also would need to be referred to the analyst for adjustments. Thus, under Assisted NuMenus, local schools will continue to exercise latitude over the meals they serve and will not be subject to the analyst's decisions unless they choose to be.

Food-Based Menu Systems

A total of 363 commenters addressed one or more aspects of the January 27, 1995, proposed rule, either at the public hearing or in writing. About 200 comments were submitted by State and local food service professionals, and 79 were from other school personnel not connected with the food service. Fifty representatives of the food industry commented as did 26 nutritionists and food advocates or groups. Of these, 95 commenters generally approved of the proposed food-based system, while 78 generally disagreed. The remainder

tended to approve of some aspects of the rule and disapprove of others. The chief areas addressed by commenters were the quantities specified for each of the four components, the age/grade groupings, and the monitoring requirements.

Before discussing these issues, however, the Department wishes to address a widespread misperception that the State agency would decide which menu planning alternative (food-based or nutrient analysis) would be used by local schools. Section 9(f)(2)(D) of the NSLA, as amended by section 106(b) of Pub. L. 103-448, specifically makes the choice of a menu planning system a local school option. While the State agency can (and, in the Department's view, should) provide advice on which system might prove to be most effective for an individual school food authority, the final decision rests with the local school food authority.

Component and Quantity Requirements

Eleven commenters gave general approval to the proposed meal patterns, while 13 disagreed completely with the proposal. For the most part, however, commenters discussed specific issues without entirely approving or disapproving. The most prevalent concern was that increased servings of vegetables/fruits and grains/breads would lead to increased plate waste (69 comments) and cost (115 comments). With respect to the meat/meat alternate component, 58 comments recommended reducing the quantity but were not specific. Another 64 commenters recommended specific reductions, and about the same number recommended crediting various alternatives, including yogurt. The Department received 142 comments on the proposed vegetables/fruits portions. Forty of these were concerned with increased plate waste and costs. The remainder generally raised technical questions or proposed revisions to the quantity requirements. The Department received 232 comments on the proposed grains/breads requirements. About half of these recommended revisions to the quantity requirements (80 comments) or raised crediting issues (47 comments). The remaining comments were concerned with a variety of technical issues, the most important of which was the proposed provision to allow one serving of dessert per day to be credited toward meeting the grains/breads requirement. Finally, 73 comments addressed the milk component. Most of these comments (52) recommended that yogurt be credited as meeting the milk requirement.

The Department appreciates commenters' recommendations for adjustments to the proposed quantity requirements. The Department did not propose to reduce the quantity requirement for the meat/meat alternate component because, while it is true that this component will generally be higher in fat than the other components, the meat/meat alternate contributes a substantial portion of the calories and protein in the meal. If this component were to be reduced, the quantities of fruits/vegetables and grains/breads would need to be significantly greater than was proposed in order to replace the calories lost from this source. The proposed food-based menu planning alternative was designed to enable schools to comply with all of the meal standards, including the requirement that lunches provide one-third of the calories needed by growing children. Therefore, the Department does not believe it is feasible to reduce the meat/meat alternate component without a correspondingly large increase in the other components. The Department continues to recommend, however, that schools use lower-fat protein sources and employ preparation techniques that will minimize the levels of fat and saturated fat.

As noted above, the Department proposed to increase the quantities of fruits/vegetables and grains/bread to increase dietary fiber and calories from low-fat or nonfat sources. The Department appreciates commenters' concerns about possible increases in food costs. However, it would not be possible to reduce the servings of these components and still have a meal pattern that meets the Dietary Guidelines. Moreover, in designing the proposed patterns, the Department considered the cost ramifications. As discussed elsewhere in this preamble, the Department compared the costs currently incurred by school food authorities with the costs of items in the meal pattern and concluded that the current cost-per-component-serving for food can be maintained through the selection of lower-cost grains/breads. For a complete discussion of the nutrition basis and cost implications of the proposed revisions to the meal pattern, readers should refer to the preamble and regulatory assessment for the proposed rule at 60 FR 5514.

The Department also shares commenters' concerns about plate waste. However, as noted elsewhere in this preamble, the Department is undertaking a major initiative to educate children and their families about good nutrition and to provide school food authorities with recipes and techniques

that can make more healthful meals that are also appealing to children. The Department continues to believe that there is no inherent reason why fruits/vegetables and grains/breads should not be appealing if they are properly prepared and presented.

In the January 27th proposed rule, the Department sought to include the crediting of one dessert per day to provide schools with flexibility in meeting the enhanced grains/breads requirement in the proposed rule. The Department appreciates commenters' concerns about possible sugar content of desserts. The Department emphasizes, however, that if desserts are served as part of the reimbursable meal service, all of the elements in these food items will be analyzed by the State agency as part of its review of the school's compliance with the nutrition standards. To assist schools in preparing desserts that make a balanced contribution to the meal, the Department has developed modified dessert recipes which reduce fat content and increase the use of whole grain products. Such popular desserts as orange rice pudding, whole grain cookies and fruit-filled items will provide many of the children's other needs, such as dietary fiber, without overemphasizing sugar and fat. For the above reasons, the Department is adopting in this final rule, at § 210.10(k) and § 220.8(g), the proposed food-based menu planning meal patterns.

Age/Grade Groupings

One concern cited by commenters to the January 27th proposed rule was the difference between the age/grade groups for NuMenus and those for the food-based menu planning systems. In the June 10, 1994, proposal, the Department advocated establishing minimum levels of calories and nutrients for four age groups: (1) Ages 3–6, (2) ages 7–10, (3) ages 11–13 and (4) ages 14–17. These groupings were designed to take into account the ages at which children tend to need greater amounts of nutrients and calories to ensure proper growth. The specific levels represented weighted averages of the levels of nutrients and calories needed by children in those groups with the greatest increase coming at approximately age 11. Under a system of nutrient analysis, such as NuMenus or Assisted NuMenus, the computer software enables the menu planner to calculate the required nutrient levels easily and to adjust the menu and portion sizes to reflect the nutrient profile of the children when more than one age group is being served.

With a food-based menu planning system, however, the components and portion sizes are prescribed for menu planners to ensure that sufficient food is provided to meet the children's calorie and nutrient needs. Consequently, this system, which is not as flexible as nutrient analysis, does not allow for the tailoring that is possible under a system of nutrient analysis. In recognition of this limitation, the Department proposed to establish minimum portion sizes (accompanied by the appropriate levels of calories and nutrients for these grade levels) for two grade groupings in the January 27, 1995, rulemaking: Kindergarten-grade 6 and grades 7–12 for the NSLP while retaining the current single grade group of kindergarten-grade 12 for the SBP. In addition, optional levels were established in the NSLP for kindergarten-grade 3 and in the SBP for grades 7–12. These groups were selected because they reflect the age breakouts commonly used for individual schools and because they recognize the need for significant increases in nutrients and calories for adolescents.

The Department received over 500 comments on the age/grade groupings proposed in the June 10, 1994, rule, the vast majority of which were from school food service personnel. While a few commenters agreed with the four age groupings for nutrient analysis, most raised questions or concerns. About a third of the commenters asserted that the groupings were too complicated and too costly and would require too much paperwork. Some commenters were concerned that the groupings did not reflect the actual age/grade groups in some schools, and some maintained that these groupings would not work in schools with kindergarten-grade 12. A small number recommended that a single generic standard be established for all ages/grades. Over half of the commenters, again mainly representing school food service, addressed miscellaneous concerns about applying these groupings in different local situations and recommended modifications such as applying one age category based upon the majority of students or establishing standards for pre-school, elementary, middle and high schools.

The Department received 53 comments addressing the age/grade groupings of the January 27, 1995, proposed rule for the food-based menu planning system. Three commenters agreed with the proposed groupings, while eight disagreed without raising specific issues. Over forty commenters suggested changes to the groupings because of concerns about the

applicability of the two groupings to their particular situations.

The Department does recognize that no set of age/grade groupings will apply precisely to every school's structure, nor will they satisfy the nutrition and calorie needs of every child. Moreover, it recognizes that not all systems will be able to tailor meals to the optimum. Therefore, the final rule adopts the same grade groups for both NuMenus and Assisted NuMenus as were proposed for the food-based menu planning alternative as the minimum requirement. In addition, the regulation also provides a number of alternatives for age/grade groupings for the nutrient analysis alternatives. Schools may use the age levels provided in the January 27, 1995, proposed regulation (ages 3–6, 7–10, 11–13 and 14 and above) as an option or may develop their own age/grade groupings. The Department continues to believe it is important to recognize the age related nutrient needs of children and provides the option of these more age appropriate levels for schools that are able to implement them. The software will readily allow for these variations, and FCS will be providing guidance on how to develop individual groupings and levels. The age/grade groupings for NuMenus and Assisted NuMenus may be found at § 210.10(c) and (i)(1) and at § 220.8(b) and (k)(1).

The January 27, 1995, proposal was structured to take into account that, in many cases, school food authorities using the food-based menu planning alternative would not have access to computer technology and would, therefore, need a simpler pattern. Consequently, as noted above, the Department proposed two grade groupings for both the nutrition standards and portion sizes which essentially overlap the four age groupings of the June 10, 1994, proposal. Since these groupings generally reflect the grade structures of most schools, the Department considers that school food authorities using these patterns should experience little, if any, difficulty in complying with the requirements. In fact, the grade groups in this rule conform more closely to the standard structures of elementary and secondary schools than did the groupings in the existing patterns (kindergarten-grade 3 and grades 4–12). Finally, the Department notes that school food authorities may always increase the portion sizes to accommodate older children, but to require schools to do so would introduce an unreasonable complexity into the system. For these reasons, the age/grade groupings of the January 27th proposal are adopted without change at

§ 210.10(d) and (k)(2) and at § 220.08(c) and (g)(2).

Monitoring Compliance With Nutrition Standards

In both proposals, the Department proposed modifications to the review requirements so that compliance with the updated nutrition standards would be monitored properly. Currently, State agencies monitor compliance with meal pattern components and quantities on a per-meal basis through observation of the meal service. If there is reason to believe that a school is consistently offering meals which are deficient, State agencies may examine menus and production records to ensure that all components were available, and that sufficient quantities were offered.

Under both the June 10, 1994, and the January 27, 1995, proposals, reimbursable meals offered over a school week must collectively meet the updated nutrition standards, including the Dietary Guidelines, as well as provide the minimum number of food items required for a reimbursable meal. Therefore, both proposals would have continued to require reviewers to determine that, on the day of review, the minimum number of menu items (NuMenus or Assisted NuMenus) or components (the food-based alternative) are offered and accepted. Meals lacking the required items or components would be disallowed. To determine compliance with the overall nutrition standards, the Department proposed to implement a review mechanism outside of the administrative review procedure set forth in § 210.18(g).

In the June 10, 1994, proposal, the Department sought to establish a separate nutrition analysis review requirement to supplement the administrative review requirements. Under this requirement (proposed at § 210.19(a)(1)), the State agency would review the school's nutrient analysis to determine that NuMenus or Assisted NuMenus are being properly conducted and that the meals provided do, in fact, comply with the program's nutrition standards. Under food-based systems, however, there generally would be no local nutrition analysis records to review. Therefore, the January 27, 1995, proposal would have required the State agency to conduct a nutrient analysis of one week's meals using the school's production records. That proposal (again § 210.19(a)(1)) also permitted State agencies to develop an alternate review methodology to nutrient analysis, subject to Departmental approval, or to examine local records of nutrient analysis should there be any. Nutrient analysis is needed because,

even with a food-based system that incorporates enhanced meal pattern requirements, there is no guarantee that meals will comply with the Dietary Guidelines. Food selection, preparation techniques and student choices will have a significant effect. Periodic nutrient analysis, even if only at five-year intervals, will be the only way of gauging the school's compliance with the nutrition standards or of identifying ways to improve performance.

Both proposals stressed the Department's commitment to technical assistance and corrective action in non-compliance situations as an alternative to taking fiscal action. In both proposals, State agencies would require corrective action when meals collectively fail to meet the nutrition standards. However, reimbursement for those meals would not be disallowed. 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. However, if the school food authority had not been acting in good faith to meet the terms of the corrective action plan and refused to renegotiate the plan, the State agency would be required to determine if a disallowance of reimbursement was warranted.

Over 800 commenters addressed the monitoring requirements in the June 10, 1994, proposal. Most of these were parents/students (350), school food service personnel (316) and teachers and other school officials (101). In general, commenters agreed with the proposed compliance procedure; 140 commenters expressed overall approval, while only 36 completely disapproved. Commenters were concerned, however, about the provision requiring school food authorities to develop corrective action plans with the concurrence of the State agency and the provision requiring disallowance of funds if the school food authority does not act in good faith to achieve corrective action. For the most part, these concerns were technical in nature and involved such issues as defining "intentional" failure to take corrective action or requesting a methodology for calculating a fiscal penalty. Some commenters believed there should be no fiscal penalties, while others believed the State agency should have greater authority to take fiscal action for non-compliance.

The Department received 148 comments on the proposed monitoring requirement for school food authorities

electing to use food-based menu planning systems. The principal concern was with the proposed requirement that State agencies conduct a nutrient analysis of one week's food service using the school's menus and supporting production records. Thirty commenters opposed the provision, while most of the others raised technical concerns or suggested alternate methodologies such as analyzing only menus.

The Department proposed to monitor compliance with the nutrition standards outside of the normal CRE process because of the belief that State agencies should have maximum flexibility to provide training and technical assistance to their schools. Therefore, both proposals stressed corrective action over automatic disallowances (except when the State agency observes that meals are not complete) because the Department does not wish to penalize school food authorities which are making good faith efforts to move toward compliance.

The Department believes that State agencies are in the best position to determine what corrective actions must be taken, what the time frames for completion will be and whether or not the school food authority is making a good faith effort to comply. Because circumstances will vary from one situation to another, the Department does not believe rigid criteria can adequately determine a "good faith" effort, although progress toward compliance with the nutrition standards would certainly be one major indicator. Moreover, the Department does not envision that disallowances would occur routinely. The timing and amount of any disallowances are entirely at the State agency's discretion, but the Department intends that they would be imposed only when the school is not taking the agreed upon corrective action and is not making progress toward compliance.

Finally, the Department proposed to have State agencies conduct a nutrient analysis as part of the review of schools using food-based menu systems because there is no other way to demonstrate that these school food authorities are actually meeting the nutrition standards, including the Dietary Guidelines. As noted elsewhere in this preamble, section 9(f) of the NSLA now requires that all schools comply with the Dietary Guidelines, and the Department's proposed meal patterns will allow schools using a food-based menu planning system to achieve these goals. However, there is a wide variation in the foods schools select to meet the component requirements. Consequently,

without nutrient analysis of the foods produced, it is impossible to document that the meals do, in fact, meet the Dietary Guidelines and the standards for RDA and calories.

By law (42 U.S.C. 1758(f)(2)(D)), schools electing to use a food-based menu planning system are not required to conduct such an analysis. Consequently, unlike schools using NuMenus or Assisted NuMenus, these schools will have no records of nutrient analysis for the State agency to review. Therefore, the State agency must conduct such an analysis to determine compliance. Moreover, the State agency must analyze the school's production records in conjunction with the menus. As discussed elsewhere in this preamble, a weighted analysis which takes into account the actual production trends is the only reliable method for determining the quality of the meal service. Simply averaging the items offered without regard to their acceptance would provide results which have little, if any, correlation to the overall meal service.

Finally, as with reviews of schools using the nutrient based system, the Department is emphasizing technical assistance and corrective action rather than fiscal action. While State agencies would continue to disallow meals which are incomplete at the point of service, the school's failure to meet the overall nutrition standards would not automatically result in disallowances. Instead, the State agency would work with schools to develop a corrective action plan and would monitor the school's progress toward the nutrition standards. Fiscal sanctions would need to be imposed *only* if the school does not make a good faith effort to work toward improvement. For these reasons, this final rule adopts the monitoring requirements at § 210.19(a)(1) as proposed in the June 10, 1994, and January 27, 1995, rules.

Streamlining: Paperwork Reduction/ Nonprofit Status

As part of the Department's continuing efforts to streamline the administration of Child Nutrition Programs, the June 10, 1994, proposal also offered State agencies and local school food authorities flexibility and reduced administrative burden in three important areas. The first provision would have extended the CRE cycle from 4 to 5 years. This change, which would result in a 20 percent decrease in annual reviews, would provide State agencies with additional flexibility and resources to enable them to work with schools to improve meals. The second provision would have eliminated the

current requirement for a specific daily edit check on meal counts for those school food authorities that have been found through CRE reviews to have accurate meal counts and claims. These school food authorities would have the option of establishing their own systems of internal controls without the Department's specified edits. Finally, the Department's proposal would have removed the requirement in § 210.15(b)(4) that distinct records be maintained to document the nonprofit status of the school food service. The Department determined that it was not necessary for the program regulations to mandate this recordkeeping requirement because these records (e.g., receipts, expenditures, etc.) are the accounts which any enterprise needs to maintain in the normal course of conducting business. These kinds of records are a necessary part of a school food authority's own accountability system and, in many cases, are required by State laws. It is important to emphasize that the school food authority would still have to be operated on a nonprofit basis; the proposed amendment would have only eliminated the requirements for *documentation* of nonprofit status. It is still incumbent upon the school food authority to demonstrate that the school food service is being operated on a nonprofit basis if a question arises during an audit or other oversight activity.

Slightly over 500 of the more than 14,000 commenters discussed the change in the administrative review cycle. Of these, 430 agreed with the extension to 5 years, although 23 commenters stated that the new cycle would not make much difference to the State agencies and a few opposed the change altogether. The Department continues to believe that the proposed reduction in the number of annual reviews will not compromise program accountability, but will enable State agencies to increase their commitments to training and technical assistance so necessary to the efficient implementation of the nutrition standards and is, therefore, adopting this amendment to § 210.18(c) as proposed. State agencies are, of course, encouraged to exceed the regulatory requirements when resources permit, and they will continue to be required to conduct follow-up reviews of school food authorities which are found to exceed error thresholds on the initial reviews.

Slightly fewer than 500 commenters addressed the proposal to eliminate specific edit checks for school food authorities found to have accurate counting and claiming systems.

Essentially, commenters tended to assert that this change would not really reduce paperwork or that it could impose an additional burden on State agencies to approve alternative systems. Several commenters recommended other areas such as elimination of verification requirements of free and reduced-price applications or the process of determining "severe need" status in the SBP.

When the Department proposed to require edit checks several years ago, many commenters stated that school food authorities should have the flexibility of devising their own systems of internal controls. However, at that time, the Department believed that school food authorities must, at a minimum, compare their meal counts, by type, to the number of eligible children in each category multiplied by an attendance factor. A few years later, in the regulation implementing CRE, the Department broadened State agencies' authority to authorize alternative systems of edits. The Department now believes that States and local school food authorities have had several years of experience with internal controls and are in the best position to modify these systems to meet their own needs. Therefore, this final rule adopts the amendment to § 210.8 (a)(2) and (a)(3) as proposed.

Only 150 commenters addressed the issue of documentation of nonprofit status. Most of these were from those in school food service. While over 30 commenters agreed with the proposed provision, about 100 commenters stated that it was not a real reduction in paperwork at the local level. Some commenters felt "real" reduction in paperwork could be accomplished through elimination of the verification procedures, on-site reviews and other requirements. However, the Department continues to believe that this provision will reduce the paperwork burden on schools because they will no longer need to maintain records using Federal specifications; records would be maintained in the manner preferred by the school district or required by State laws. Therefore, the proposed amendments to § 210.14(c) and § 210.15(b) are adopted as final without change. It is not possible for the Department to implement other changes suggested by commenters at this time since they were not a part of the original proposal. The Department will, however, retain them for future consideration.

Related Topics of Concern

Competitive Foods

Approximately 640 commenters addressed the sale of foods in competition with school meals. Nearly 400 commenters recommended that all foods sold in the cafeteria, including a la carte items, be included in the analysis to determine whether or not the food service meets the Dietary Guidelines. More than 500 commenters recommended that the Department go even further and regulate the food items that may be sold in vending machines throughout the school or ban vending machines altogether.

The Department appreciates and shares many of these concerns. Currently, the program regulations (§ 210.11(a) and § 220.12(a)) prohibit the sale of certain foods of minimal nutritional value in the food service area between the start of school and the last lunch period of the day. Other foods may be sold in competition with reimbursable meals provided that the proceeds inure to the benefit of the schools or of student organizations. These items would include foods sold a la carte.

The Department has no authority to regulate the sale of foods *outside* the food service area. The current regulations governing the sale of competitive foods result from a Federal court's ruling in a lawsuit filed against the Department by a soft drink manufacturers' association. In that ruling, the court found that the Department had no authority to regulate the sale of competitive foods beyond the food service area. The court also limited the Department's jurisdiction over the food service area after the meal service has ended. Therefore, the Department cannot address the issue of vending machines elsewhere in the school in this rulemaking. The Department notes, however, that State agencies and local school food authorities have complete authority to impose more stringent limitations on the sale of competitive foods. This authority is underscored in Pub. L. 103-448, which directs the Department to provide States with a copy of the current regulations dealing with competitive foods and to provide States with model language prohibiting the sale of foods of minimal nutritional value anywhere on elementary school grounds between the start of the school day and the last lunch period. The Department intends to provide these materials to States for distribution to school food authorities in the near future.

The Department shares commenters' concerns about a la carte items. The

Department notes that these items are generally not intended to be part of a complete, balanced meal. A la carte sales can range from a second helping of a food item prepared as part of a reimbursable meal to items from a separate salad bar. Consequently, an analysis which includes a la carte items would shift the focus to individual foods, something which the Dietary Guidelines do not intend. Moreover, in the case of prepackaged items, the school would need to establish a separate system of records to track their selection and would need to identify their nutrient content. The Department believes, therefore, that requiring schools to apply the principles of the Dietary Guidelines to these items would greatly increase the complexity and burden of nutrient analysis.

Fortification

The preamble to the June 10, 1994, proposal solicited comments regarding the use of fortified foods in school meal programs. The Department was particularly interested in whether there are practical ways to control excessive use of fortification, the degree to which this should be a concern, and the potential impact on the character of school meals.

No regulatory proposals were made on this subject because the Department was unaware of any practical method for controlling the use of highly fortified foods. It was our understanding at the time of the proposal that it was virtually impossible to distinguish those nutrients that have been added to a product from those that are naturally occurring, especially for food items with numerous ingredients. Nevertheless, the Department was committed to the principle that meals be comprised of a variety of conventional foods, as recommended in the Dietary Guidelines, rather than ones containing formulated fortified foods.

More than 2,300 commenters responded to our request for comments, some of whom recommended adoption of the fortification policy developed by USDA and employed in the USDA nutrient standard pilots in the mid-1980's. This method, which is also a part of pilot projects currently operating in California, permits nutrients which are added to foods to be counted toward the nutrient standards only if they were added in accord with one of the following criteria: (1) a standard of identity or standard for enrichment issued by the Food and Drug Administration (FDA), (2) a USDA purchase specification for a donated commodity, (3) a standard for an Alternative Food for Meals under

Appendix A of Parts 210 and 220, excluding formulated grain/fruit products, and (4) in a breakfast cereal available on the commercial market.

The Department had seriously considered adopting this policy as a part of the June 10, 1994, proposal. However, following discussions with the FDA, the food industry, the nutrient data laboratory of the USDA's Agriculture Research Service and local school food service personnel, the Department concluded that it could not be implemented at the local level for several reasons.

First, there is no simple way to distinguish between the amount of synthetic nutrients added to a food and the level which occurs naturally because FDA does not require such distinctions to be made on food labels. Moreover, the Department has found that FDA standards of identity are not a particularly helpful source of information because they are only available for a limited number of products (under 40). Standards do not exist, for example, for many fruit juices commonly fortified and sold on the market. It would be difficult and costly to require the food industry to identify the primary source of nutrients on the label because such a requirement would exceed the requirements of the Nutrition Labeling and Education Act. It should be noted that further inquiries to the California State agency concerning this policy confirmed that it had not been successfully implemented in the pilot sites.

Some commenters also suggested that USDA use the fortification standards established by FDA. These standards (21 CFR 101.14) only apply to those instances in which a health claim is being made in connection with the use of a particular food product. Therefore, such standards would have little applicability to the school meal programs. Since commenters did not provide new information that could be used to fashion a practical method for regulating the use of fortified products in the school meal programs, this final regulation contains no new regulatory proscriptions. The Department does wish to stress its continued commitment to the principle that school meals should be comprised of a variety of foods which provide naturally occurring nutrients rather than formulated foods which have been artificially fortified. The training and technical assistance the Department plans to provide on implementing the Dietary Guidelines will stress the importance of serving a variety of foods as well as the potential dangers of serving highly fortified foods.

The Department also wishes to reiterate that the nutrition standards for school meals include standards for calories as well as for key nutrients. Moreover, the nutrient analysis alternatives continues to require that a minimum of three food items, one of which must be an entree, be available as part of every reimbursable meal. Finally, the Department notes that engineered foods generally cost more than foods that are not artificially fortified. All these factors are disincentives to the use of heavily fortified foods and should serve to minimize their use. The Department will be monitoring the implementation of the nutrient analysis menu planning alternatives and will continue to consider this issue should a feasible method of monitoring fortification levels become available in the future.

Alternate Foods for Meals

The regulations governing Alternate Foods for Meals for the school lunch program are found in Appendix A of 7 CFR Part 210. This Appendix sets forth the requirements for enriched macaroni products with fortified protein, cheese alternate products and vegetable protein products. These regulations were developed to define and clarify the use of new products in the Child Nutrition Programs. Advances in food processing have allowed food producers to engineer ingredients into fabricated or formulated foods, usually in answer to a specific need or problem. Cheese alternate products, for example, were developed to supplement the natural cheese supply at a time when the availability of natural cheese had decreased and the price had increased. The alternate foods regulations were designed to maintain nutritional quality in school meals while providing schools with flexibility in menu planning, convenience in food preparation and an economic advantage. Because the Department proposed no changes to these regulations, the current requirements for alternative foods in Appendix A will remain in effect. However, the Department recognizes that more recent developments in food processing may necessitate revisions and that some products not currently allowable may provide schools with additional low-fat options. Therefore, the Department is considering proposing changes to these regulations in the near future. Prior to making any decisions, however, the Department will be consulting with an expert panel, as appropriate, to develop options.

Lunch Periods

In the June 10, 1994, proposal, the Department indicated its concern that schools have an adequate number of lunch periods to accommodate all of their students and that the lunch periods provide sufficient time for children to eat the entire meal. Therefore, the Department proposed a recommendation at § 210.10(i) that school food authorities make every effort to provide adequate meal service times and periods to ensure that children can effectively participate in the school lunch program.

Nine hundred and forty-five commenters addressed this provision; over 850 were from school food service personnel, teachers, other school officials, parents and teachers. Overwhelmingly, they asserted that lunch periods need to be longer, especially if additional foods are served, and nearly 600 maintained that the Department should regulate this aspect of the food service. The Department appreciates these concerns. However, as noted in the preamble to the proposed rule, the Department has no authority to regulate meal times. Nevertheless, we intend to continue working with our partners in the Department of Education to solicit support in the education community to ensure that educators and school administrators understand the importance of giving students adequate time to eat. The Department also emphasizes that this is an issue that can be dealt with effectively at the local level, and the Department strongly encourages school food service directors to work with other school officials. Therefore, this final rule adopts the recommendation included in the proposed rule at § 210.10(f).

Nutrition Disclosure

The June 10, 1994, proposal included a provision at § 210.10(n) encouraging school authorities to make a public disclosure of the nutrients contained in their meals. The Department intended that such a provision would promote an increased awareness on the part of students and their families of the nutrients in their meals, enhance the ability of children and their parents to make healthful food choices and increase support for school meals through public recognition of improved meal quality. However, in recognition of the differing needs of school food authorities, the Department did not mandate disclosure, nor was a particular method of making the disclosure prescribed, although the proposal did indicate that the information should be

readily available to children and their families.

The Department received over 260 comments on this issue, over 200 of them from school food service personnel. Approximately 190 commenters agreed that nutrition disclosure should be optional, and only 15 believed the Department should require disclosure. The remaining comments addressed narrower issues, such as suggesting that information be sent home with elementary students. Because the Department did not propose mandatory disclosure, the Department is adopting the provision as it was proposed at § 210.10(h) and § 220.8(l). The Department appreciates the overall support for voluntary disclosure. However, section 9(f)(1)(A) of the NSLA, as amended by section 106(b) of Pub. L. 103-448, 42 U.S.C. 1758(f)(1), includes a provision requiring schools to make a public disclosure of the nutrient content of their meals. The Department is assessing various methods of disclosure and intends to issue a proposed rule on this subject at a later time.

Compliance Over a School Week

The June 10, 1994, proposal would have required nutrient analysis of the reimbursable meals served over the course of a school week, as defined in proposed § 210.2 as a period of three to seven days. The normal school week would, of course, be five consecutive days. To accommodate situations when school is not in session for a complete week, the Department intended that weeks in which school lunches are offered fewer than three times would be combined with either the previous or the following week. The Department's proposal for weekly compliance and the proposed definition of "school week" were repeated in the January 27, 1995, rule, in keeping with a provision of Pub. L. 103-448 (section 106(a), 42 U.S.C. 1758(a)(1)(A)(ii)) requiring that, at a minimum, compliance with the nutrition standards be based on the weekly average of the nutrient content of school lunches. This proposal was intended to provide schools with a manageable time period in which to vary menus and make meaningful calculations and adjustments. The range of three to seven days was intended to provide school food authorities with flexibility in planning menus when the school is not in session for an entire week.

The Department received over 600 comments on this provision in the June 10, 1994, proposal. Nearly 400 of the comments were from school food service personnel, and approximately 130 were from parents and students.

Over half of the comments agreed with weekly analyses. Those who disagreed generally suggested a different length of time, although some believed there should be no specific time period at all, since the Dietary Guidelines have none. Generally commenters recommended that planning and analysis be done on a daily, bi-weekly or monthly basis, although some commenters recommended averaging over the length of the menu cycle or even the entire school year. Approximately 50 commenters were also concerned that requiring weekly compliance could result in less variety in meals overall, since schools might tend simply to repeat a qualifying menu every week.

The Department received 25 comments on this provision as applied to the proposed food-based menu planning system in the January 27, 1995, rulemaking. The largest number of these came from persons in school food service. Generally, these commenters recommended that the school week be defined strictly as five days or raised technical concerns about shorter periods.

The Department appreciates commenters' suggestions for changing the length of the planning cycle. The Department continues to believe, however, that a school week represents the optimum length of time for determining nutrient content, as long as flexibility is built in to accommodate days when schools are not in session. A school week allows enough time for schools to vary menus but still ensures that nutrients are reasonably concentrated. Moreover, since the law now mandates compliance with the nutrition standards over the school week, the Department is adopting this provision as proposed at § 210.2 and § 220.2(w-1).

Operational Obstacles

Over 9,000 commenters addressed perceived operational obstacles to implementation of the June 10, 1994, proposal. Nearly 7,000 commenters were from those in school food service, and more than 100 others were teachers or school officials. Commenters were chiefly concerned about the potential for increased administrative and paperwork burdens, the possibility that schools would drop out of the program because of the complexity of the requirements, the need for additional staff to conduct nutrient analysis and the difficulty in balancing good nutrition with student acceptance.

The Department has given due consideration to these concerns. The Department believes, however, that the complexities of NuMenus and Assisted

NuMenus are not as great as commenters have represented them to be. While it is true that nutrition analysis will measure nutrients and calories more precisely than in the past, this analysis will be done entirely by computer. Once the information has been entered, there is little additional burden on the school. Much the same is true of menu adjustments. Creating the initial menu may require more time than is currently the case with the meal pattern. However, once the recipe and product data has been entered and the menu cycle has been adjusted to comply with the nutrition standards, wholesale changes with resulting new analysis should not generally be needed. The Department also notes that the computer software approved for NuMenus will have the capability of searching for food sources of high nutrient density when a particular nutrient must be provided.

The Department also believes that the amount of paperwork resulting from NuMenus will not be as great as commenters have stated. The nutrient analysis, itself, will remain in the computer unless a report is generated by the school or at the request of the State agency. The Department also wishes to emphasize that the analysis need not be performed individually by every school. If the school food authority wishes, the analysis can be performed centrally. For these reasons, it will not be necessary for schools' food authorities to add additional personnel to conduct NuMenus.

Also, the Department does not consider appealing meals as incompatible with good nutrition. The Department has undertaken Team Nutrition—a comprehensive initiative to help meal planners produce meals that are appealing as well as nutritious and to foster an awareness on the part of children that good meals do taste good. The Department is promoting an array of technical assistance programs among State and local school food agencies. One prominent example is our partnership with the American Culinary Federation and others to develop recipes and provide information on how to make the meal presentation more appealing. In addition, the Department believes that the Children's Nutrition Campaign, which concentrates on bringing the message of good nutrition to children and their parents, will make nutritious foods more popular. Thus, the Department anticipates that these efforts to assist and educate will lead to increased participation.

Cost Implications

Over 5,500 commenters, many from school food service personnel, were

concerned that the changes set forth in the June 10, 1994, proposal would significantly increase the cost of their food operations. These concerns were based on the perception that they would need to purchase more expensive lower-fat foods and employ costlier preparation techniques along with the expense of acquiring computer equipment and software for NuMenus. Approximately 145 commenters raised cost concerns about the January 27, 1995, proposal because of the increased quantity requirements for fruits/vegetables and grains/breads.

The Department extensively studied the cost implications of both proposals as part of the Regulatory Assessments published with the proposals. The analysis published on June 10, 1994, found that the nutrient requirements of NuMenus can be met at about the current cost of food in the National School Lunch Program. Moreover, the Department does not anticipate the need for significant changes in meal preparation practices that would affect the cost of meals. While schools without computer resources might experience one-time acquisition costs, these costs must be considered in light of the length of time the schools will be using that equipment. Moreover, software to conduct NuMenus can have other food service applications as well, thereby providing some administrative efficiencies. For a complete discussion of the cost analysis, readers should refer to the June 10, 1994, issue of the **Federal Register** (59 FR 30250).

In the cost/benefit analysis for the January 27, 1995, proposed rule, the Department noted that its school lunch model did experience slight increases in costs for leaner meat and for fruits/vegetables. These increases, however, can be effectively offset by selecting less expensive items from the grains/breads component. In fact, the analysis found that the nutrient requirements of the food-based menu planning system can be met at about the current cost of food in the program. Again, readers wishing a complete discussion of costs should refer to the January 27, 1995, issue of the **Federal Register** (60 FR 5525-26).

General Comments on Meal Content

The Department received over 4,200 comments on various issues related to the content of school meals. More than 2,500 were from persons in school food service, while nearly 800 were from students or their families and over 250 were from the medical, public health and food advocacy communities. Some of these comments were general observations on the quality of existing meal services or reflected concerns

about plate waste. For the most part, however, commenters discussed increasing or decreasing specific food components. Approximately 1,000 commenters recommended increasing the amounts of fruits and vegetables, and another 500 wanted more breads and grain products. On the other hand, approximately 400 commenters recommended using either lower fat meats or meat substitutes such as soy, while over 1,200 opposed the milk requirement.

The Department appreciates commenters' concerns. The Department agrees that it is important for children to receive plenty of fruits and vegetables as well as grain products. Although there are no component or quantity requirements under NuMenus and Assisted NuMenus, the Department believes that menu planners will use more of these food groups since they are prime sources of low-fat, nutrient-dense foods needed to meet the recommendations of the Dietary Guidelines. The Department's January 27, 1995, proposal did, in fact, significantly increase the quantity requirements for both fruits/vegetables and grains/breads. In addition, the Department believes that the nutrition standards established for school meals will ensure that a wide variety and ample amount of these items will be served.

With respect to meats, the Department reiterates that it is important to obtain essential nutrients from a variety of foods. The Department agrees that foods, particularly those high in fat, must be eaten in moderation, but the Department does not share the view that any given foods are necessarily "good" or "bad." For this reason, the January 27, 1995, proposal retained the quantity requirements for meats/meat alternates currently in effect, and the Department does not plan to limit or eliminate items from this food group in any future rulemakings. It is also important to note that meat is a significant source of iron, a nutrient that was not adequately met for some participants in the school meal programs reviewed in the 1993 SNDA study. As one final note, the Department is aware that yogurt can be a useful meat alternate, and the Department is considering a future action which would allow meal planners to substitute yogurt for meat.

The Department also appreciates commenters' suggestions to eliminate the whole milk requirement or permit alternatives to milk. The requirement that schools offer fluid milk as part of a reimbursable lunch is statutory (42 U.S.C. 1758(a)(2)(A)(i)). The Department notes, however, that section 107 of Pub.

L. 103-448 did modify this requirement. In the past, schools were required to offer fluid whole milk and fluid unflavored low-fat milk. Schools now are required to offer a variety of fluid milk consistent with children's preferences in the prior year. Schools also may cease offering any variety which constituted less than one percent of the total milk consumed in the prior year (42 U.S.C. 1758(a)(2)(A)(ii)). Therefore, while schools must still make milk available as part of all reimbursable lunches, they will have somewhat more flexibility than in the past to reflect their children's changing preferences. This provision is found at § 210.10(l)(1).

NuMenus and Assisted NuMenus for Meals Served Under the Child and Adult Care Food Program and the Summer Food Service Program

A few commenters recommended that schools using NuMenus or Assisted NuMenus should be allowed to use these systems when the school is providing meals under the Child and Adult Care Food Program (CACFP) or the Summer Food Service Program (SFSP). Otherwise, the school food service could be placed in the position of following multiple sets of meal requirements. The Department agrees that schools should be able to use the same menu planning system for all meals it prepares and serves. Moreover, once the analysis has been properly completed and appropriate adjustments made, meals served under NuMenus or Assisted NuMenus will generally be more healthful and nutritious than meals planned and prepared under the old meal patterns. Therefore, although NuMenus and Assisted NuMenus has not yet been proposed for the CACFP or the SFSP, the Department is providing in this final rule (§ 210.10 (i)(12) and (j)(7); § 220.8 (e)(12) and (f)(7)) that schools, with State agency approval, may use, in addition to the food-based menu planning systems, nutrient analysis for all of the meal programs receiving USDA reimbursement that they operate. These exceptions are consistent with the current requirements in the regulations governing the CACFP and the SFSP. The Department emphasizes, however, that schools would still be required to follow the existing meal patterns for snacks and for meals served to children under two years of age.

Implementation Schedules

The June 10, 1994, proposal would have required all schools to comply with the Dietary Guidelines and nutrition standards established by that

proposal by School Year 1998. Over 750 commenters agreed with the proposed implementation schedule, although 40 commenters believed implementation should be sooner. Over 200 commenters, however, believed that School Year 1998 would be too early for full implementation or requested that waivers be authorized for schools unable to comply. Subsequently, Congress amended the NSLA to require that school meals comply with the Dietary Guidelines by School Year 1996/97, unless a waiver not to exceed two years is authorized by the State agency. This provision (42 U.S.C. 1758 (f)(2)) affirms the importance of having school meals that comply with the best scientific research regarding nutrition, and the Department appreciates Congressional support on this issue. Therefore, this final regulation, at § 210.10(o) and § 220.8(m), will require implementation by School Year 1996, although State agencies may authorize schools to delay implementation on a case by case basis until a later date, but not later than School Year 1998/1999. This provision of the law will accommodate schools that have training or resource needs that require delayed implementation. However, State agencies and school food authorities may implement the provisions in this rule, such as the streamlining/paperwork reduction provisions including the extension of the CRE review period, prior to that date. Nonetheless, while the revised menu planning alternatives may be implemented early, they must be implemented in their entirety.

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 amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

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

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

2. 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;
- d. a new definition of "Menu item" is added;
- e. a new definition of "Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning" is added;
- f. the definition of "Reimbursement" is amended by adding the words "or § 210.10a, whichever is applicable," after "§ 210.10"; and
- g. a new definition of "School Week" is added.

The revisions and additions 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 for the purposes of § 210.10(k) or one of the four food groups which compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and vegetable/fruit under § 210.10a.

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 for the purposes of § 210.10(k) or one of the five required foods that compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and two (2) servings of vegetables, fruits, or a combination of both for the purposes of § 210.10a.

* * * * *

Lunch means a meal which meets the nutrition standards and the appropriate nutrient and calorie levels designated in § 210.10. In addition, if applicable, a lunch shall meet the requirements by age/grade groupings in § 210.10(k)(2) or the school lunch pattern for specified age/grade groups of children as designated in § 210.10a.

Menu item means, under Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning, any single food or combination of foods. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards provided in § 210.10, except for those foods that are considered as foods of minimal nutritional value as provided for in § 210.11(a)(2) which are not offered as part of a menu item in a

reimbursable meal. For the purposes of a reimbursable lunch, a minimum of three menu items must be offered, one of which must be an entree (a combination of foods or a single food item that is offered as the main course) and one of which must be fluid milk. Under offer versus serve, a student shall select, at a minimum, an entree and one other menu item. If more than three menu items are offered, the student may decline up to two menu items; however, the entree cannot be declined.

* * * * *

Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning mean ways to develop menus based on the analysis for nutrients in the menu items and foods offered over a school week to determine if specific levels for a set of key nutrients and calories were met. Such analysis is based on averages weighted in accordance with the criteria in § 210.10(i)(5). Such analysis is normally done by a school or a school food authority. However, for the purposes of Assisted Nutrient Standard Menu Planning, menu planning and analysis are completed by other entities and shall incorporate the production quantities needed to accommodate the specific service requirements of a particular school or school food authority.

* * * * *

School week means the period of time used to determine compliance with the nutrition standards and the appropriate calorie and nutrient levels in § 210.10. Further, if applicable, school week is the basis for conducting Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning for lunches as provided in § 210.10(i) and § 210.10(j). The period shall be a normal school week of five consecutive days; however, to accommodate shortened weeks resulting from holidays and other scheduling needs, the period shall be a minimum of three consecutive days and a maximum of seven consecutive days. Weeks in which school lunches are offered less than three times shall be combined with either the previous or the coming week.

* * * * *

§ 210.4 [Amended]

3. In § 210.4, paragraph (b)(3) introductory text is amended by removing the words "§ 210.10(j)(1) of this part" and adding in their place the words "§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable".

§ 210.7 [Amended]

4. In § 210.7:

a. paragraph (c)(1)(v) is amended by removing the reference to "§ 210.10(b) of this part" and adding in its place the words "§ 210.10(a)(2) or § 210.10a(b), whichever is applicable,"; and

b. paragraph (d) is amended by removing the reference to "§ 210.10(j)(1) of this part" and adding in its place the words "§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable".

5. In § 210.8:

a. the third sentence of paragraph (a)(2) is removed and new paragraphs (a)(2)(i) and (a)(2)(ii) are added at the end;

b. Paragraph (a)(3) is revised;

c. the first sentence of paragraph (a)(4) is revised;

d. the first sentence of paragraph (b)(2)(i) is amended by removing the reference to "paragraph (a)(2)" and adding in its place a reference to "paragraph (a)(3)" and by adding at the end of the sentence the words "or the internal controls used by schools in accordance with paragraph (a)(2)(i) of this section." The revisions and additions read as follows:

§ 210.8 Claims for reimbursement.

(a) *Internal controls.* * * *

(2) *School food authority claims review process.* * * *

(i) Any school food authority that was found by its most recent administrative review conducted in accordance with § 210.18, to have no meal counting and claiming violations may:

(A) Develop internal control procedures that ensure accurate meal counts. The school food authority shall submit any internal controls developed in accordance with this paragraph to the State agency for approval and, in the absence of specific disapproval from the State agency, shall implement such internal controls. The State agency shall establish procedures to promptly notify school food authorities of any modifications needed to their proposed internal controls or of denial of unacceptable submissions. If the State agency disapproves the proposed internal controls of any school food authority, it reserves the right to require the school food authority to comply with the provisions of paragraph (a)(3) of this section; or

(B) Comply with the requirements of paragraph (a)(3) of this section.

(ii) Any school food authority that was identified in the most recent administrative review conducted in accordance with § 210.18, or in any other oversight activity, as having meal counting and claiming violations shall comply with the requirements in paragraph (a)(3) of this section.

(3) *Edit checks.* (i) The following procedure shall be followed for school

food authorities identified in paragraph (a)(2)(ii) of this section, by other school food authorities at State agency option, or, at their own option, by school food authorities identified in paragraph (a)(2)(i) of this section: the school food authority shall compare each school's daily counts of free, reduced price and paid lunches against the product of the number of children in that school currently eligible for free, reduced price and paid lunches, respectively, times an attendance factor.

(ii) School food authorities that are identified in subsequent administrative reviews conducted in accordance with § 210.18 as not having meal counting and claiming violations and that are correctly complying with the procedures in paragraph (a)(3)(i) of this section have the option of developing internal controls in accordance with paragraph (a)(2)(i) of this section.

(4) *Follow-up activity.* The school food authority shall promptly follow-up through phone contact, on-site visits or other means when the internal controls used by schools in accordance with paragraph (a)(2)(i) of this section or the claims review process used by schools in accordance with paragraphs (a)(2)(ii) and (a)(3) of this section suggest the likelihood of lunch count problems.

* * *
* * * * *

§ 210.9 [Amended]

- 6. In § 210.9:
 - a. paragraph (b)(5) is amended by adding the words "or § 210.10a, whichever is applicable" at the end of the paragraph;
 - b. paragraph (c) introductory text is amended by removing the reference to "§ 210.10(j)(1) of this part" and adding in its place the words "§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable"; and
 - c. paragraph (c)(1) is amended by adding the words "or § 210.10a, whichever is applicable" after the reference to "§ 210.10."
- 7. Section 210.10 is redesignated as § 210.10a.
- 8. A new § 210.10 is added to read as follows:

§ 210.10 Nutrition standards for lunches and menu planning methods.

- (a) *General requirements for school lunches.*
 - (1) In order to qualify for reimbursement, all lunches served to children age 2 and older, as offered by participating schools, shall, at a minimum, meet the nutrition standards provided in paragraph (b) of this section and the appropriate level of calories and nutrients provided for in either

paragraph (c) or paragraph (i)(1) of this section for nutrient standard menu planning and assisted nutrient standard menu planning or in paragraph (d) of this section for food-based menu planning, whichever is applicable. Compliance with the nutrition standards and the nutrient and calorie levels shall be determined by averaging lunches offered over a school week. Except as otherwise provided herein, school food authorities shall ensure that sufficient quantities of foods are planned and produced to meet, at a minimum, the nutrition standards in paragraph (b) of this section, the appropriate nutrient and calorie levels in paragraphs (c), (d), or (i)(1) of this section, whichever is applicable, and to either contain all the required food items in at least the amounts indicated in paragraph (k) of this section or to supply sufficient quantities of menu items and foods as provided in paragraphs (i) or (j) of this section.

(2) School food authorities shall ensure that each lunch is priced as a unit and that lunches are planned and produced on the basis of participation trends, with the objective of providing one reimbursable lunch per child per day. Any excess lunches that are produced may be offered, but shall not be claimed for general or special cash assistance provided under § 210.4. The component requirements for meal supplements served under the Child and Adult Care Food Program authorized under part 225 of this chapter shall also apply to meal supplements served by eligible school food authorities in afterschool care programs under the NSLP.

(3) Production and menu records shall be maintained to demonstrate that the required number of food components and food items or menu items are offered on a given day. Production records shall include sufficient information to evaluate the menu's contribution to the requirements on nutrition standards in paragraph (b) of this section and the appropriate levels of nutrients and calories in paragraphs (c), (d) or (i)(1) of this section, whichever is applicable. If applicable, schools or school food authorities shall maintain nutritional analysis records to demonstrate that lunches meet, when averaged over each school week, the nutrition standards provided in paragraph (b) of this section and the nutrient and calorie levels for the appropriate age or grade group as provided for in paragraphs (c) or (i)(1) of this section, whichever is applicable.

(b) *Nutrition standards for reimbursable lunches.* School food authorities shall ensure that

participating schools provide nutritious and well-balanced meals to children. In addition, for children ages 2 and above meals shall be provided based on the nutrition standards provided in this section.

(1) Provision of one-third of the Recommended Dietary Allowances (RDA) of protein, calcium, iron, vitamin A and vitamin C to the applicable age or grade groups in accordance with the appropriate levels provided in paragraph (c), (d) or (i)(1) of this section, whichever is applicable;

(2) Provision of the lunchtime energy allowances for children based on the appropriate age or grade groups in accordance with the levels provided in paragraphs (c), (d) or (i)(1) of this section, whichever is applicable;

(3) The applicable recommendations of the *1990 Dietary Guidelines for Americans* which are:

- (i) Eat a variety of foods;
- (ii) Limit total fat to 30 percent of calories;
- (iii) Limit saturated fat to less than 10 percent of calories;
- (iv) Choose a diet low in cholesterol;
- (v) Choose a diet with plenty of vegetables, fruits, and grain products; and
- (vi) Use salt and sodium in moderation.

(4) The following measures of compliance with the applicable recommendations of the *1990 Dietary Guidelines for Americans*:

- (i) A limit on the percent of calories from total fat to 30 percent based on the actual number of calories offered;
- (ii) A limit on the percent of calories from saturated fat to less than 10 percent based on the actual number of calories offered;
- (iii) A reduction of the levels of sodium and cholesterol; and
- (iv) An increase in the level of dietary fiber.

(5) School food authorities have three alternatives for menu planning in order to meet the requirements of this paragraph and the appropriate nutrient and calorie levels in paragraphs (c), (d) or (i)(1) of this section, whichever is applicable: nutrient standard menu planning as provided for in paragraph (i) of this section, assisted nutrient standard menu planning as provided for in paragraph (j) of this section, or food-based menu planning as provided for in paragraph (k) of this section. The actual minimum calorie levels vary depending upon the alternative followed due to differences in age/grade groupings of each alternative.

(c) *Nutrient levels for school lunches/nutrient analysis.* (1) For the purposes of nutrient standard and assisted nutrient

standard menu planning, as provided for in paragraphs (i) and (j), respectively, of this section, schools shall, at a minimum, provide calorie and nutrient levels for school lunches (offered over a school week) for the required grade groups specified in the chart following:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL LUNCHES/NUTRIENT ANALYSIS (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Minimum requirements			Optional
	Preschool	Grades K-6	Grades 7-12	Grades K-3
Energy allowance/calories	517	664	825	633
Total fat (as a percent of actual total food energy)	(1)	(1)	(1)	(1)
Saturated fat (as a percent of actual total food energy)	(2)	(2)	(2)	(2)
RDA for protein	7	10	16	9
RDA for calcium (mg)	267	286	400	267
RDA for iron (mg)	3.3	3.5	4.5	3.3
RDA for vitamin A (RE)	150	224	300	200
RDA for vitamin C (mg)	14	15	18	15

¹ Not to exceed 30 percent over a school week.
² Less than 10 percent over a school week.

(2) At their option, schools may provide for the calorie and nutrient levels for school lunches (offered over a school week) for the age groups specified in the following chart or may develop their own age groups and their corresponding levels in accordance with paragraph (i)(1) of this section.

OPTIONAL MINIMUM NUTRIENT LEVELS FOR SCHOOL LUNCHES/NUTRIENT ANALYSIS (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Ages 3-6	Ages 7-10	Ages 11-13	Ages 14 and above
Energy allowance/calories	558	667	783	846
Total fat (as a percent of actual total food energy)	(1)	(1)	(1)	(1)
Saturated fat (as a percent of actual total food energy)	(2)	(2)	(2)	(2)
RDA for protein (g)	7.3	9.3	15.0	16.7
RDA for calcium (mg)	267	267	400	400
RDA for iron (mg)	3.3	3.3	4.5	4.5
RDA for vitamin A (RE)	158	233	300	300
RDA for vitamin C (mg)	14.6	15.0	16.7	19.2

¹ Not to exceed 30 percent over a school week.
² Less than 10 percent over a school week.

(d) *Minimum nutrient levels for school lunches/food-based menu planning.* For the purposes of food-based menu planning, as provided for in paragraph (k) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school lunches offered over a school week:

MINIMUM NUTRIENT LEVELS FOR SCHOOL LUNCHES/FOOD-BASED MENU PLANNING (SCHOOL WEEK AVERAGES)

	Preschool	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

¹ Not to exceed 30 percent over a school week.
² Less than 10 percent over a school week.

(e) *Choice.* To provide variety and to encourage consumption and participation, schools should, whenever possible, offer a selection of menu items and foods from which children may make choices. When a school offers a selection of more than one type of lunch or when it offers a variety of menu items, foods or milk for choice within a reimbursable lunch, the school shall

offer all children the same selection regardless of whether the children are eligible for free or reduced price lunches or pay the school food authority's designated full price. The school may establish different unit prices for each type of lunch offered provided that the benefits made available to children eligible for free or reduced price lunches are not affected.

(f) *Lunch period.* At or about mid-day schools shall offer lunches which meet the requirements of this section during a period designated as the lunch period by the school food authority. Such lunch periods shall occur between 10:00 a.m. and 2:00 p.m., unless otherwise exempted by FCS. With State agency approval, schools that serve children 1-5 years old are encouraged to divide the

service of the meal into two distinct service periods. Such schools may divide the quantities, and/or menu items, foods or food items offered between these service periods in any combination that they choose. Schools are also encouraged to provide an adequate number of lunch periods of sufficient length to ensure that all students have an opportunity to be served and have ample time to consume their meals.

(g) *Exceptions.* Lunches claimed for reimbursement shall meet the nutrition requirements for reimbursable meals specified in this section. However, lunches served which accommodate the exceptions and variations authorized under this paragraph are also reimbursable. Exceptions and variations are restricted to the following:

(1) *Medical or dietary needs.* Schools shall make substitutions in foods listed in this section for students who are considered to have a disability under 7 CFR part 15b and whose disability restricts their diet. Schools may also make substitutions for students who do not have a disability but who are unable to consume the regular lunch because of medical or other special dietary needs. Substitutions shall be made on a case by case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FCS. Such statement shall, in the case of a student with a disability, be signed by a physician or, in the case of a student who is not disabled, by a recognized medical authority.

(2) *Ethnic, religious or economic variations.* FCS encourages school food authorities to consider ethnic and religious preferences when planning and preparing meals. For the purposes of the food-based menu planning alternative as provided for in paragraph (k) of this section, FCS may approve variations in the food components of the lunch on an experimental or on a continuing basis in any school where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, or economic needs.

(3) *Natural disaster.* In the event of a natural disaster or other catastrophe, FCS may temporarily allow schools to serve lunches for reimbursement that do not meet the requirements of this section.

(h) *Nutrition disclosure.* School food authorities are encouraged to make information available indicating efforts to meet the nutrition standards in paragraph (b) of this section.

(i) *Nutrient standard menu planning.*

(1) *Adjusted nutrient levels.* (i) At a

minimum, schools with children age 2 that choose the nutrient standard menu planning alternative shall ensure that the nutrition standards in paragraph (b) and the required preschool level in paragraph (c)(1) of this section are met over a school week except that, such schools have the option of either using the nutrient and calorie levels for preschool children in paragraph (c)(2) of this section or developing separate nutrient and calorie levels for this age group. The methodology for determining such levels will be available in menu planning guidance material provided by FCS.

(ii) At a minimum, schools shall offer meals to children based on the required grade groups in the table, *Minimum Nutrient Levels for School Lunches/Nutrient Analysis*, in paragraph (c)(1) of this section. However, schools may, at their option, offer meals to children using the age groups and their corresponding calorie and nutrient levels in paragraph (c)(2) of this section or, following guidance provided by FCS, develop their own age or grade groups and their corresponding nutrient and calorie levels. However, if only one age or grade is outside the established levels, schools may use the levels for the majority of children regardless of the option selected.

(2) *Contents of reimbursable meal and offer versus serve.* (i) *Minimum requirements.* For the purposes of this menu planning alternative, a reimbursable lunch shall include a minimum of three menu items as defined in § 210.2; one menu item shall be an entree and one shall be fluid milk as a beverage. An entree may be a combination of foods or a single food item that is offered as the main course. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards in paragraph (b) of this section and the appropriate nutrient and calorie levels in paragraph (c) or (i)(1) of this section, whichever is applicable, except for those foods that are considered foods of minimal nutritional value as provided for in § 210.11(a)(2) which are not offered as part of a menu item in a reimbursable meal. Such reimbursable lunches, as offered, shall meet the established nutrition standards in paragraph (b) and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever is applicable, when averaged over a school week.

(ii) *Offer versus serve.* Each participating school shall offer its students at least three menu items as required by paragraph (i)(2)(i) of this

section. Under offer versus serve, senior high students must select at least two menu items and may decline a maximum of two menu items; one menu item selected must be an entree. At the discretion of the school food authority, students below the senior high level may also participate in offer versus serve. The price of a reimbursable lunch shall not be affected if a student declines a menu item or requests smaller portions. State educational agencies shall define "senior high."

(3) *Nutrient analysis under Nutrient Standard Menu Planning.* School food authorities choosing the nutrient analysis alternative shall conduct nutrient analysis on all menu items or foods offered as part of the reimbursable meal. However, those foods that are considered as foods of minimal nutritional value as provided for in § 210.11(a)(2) which are not offered as part of a menu item in a reimbursable meal shall not be included. Such analysis shall be over the course of each school week.

(4) *The National Nutrient Database and software specifications.* (i) Nutrient analysis shall be based on information provided in the National Nutrient Database for Child Nutrition Programs. This database shall be incorporated into software used to conduct nutrient analysis. Upon request, FCS will provide information about the database to software companies and others that wish to develop school food service software systems.

(ii) Any software used to conduct nutrient analysis shall be evaluated by FCS or by an FCS designee beforehand and, as submitted, has been determined to meet the minimum requirements established by FCS. However, such review does not constitute endorsement by FCS or USDA. Such software shall provide the capability to perform all functions required after the basic data has been entered including calculation of weighted averages and the optional combining of analysis of the lunch and breakfast programs as provided in paragraph (i)(5) of this section.

(5) *Determination of weighted averages.* (i) Menu items and foods offered as part of a reimbursable meal shall be analyzed based on portion sizes and projected serving amounts and shall be weighted based on their proportionate contribution to the meals. Therefore, in determining whether meals satisfy nutritional requirements, menu items or foods more frequently offered will be weighted more heavily than menu items or foods which are less frequently offered. Such weighting shall be done in accordance with guidance

issued by FCS as well as that provided by the software used.

(ii) An analysis of all menu items and foods offered in the menu over each school week shall be computed for calories and for each of the following nutrients: protein; vitamin A; vitamin C; iron; calcium; total fat; saturated fat; and sodium. The analysis shall also include the dietary components of cholesterol and dietary fiber.

(iii) At its option, a school food authority may combine analysis of the National School Lunch and School Breakfast Programs. Such analysis shall be proportionate to the levels of participation in the two programs in accordance with guidance issued by FCS.

(6) *Comparing average nutrient levels.* Once the appropriate procedures of paragraph (i)(5) of this section have been completed, the results shall be compared to the appropriate nutrient and calorie levels, by age/grade groups, in paragraph (c)(1) or (c)(2) of this section or to the levels developed in accordance with paragraph (i)(1) of this section, whichever is applicable, to determine the school week's average. In addition, comparisons shall be made to the nutrition standards provided in paragraph (b) of this section in order to determine the degree of conformity over the school week.

(7) *Adjustments based on students' selections.* The results obtained under paragraph (i)(5) and (i)(6) of this section shall be used to adjust future menu cycles to accurately reflect production and the frequency with which menu items and foods are offered. Menus may require further analysis and comparison, depending on the results obtained in paragraph (i)(6) of this section, when production and selection patterns of students change. The school food authority may need to consider modifications to the menu items and foods offered based on student selections as well as modifications to recipes and other specifications to ensure that the nutrition standards provided in paragraph (b) of this section and paragraphs (c) or (i)(1) of this section, whichever is applicable, are met.

(8) *Standardized recipes.* Under Nutrient Standard Menu Planning, standardized recipes shall be developed and followed. A standardized recipe is one that was tested to provide an established yield and quantity through the use of ingredients that remain constant in both measurement and preparation methods. USDA/FCS standardized recipes are included in the National Nutrient Database for the Child Nutrition Programs. In addition, local

standardized recipes used by school food authorities shall be analyzed for their calories, nutrients and dietary components, as provided in paragraph (i)(5)(ii) of this section, and added to the local databases by school food authorities in accordance with guidance provided by FCS.

(9) *Processed foods.* Unless already included in the National Nutrient Database, the calorie amounts, nutrients and dietary components, as provided in paragraph (i)(5)(ii) of this section, of purchased processed foods and menu items used by the school food authority shall be obtained by the school food authority or State agency and incorporated into the database at the local level in accordance with FCS guidance.

(10) *Menu substitutions.* If the need for serving a substitute food(s) or menu item(s) occurs at least two weeks prior to serving the planned menu, the revised menu shall be reanalyzed based on the changes. If the need for serving a substitute food(s) or menu item(s) occurs two weeks or less prior to serving the planned menu, no reanalysis is required. However, to the extent possible, substitutions should be made using similar foods.

(11) *Compliance with the nutrition standards.* If the analysis conducted in accordance with paragraphs (i)(1) through (i)(10) of this section shows that the menus offered are not meeting the nutrition standards in paragraph (b) of this section and the appropriate levels of nutrients and calories in paragraph (c)(1) or (c)(2) of this section or the levels developed in accordance with paragraph (i)(1) of this section, whichever is applicable, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the lunches offered to children comply with the nutrition standards established by paragraph (b) and the appropriate levels of nutrients and calories in paragraphs (c) or (i)(1) of this section, whichever is applicable.

(12) *Other programs.* Any school food authority that operates the Summer Food Service Program authorized under part 225 of this chapter and/or the Child and Adult Care Food Program under part 226 of this chapter may, at its option and with State agency approval, prepare meals provided for those programs using the nutrient standard menu planning alternative, except for children under two years of age. For school food authorities providing meals for adults, FCS will provide guidance on the level of nutrients and calories needed. Meal supplements shall

continue to be provided based on the appropriate program's meal pattern.

(j) *Assisted Nutrient Standard Menu Planning.*

(1) School food authorities without the capability to conduct Nutrient Standard Menu Planning, as provided in paragraph (i) of this section, may choose an alternative which uses menu cycles developed by other sources. Such sources may include, but are not limited to the State agency, other school food authorities, consultants, or food service management companies. This alternative is Assisted Nutrient Standard Menu Planning.

(2) Assisted Nutrient Standard Menu Planning shall establish menu cycles that have been developed in accordance with paragraphs (i)(1) through (i)(10) of this section as well as local food preferences and local food service operations. These menu cycles shall incorporate the nutrition standards in paragraph (b) of this section and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever is applicable. In addition to the menu cycle, recipes, food product specifications and preparation techniques shall also be developed and provided by the entity furnishing Assisted Nutrient Standard Menu Planning to ensure that the menu items and foods offered conform to the nutrient analysis determinations of the menu cycle.

(3) At the inception of any use of Assisted Nutrient Standard Menu Planning, the State agency shall approve the initial menu cycle, recipes, and other specifications to determine that all required elements for correct nutrient analysis are incorporated. The State agency shall also, upon request by the school food authority, provide assistance with implementation of the chosen system.

(4) After initial service of the menu cycle under the Assisted Nutrient Standard Menu Planning, the nutrient analysis shall be reassessed and appropriate adjustments made in accordance with paragraph (i)(7) of this section.

(5) Under Assisted Nutrient Standard Menu Planning, the school food authority retains final responsibility for ensuring that all nutrition standards established in paragraph (b) and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever are applicable, are met.

(6) If the analysis conducted in accordance with paragraphs (i)(1) through (i)(10) and paragraph (j)(4) of this section shows that the menus offered are not meeting the nutrition standards in paragraph (b) of this

section and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever is applicable, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the lunches offered to children comply with the nutrition standards established by paragraph (b) and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever is applicable.

(7) Any school food authority that operates the Summer Food Service Program authorized under part 225 of

this chapter and/or the Child and Adult Care Food Program under part 226 of this chapter may, at its option and with State agency approval, prepare meals provided for those programs using the assisted nutrient standard menu planning alternative, except for children under two years of age. For school food authorities providing meals for adults, FCS will provide guidance on the level of nutrients and calories needed. Meal supplements shall continue to be provided based on the appropriate program's meal pattern.

(k) *Food-based menu planning.* (1) *Menu planning alternative.* School food

authorities may choose to plan menus using the food-based menu planning alternative. Under the food-based menu planning alternative, specific food components in minimum quantities must be served as provided in paragraphs (k)(2) through (k)(5) of this section.

(2) *Minimum quantities.* At a minimum, school food authorities choosing to plan menus using the food-based menu planning alternative shall offer all five required food items in the quantities provided in the following chart:

Meal component	Minimum quantities required for			
	Ages 1-2	Preschool	Grades K-6	Grades 7-12
Milk (as a beverage)	6 ounces	6 ounces	8 ounces	8 ounces.
Meat or meat alternate (quantity of the edible portion as served):				
Lean meat, poultry or fish	1 oz	1 1/2 oz	2 oz	2 oz
Cheese	1 oz	1 1/2 oz	2 oz	2 oz.
Large egg	1/2	3/4	1	1.
Cooked dry beans or peas	1/4 cup	3/8 cup	1/2 cup	1/2 cup.
Peanut butter or other nut or seed butters ..	2 tbsp	3 tbsp	4 tbsp	4 tbsp.
The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above:				
Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 ounce of nuts/seeds=1 ounce of cooked lean meat, poultry or fish.)	1/2 oz.=50%	3/4 oz.=50%	1 oz.=50%	1 oz.=50%.
Vegetables/Fruits (2 or more servings of vegetables or fruits or both)	1/2 cup	1/2 cup	3/4 cup plus additional 1/2 cup over a week ¹ .	1 cup.
Grains/Breads Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or 1/2 cup of cooked rice, macaroni, noodles, other pasta products or cereal grains.	5 servings per week—minimum of 1/2 per day ¹ .	8 servings per week—minimum of 1 per day ¹ .	12 servings per week—minimum of 1 per day ^{1,2} .	15 servings per week—minimum of 1 per day. ^{1,2}

¹ For the purposes of this chart, a week equals five days.
² Up to one grains/breads serving per day may be a dessert.

(3) *Meat or meat alternate component.* The quantity of meat or meat alternate shall be the quantity of the edible portion as served. When the school determines that the portion size of a meat alternate is excessive, it shall reduce the portion size of that particular meat alternate and supplement it with another meat/meat alternate to meet the full requirement. To be counted as meeting the requirement, the meat or meat alternate shall be served in a main dish or in a main dish and only one other of the items offered. The Department recommends that if schools do not offer children choices of meat or meat alternates each day, they serve no one meat alternate or form of meat (e.g., ground, diced, pieces) more than three times in a single week.

(i) Vegetable protein products, cheese alternate products, and enriched

macaroni with fortified protein defined in appendix A of this part may be used to meet part of the meat or meat alternate requirement when used as specified in appendix A of this part. An enriched macaroni product with fortified protein as defined in appendix A of this part may be used as part of a meat alternate or as a grain/bread item, but not as both food components in the same meal.

(ii) Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall not be used as meat alternates due to their low protein and iron content. Nut and seed meals or flours shall not be used as a meat alternate except as defined in this part under appendix A: Alternate Foods for

Meals. Nuts or seeds may be used to meet no more than one-half of the meat/meat alternate requirement. Therefore, nuts and seeds must be used in the meal with another meat/meat alternate to fulfill the requirement.

(4) *Vegetables and fruits.* Full strength vegetable or fruit juice may be counted to meet not more than one-half of the vegetable/fruit requirement. Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but not as both food components in the same meal. For children in kindergarten through grade six, the requirement for this component is based on minimum daily servings plus an additional 1/2 cup in any combination over a five day period.

(5) *Grains/breads.* (i) All grains/breads such as bread, biscuits, muffins or rice, macaroni, noodles, other pastas or cereal grains such as bulgur or corn

grits, shall be enriched or whole grain or made with enriched or whole grain meal or flour.

(ii) Unlike the other component requirements, the grains/breads requirement is based on minimum daily servings and total servings per week. The requirement for this component is based on minimum daily servings plus total servings over a five day period. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in the Food Buying Guide for Child Nutrition Programs (PA 1331), an FCS publication.

(6) *Offer versus serve.* Each school shall offer its students all five required food items as set forth in the table presented under paragraph (k)(2) of this section. Senior high students shall be permitted to decline up to two of the five required food items. At the discretion of the school food authority, students below the senior high level may be permitted to decline one or two of the required five food items. The price of a reimbursable lunch shall not be affected if a student declines food items or accepts smaller portions. State educational agencies shall define "senior high."

(7) *Outlying areas.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve a starchy vegetable such as yams, plantains, or sweet potatoes to meet the grain/bread requirement. For the Commonwealth of the Northern Mariana Islands, FCS has established a menu consistent with the food-based menu alternative and with local food consumption patterns and which, given available food supplies and food service equipment and facilities, provides optimum nutrition consistent with sound dietary habits for participating children. The State agency shall attach to and make a part of the written agreement required under § 210.9 the requirements of that menu option.

(1) *Milk.* (1) *Varieties.* Regardless of the menu planning alternative chosen, schools shall offer students fluid milk. The selection of the types of milk offered shall be consistent with the types of milk consumed in the prior year. This requirement does not preclude schools from offering additional kinds of milk. However, in the event that a particular type of milk represents less than one (1) percent of the total amount of milk consumed in the previous year, a school may elect not to make this type of milk available. All milk served shall be pasteurized fluid types of milk which meet State and local standards for such milk; except that, in the meal pattern for infants under 1 year of age, the milk

shall be unflavored types of whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meets such standards. All milk shall contain vitamins A and D at levels specified by the Food and Drug Administration and be consistent with State and local standards for such milk.

(2) *Insufficient milk supply.* The inability of a school to obtain a supply of milk shall not bar it from participation in the Program and is to be resolved as follows:

(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 approve the service of lunches during the emergency period with an available alternate form of milk or without 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 lunches without milk if the school uses an equivalent amount of canned or dry milk in the preparation of the lunch. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk, or as otherwise provided under written exception by FCS.

(m) *Infant lunch pattern.* (1) *Definitions for infant meals.* For the purpose of this section:

(i) Infant cereal means any iron-fortified dry cereal especially formulated and generally recognized as cereal for infants and that is routinely mixed with formula or milk prior to consumption.

(ii) Infant formula means any iron-fortified formula intended for dietary use solely as a food for normal, healthy infants; excluding those formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

(2) *Infants under the age of one.* Infants under 1 year of age shall be served an infant lunch as specified in this paragraph when they participate in the Program. Foods within the infant lunch pattern shall be of texture and consistency appropriate for the particular age group being served, and shall be served to the infant during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready.

Whenever possible the school should consult with the infant's parent in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food authorized in the meal patterns set forth below must be provided in order to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months of age or older may be claimed for reimbursement when the other meal component or components are supplied by the school. Although it is recommended that either breast milk or iron-fortified infant formula be served for the entire first year, whole milk may be served beginning at 8 months of age as long as infants are consuming one-third of their calories as a balanced mixture of cereal, fruits, vegetables, and other foods in order to ensure adequate sources of iron and vitamin C. The infant lunch pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(i) Birth through 3 months—4 to 6 fluid ounces of iron-fortified infant formula.

(ii) 4 through 7 months:

(A) 4 to 8 fluid ounces of iron-fortified infant formula;

(B) 0 to 3 tablespoons of iron-fortified dry infant cereal (optional); and

(C) 0 to 3 tablespoons of fruit or vegetable of appropriate consistency or a combination of both (optional).

(iii) 8 through 11 months:

(A) 6 to 8 fluid ounces of iron-fortified infant formula or 6 to 8 fluid ounces of whole milk;

(B) 2 to 4 tablespoons of iron-fortified dry infant cereal and/or 1 to 4 tablespoons meat, fish, poultry, egg yolk, or cooked dry beans or peas, or 1/2 to 2 ounces (weight) of cheese or 1 to 4 ounces (weight or volume) of cottage cheese, cheese food or cheese spread of appropriate consistency; and

(C) 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(n) *Supplemental food.* Eligible schools operating afterschool care programs may be reimbursed for one meal supplement served to an eligible child (as defined in § 210.2) per day.

(1) Eligible schools mean schools that:

(i) Operate school lunch programs under the National School Lunch Act;
 (ii) Sponsor afterschool care programs as defined in § 210.2; and
 (iii) Were participating in the Child and Adult Care Food Program as of May 15, 1989.
 (2) Meal supplements shall contain two different components from the following four:
 (i) A serving of fluid milk as a beverage, or on cereal, or used in part for each purpose;
 (ii) A serving of meat or meat alternate. Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts are excluded and shall not be used as meat alternates due to their low protein content. Nut or seed meals or flours shall not be used as a meat

alternate except as defined under appendix A: Alternate Foods for Meals of this part;
 (iii) A serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods. Juice may not be served when milk is served as the only other component;
 (iv) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., 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 rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods.
 (3) Infant supplements shall contain the following:
 (i) Birth through 3 months: 4–6 fluid ounces of infant formula.

(ii) 4 through 7 months: 4–6 fluid ounces of infant formula.
 (iii) 8 through 11 months: 2–4 fluid ounces of infant formula or whole fluid milk or full strength fruit juice; 0–1/2 slice of crusty bread or 0–2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate. To improve the nutrition of participating children over one year of age, additional foods may be served with the meal supplements as desired.
 (iv) The minimum amounts of food components to be served as meal supplements as set forth in paragraph (n)(3) of this section are as follows. Select two different components from the four listed. (Juice may not be served when milk is served as the only other component.)

MEAL SUPPLEMENT CHART FOR CHILDREN

Snack (supplement) for children	Children 1 and 2	Children 3 through 5	Children 6 through 12
(Select two different components from the four listed)			
Milk, fluid	1/2 cup	1/2 cup	1 cup.
Meat or meat alternate ⁴	1/2 ounce	1/2 ounce	1 ounce.
Juice or fruit or vegetable	1/2 cup	1/2 cup	3/4 cup.
Bread and/or cereal: Enriched or whole grain bread or	1/2 slice	1/2 slice	1 slice.
Cereal: Cold dry or	1/4 cup ¹	1/3 cup ²	3/4 cup ³ .
Hot cooked	1/4 cup	1/4 cup	1/2 cup.

¹ 1/4 cup (volume) or 1/3 ounce (weight), whichever is less.
² 1/3 cup (volume) or 1/2 ounce (weight), whichever is less.
³ 3/4 cup (volume) or 1 ounce (weight), whichever is less.
⁴ Yogurt may be used as meat/meat alternate in the snack only. You may serve 4 ounces (weight) or 1/2 cup (volume) of plain, or sweetened and flavored yogurt to fulfill the equivalent of 1 ounce of the meat/meat alternate component. For younger children, 2 ounces (weight) or 1/4 cup (volume) may fulfill the equivalent of 1/2 ounce of the meat/meat alternate requirement.
 Caution: Children under five years of age are at the highest risk of choking. USDA recommends that nuts and/or seeds be served to them ground or finely chopped in a prepared food.

SUPPLEMENTS FOR INFANTS

Birth through three months	Four months through seven months	Eight months through eleven months
4–6 fluid ounces formula ¹	4–6 fluid ounces formula ¹	2–4 fluid ounces formula, ¹ breast milk, ⁴ whole milk or fruit juice. ² 0–1/2 slice bread or 0–2 crackers (optional). ³

¹ Shall be iron-fortified infant formula.
² Shall be full-strength fruit juice.
³ Shall be from whole-grain or enriched meal or flour.
⁴ Breast milk provided by the infant's mother may be served in place of formula from birth through 11 months. Meals containing only breast milk are not reimbursable. Meals containing breast milk served to infants 4 months or older may be claimed when the other meal component(s) is supplied by the school.

(o) *Implementation of the nutrition standards.* School food authorities shall comply with the *1990 Dietary Guidelines for Americans* as provided in paragraph (b) of this section no later than School Year 1996–97 except that State agencies may grant waivers to postpone implementation until no later than School Year 1998–99. Such waivers shall be granted by the State agency using guidance provided by the Secretary.

9. In the newly redesignated § 210.10a:
 a. the section heading is revised and
 b. the table in paragraph (c) is amended by revising the “Milk” description under “Food Components and Food Items.”

The revisions read as follows:

§ 210.10a Lunch components and quantities for the meal pattern.

* * * * *

(c) *Minimum required lunch quantities.* * * *

SCHOOL LUNCH PATTERN—PER LUNCH MINIMUMS

Food components and food items	Minimum quantities				Recommended quantities: group V, 12 years and older (7–12)
	Group 1, ages 1–2, (preschool)	Group II, ages 3–4 (preschool)	Group III, ages 5–8 (K–3)	Group IV, age 9 and older (4–12)	
Milk (as a beverage): Fluid whole milk and fluid unflavored lowfat milk must be offered; (Flavored fluid milk, skim milk or buttermilk optional)	* * *	* * *	* * *	* * *	* * *
	*	*	*	*	*

* * * * *
 10. In § 210.14, paragraph (c) is revised to read as follows:

§ 210.14 Resource management.

(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.

11. In § 210.15:
 a. Paragraph (b)(2) is revised;
 b. Paragraph (b)(3) is amended by removing the reference to “210.10(b) of this part” and adding in its place the words “§ 210.10(a)(2) or § 210.10a(b), whichever is applicable;” and
 c. Paragraph (b)(4) is removed and paragraph (b)(5) is redesignated as (b)(4).

The revision reads as follows:

§ 210.15 Reporting and recordkeeping.

(b) *Recordkeeping summary.* * * *
 (2) Production and menu records as required under § 210.10a and production and menu records and, if appropriate, nutrition analysis records as required under § 210.10, whichever is applicable.

12. In § 210.16:
 a. paragraph (b)(1) is amended by adding the words “developed in accordance with the provisions of § 210.10 or § 210.10a, whichever is applicable,” after the words “21-day cycle menu” whenever they appear; and
 b. the first sentence of paragraph (c)(3) is revised to read as follows:

§ 210.16 Food service management companies.

(c) * * *
 (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 or menu item as specified for the appropriate menu planning alternative in § 210.10 or for each food component in § 210.10a, whichever is applicable, or do not otherwise meet the requirements of the contract. * * *

§ 210.18 [Amended]

13. In § 210.18:
 a. Paragraph (c) introductory text is amended by removing the number “4” in the phrase “4-year review cycle” wherever it appears and adding in its place the number “5”;
 b. the first sentence of paragraph (c)(1) is amended by removing the number “4” in the phrase “4-year review cycle” and adding in its place the number “5” and by removing the number “5” in the phrase “every 5 years” and adding in its place the number “6”;
 c. paragraph (c)(2) is amended by removing the number “4” in the phrase “4-year cycle” and adding in its place the number “5”;
 d. paragraph (c)(3) is amended by removing the number “5” in the phrase “5-year review interval” and adding the number “6” in its place;
 e. paragraph (d)(3) is amended by removing the reference to “210.19(a)(4)” and adding in its place a reference to “210.19(a)(5)”;
 f. paragraph (h)(2) is amended by removing the words “210.10 of this part” and adding in their place the words “§ 210.10 or § 210.10a, whichever is applicable.”

§ 210.19 [Amended]

14. In § 210.19:
 a. paragraphs (a)(1) through (a)(5) are redesignated as paragraphs (a)(2) through (a)(6), respectively, and a new paragraph (a)(1) is added;
 b. newly redesignated paragraph (a)(2) is revised;
 c. the last sentence in newly redesignated paragraph (a)(3) is revised;

d. the number “4” in the second sentence of newly redesignated paragraph (a)(6) is removed and the number “5” is added in its place;
 e. the second sentence of paragraph (c) introductory text is revised;
 f. a new sentence is added at the end of paragraph (c)(1);
 g. the reference to “§ 210.10” in paragraph (c)(6)(i) is removed and the words “§ 210.10a or the food-based menu planning alternative in § 210.10(k), whichever is applicable;” are added in its place;
 h. paragraph (c)(6)(ii) is amended by removing the period at the end and adding in its place the word “; or”; and
 i. a new paragraph (c)(6)(iii) is added.
 The additions and revisions read as follows:

§ 210.19 Additional responsibilities.

(a) General Program management.
 (1) *Compliance with nutrition standards.* Beginning with School Year 1996–1997 (unless the school food authority has an implementation waiver as provided in § 210.10(o)), State agencies shall evaluate compliance, over the school week, with the nutrition standards in § 210.10(b) and § 210.10(c) or (d), whichever is applicable. 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. The type of evaluation conducted by the State agency shall be determined by the menu planning alternative chosen by the school food authority.
 (i) For school food authorities choosing the nutrient standard menu planning or assisted nutrient standard menu planning options provided in § 210.10(i) and § 210.10(j), respectively, the State agency shall assess the nutrient analysis for the last completed school week prior to the review period

to determine if the school food authority is applying the methodology in § 210.10(i) or § 210.10(j), as appropriate. Part of this assessment shall be an independent review of menus and production records to determine if they correspond to the analysis conducted by the school food authority and if the menu, as offered, over a school week, corresponds to the nutrition standards set forth in § 210.10(b) and § 210.10(c).

(ii) For school food authorities choosing the food-based menu planning alternative in § 210.10(k), the State agency shall conduct nutrient analysis on the menu(s) served during the review period to determine if the nutrition standards set forth in § 210.10(b) and § 210.10(d) are met, except that, the State agency may:

(A) Use the nutrient analysis of any school or school food authority that offers meals using the food-based menu planning alternative provided in § 210.10(k) and/or § 220.8(e) or § 220.8(f) of this chapter and that conducts its own nutrient analysis under the criteria for nutrient analysis established in § 210.10 and § 220.8 for nutrient standard menu planning and assisted nutrient standard menu planning of those meals; or

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

(iii) If the menu for the school week fails to comply with the nutrition standards specified in § 210.10(b) and/or § 220.8(a) and the appropriate nutrient levels in either § 210.10(c), § 210.10(d), or § 210.10(i)(1) whichever is applicable, and/or § 220.8(b), § 220.8(c) or § 220.8(e)(1) of this chapter, whichever is applicable, 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.

(iv) If a school food authority fails to meet the terms of the corrective action plan, the State agency shall determine if the school food authority is working in good faith towards compliance 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.

(2) *Assurance of compliance for finances.* Each State agency shall ensure

that school food authorities comply with the requirements to account for all revenues and expenditures of their nonprofit school food service. School food authorities shall meet the requirements for the allowability of nonprofit school food service expenditures in accordance with this part and, as applicable, 7 CFR part 3015. The State agency shall ensure compliance with the requirements to limit net cash resources and shall provide for approval of net cash resources in excess of three months' average expenditures. Each State agency shall monitor, through review or audit or by other means, the net cash resources of the nonprofit school food service in each school food authority participating in the Program. In the event that net cash resources exceed 3 months' average expenditures for the school food authority's nonprofit school food service or such other amount as may be approved in accordance with this paragraph, the State agency may require the school food authority to reduce the price children are charged for lunches, improve food quality or take other action designed to improve the nonprofit school food service. In the absence of any such action, the State agency shall make adjustments in the rate of reimbursement under the Program.

(3) *Improved management practices.*

* * * If a substantial number of children who routinely and over a period of time do not favorably accept a particular item that is offered; return foods; or choose less than all food items/components or foods and menu items, as authorized under § 210.10 or § 210.10a, whichever is applicable, poor acceptance of certain menus may be indicated.

* * * * *

(c) *Fiscal action.* * * * State agencies shall take fiscal action against school food authorities for Claims for Reimbursement that are not properly payable under this part including, if warranted, the disallowance of funds for failure to take corrective action in accordance with paragraph (a)(1) of this section. * * *

(1) *Definition.* * * * Fiscal action also includes disallowance of funds for failure to take corrective action in accordance with paragraph (a)(1) of this section.

* * * * *

(6) *Exceptions.* * * *

(iii) when any review or audit reveals that a school food authority's failure to meet the nutrition standards of § 210.10 is unintentional and the school food authority is meeting the requirements of

a corrective plan developed and agreed to under paragraph (a)(1)(iii) of this section.

* * * * *

[Appendix A—Amended]

15. In Appendix A, Alternate Foods for Meals; Enriched Macaroni Products with Fortified Protein, the first sentence of paragraph 1(a) is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10".

16. In Appendix A, Alternate Foods for Meals; Cheese Alternate Products:

a. the introductory text of paragraph 1 is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10"; and

b. paragraph 1(d) is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10".

17. In Appendix A, Alternate Foods for Meals; Vegetable Protein Products:

a. the introductory text of paragraph 1 is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10";

b. the second sentence of paragraph 1(d) is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10";

c. the first sentence of paragraph 1(e) is amended by adding the words "§ 210.10a, whichever is applicable," after the reference to "§ 210.10"; and

d. the first sentence of paragraph 3 is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10".

Appendix C—[Amended]

18. In Appendix C, Child Nutrition Labeling Program:

a. paragraph 2(a) is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "210.10"; and

b. the first sentence of paragraph 3(c)(2) is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "§ 210.10" and by adding the words "or 220.8a, whichever is applicable," after the reference to "§ 220.8"; and

c. the second sentence of paragraph 6 is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "§ 210.10" and by adding the words "or 220.8a, whichever is applicable," after the reference to "§ 220.8".

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In § 220.2:

a. paragraph (b) is amended by adding the words "or § 220.8a, whichever is applicable," after the reference to "§ 220.8;"

b. paragraph (m), previously reserved, is added;

c. a new paragraph (p-1) is added;

d. paragraph (t) is amended by adding the words "or § 220.8a, whichever is applicable," after the reference to "§ 220.8"; and

e. a new paragraph (w-1) is added.

The additions read as follows:

§ 220.2 Definitions.

* * * * *

(m) *Menu item* means, under Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning, any single food or combination of foods. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards provided in § 220.8, except for those foods that are considered as foods of minimal nutritional value as provided for in § 220.2(i-1) which are not offered as part of a menu item in a reimbursable meal. For the purposes of a reimbursable breakfast, a minimum of three menu items must be offered, one of which shall be fluid milk served as a beverage or on cereal or both; under the offer versus serve, a student may decline only one menu item.

* * * * *

(p-1) *Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning* mean ways to develop menus based on the analysis of nutrients in the menu items and foods offered over a school week to determine if specific levels for a set of key nutrients and calories were met. Such analysis is based on averages weighted in accordance with the criteria in § 220.8(e)(5). Such analysis is normally done by a school or a school food authority. However, for the purposes of Assisted Nutrient Standard Menu Planning, menu planning and analysis are completed by other entities and shall incorporate the production quantities needed to accommodate the specific service requirements of a particular school or school food authority.

* * * * *

(w-1) *School week* means the period of time used to determine compliance with the nutrition standards and the appropriate calorie and nutrient levels

in § 220.8. Further, if applicable, school week is the basis for conducting Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning for breakfasts as provided in § 220.8(e) and § 220.8(f). The period shall be a normal school week of five consecutive days; however, to accommodate shortened weeks resulting from holidays and other scheduling needs, 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.

* * * * *

§ 220.7 [Amended]

3. In § 220.7, paragraph (e)(2) is amended by adding the words "or § 220.8a, whichever is applicable," after the reference to "§ 220.8".

4. Section 220.8 is redesignated as 220.8a and a new section 220.8 is added to read as follows:

§ 220.8 Nutrition standards for breakfast and menu planning alternatives.

(a) *Nutrition standards for breakfasts for children age 2 and over.* School food authorities shall ensure that participating schools provide nutritious and well-balanced breakfasts. For children age 2 and over, breakfasts shall be offered based on the nutrition standards provided in this section when averaged over a school week. For the purposes of this section, the nutrition standards are:

(1) Provision of one-fourth of the Recommended Dietary Allowances (RDA) of protein, calcium, iron, vitamin A and vitamin C to the applicable age or grade groups in accordance with the appropriate levels provided in paragraphs (b), (c), or (e)(1) of this section, whichever is applicable;

(2) Provision of the breakfast energy allowances for children based on the age or grade groups in accordance with the appropriate levels provided in paragraphs (b), (c) or (e)(1) of this section, whichever is applicable;

(3) The applicable recommendations of the *1990 Dietary Guidelines for Americans* which are:

- (i) Eat a variety of foods;
- (ii) Limit total fat to 30 percent of calories;
- (iii) Limit saturated fat to less than 10 percent of calories;

(iv) Choose a diet low in cholesterol;

(v) Choose a diet with plenty of vegetables, fruits, and grain products; and

(vi) Use salt and sodium in moderation.

(4) The following measures of compliance with the applicable recommendations of the *1990 Dietary Guidelines for Americans*:

(i) A limit on the percent of calories from total fat to 30 percent based on the actual number of calories offered;

(ii) A limit on the percent of calories from saturated fat to less than 10 percent based on the actual number of calories offered;

(iii) A reduction of the levels of sodium and cholesterol; and

(iv) An increase in the level of dietary fiber.

(5) School food authorities have three alternatives for menu planning in order to meet the requirements of this paragraph and the appropriate nutrient and calorie levels in paragraphs (b), (c) or (e)(1) of this section, whichever is applicable: nutrient standard menu planning as provided in paragraph (e) of this section, assisted nutrient standard menu planning as provided for in paragraph (f) of this section, or food-based menu planning as provided for in paragraph (g) of this section. The actual minimum calorie and nutrient levels vary depending upon the alternative followed due to the differences in age/grade groupings of each alternative.

(6) Production and menu records shall include sufficient information to evaluate the menu's contribution to the requirements on nutrition standards in paragraph (a) of this section and the appropriate levels of nutrient and calorie levels in paragraphs (b), (c) or (e)(1) of this section, whichever is applicable. If applicable, schools or school food authorities shall maintain nutritional analysis records to demonstrate that breakfasts meet, when averaged over each school week, the nutrition standards provided in paragraph (a) of this section and the nutrient and calorie levels for children for each age or grade group in accordance with paragraphs (b) or (e)(1) of this section.

(b) *Nutrient levels/nutrient analysis.*

(1) For the purposes of nutrient standard and assisted nutrient standard menu planning, as provided for in paragraphs (e) and (f), respectively, of this section, schools shall, at a minimum, provide the calorie and nutrient levels for school breakfasts (offered over a school week) for required grade groups specified in the following chart:

MINIMUM REQUIREMENTS FOR NUTRIENT AND CALORIE LEVELS FOR SCHOOL BREAKFAST
[School week averages]

	Preschool	Grades K-12	Option for grades 7-12
Energy Allowances (calories)	388	554	618
Total Fat (as a Percentage of Actual Total Food Energy)	(1)	(1)	(1)
Total Saturated Fat (as a Percentage of Actual Total Food Energy)	(2)	(2)	(2)
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

¹ Not to exceed 30 percent over a school week.
² Less than 10 percent over a school week.

(2) At their option, schools may provide for calorie and nutrient levels for school breakfasts (offered over a school week) for the age groups specified in the following chart or may develop their own age groups and their corresponding levels in accordance with paragraph (e)(1) of this section.

OPTIONAL MINIMUM NUTRIENT LEVELS FOR SCHOOL BREAKFASTS/NUTRIENT ANALYSIS
[School week averages]

Nutrients and energy allowances	Ages 3-6 years	Ages 7-10 years	Ages 11-13 years	Ages 14 and above
Energy Allowances/Calories	419	500	588	625
Total Fat (as a percent of actual total food energy)	(1)	(1)	(1)	(1)
Saturated Fat (as a percent of actual total food energy)	(2)	(2)	(2)	(2)
RDA for Protein (g)	5.50	7.00	11.25	12.50
RDA for Calcium (mg)	200	200	300	300
RDA for Iron (mg)	2.5	2.5	3.4	3.4
RDA for Vitamin A (RE)	119	175	225	225
RDA for Vitamin C (mg)	11.00	11.25	12.50	14.40

¹ Not to exceed 30 percent over a school week.
² Less than 10 percent over a school week.

(c) *Nutrient levels/food-based menu planning.* For the purposes of the food-based menu planning alternative as provided for in paragraph (g) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school breakfasts offered over a school week:

CALORIE AND NUTRIENT LEVELS FOR SCHOOL BREAKFAST
[School week averages]

	Preschool	Grades K-12	Option for grades 7-12
Energy Allowances (Calories)	388	554	618
Total Fat (as a percentage of actual total food energy)	¹	¹	¹
Total Saturated Fat (as a percentage of actual total food energy)	²	²	²
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

¹ Not to Exceed 30 Percent Over a School Week
² Less Than 10 Percent Over a School Week

(d) *Exceptions.* Breakfasts claimed for reimbursement shall meet the nutrition requirements for reimbursable meals specified in this section. However, breakfasts served which accommodate the exceptions and variations authorized under this paragraph are also reimbursable. Exceptions and variations are restricted to the following:

(1) *Medical or dietary needs.* Schools shall make substitutions in the foods or menu items offered in accordance with

this section for students who are considered to have a disability under 7 CFR part 15b and whose disability restricts their diet. Schools may also make substitutions for students who do not have a disability but who are unable to consume the regular breakfast because of medical or other special dietary needs. Substitutions shall be made on a case-by-case basis only when supported by a statement of the need for

substitutions that includes recommended alternate foods, unless otherwise exempted by FCS. Such statement shall, in the case of a disabled student, be signed by a physician or, in the case of a student who is not disabled, by a recognized medical authority.

(2) FCS encourages school food authorities to consider ethnic and religious preferences when planning and preparing meals. For the purposes

of the food-based menu planning alternative, FCS may approve variations in the food components of the breakfast on an experimental or on a continuing basis in any school where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, or economic needs.

(e) *Nutrient Standard Menu Planning.* (1) *Adjusted nutrient levels.* (i) At a minimum, schools that choose the nutrient standard menu planning alternative and that have children age 2 enrolled shall ensure that the nutrition standards in paragraph (a) of this section and the required preschool levels for nutrients and calories in paragraph (b)(1) of this section are met except that, such schools have the option of either using the nutrient and calorie levels for preschool children in paragraph (b)(2) of this section, or developing separate nutrient levels for this age group. The methodology for determining such levels will be available in menu planning guidance material provided by FCS.

(ii) At a minimum, schools shall offer meals to children based on the required grade groups in paragraph (b)(1) of this section. However, schools may, at their option, offer meals to children using the age groups and their corresponding nutrient and calorie levels in paragraph (c)(2) of this section or, following guidance provided by FCS, develop their own age or grade groups and their corresponding nutrient and calorie levels. However, if only one age or grade is outside the established levels, schools may use the levels for the majority of children regardless of the option selected.

(2) *Contents of reimbursable meal and offer versus serve.* (i) *Minimum requirements.* For the purposes of this menu planning alternative, a reimbursable breakfast shall include a minimum of three menu items as defined in § 220.2. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraphs (b) or (e)(1) of this section, whichever is applicable, except for those foods that are considered foods of minimal nutritional value as provided for in § 220.2(i-1) which are not offered as part of a menu item in a reimbursable meal. Such reimbursable breakfasts, as offered, shall meet the established nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraphs (b) or (e)(1) of this section, whichever is

applicable, when averaged over a school week.

(ii) *Offer versus serve.* Each participating school shall offer its students at least three menu items as required by paragraph (e)(2)(i) of this section. Under offer versus serve, senior high students must select at least two menu items and may decline a maximum of one menu item offered. At the discretion of the school food authority, students below the senior high level may also participate in offer versus serve. The price of a reimbursable breakfast shall not be affected if a student declines a menu item or requests smaller portions. State educational agencies shall define "senior high."

(3) *Nutrient analysis under Nutrient Standard Menu Planning.* School food authorities choosing the nutrient analysis alternative shall conduct nutrient analysis on all menu items or foods offered as part of the reimbursable meal. However, those foods that are considered as foods of minimal nutritional value as provided for in § 220.2(i-1) which are not offered as part of a menu item in a reimbursable meal shall not be included. Such analysis shall be over the course of each school week.

(4) *The National Nutrient Database and software specifications.* (i) Nutrient analysis shall be based on information provided in the National Nutrient Database for Child Nutrition Programs. This database shall be incorporated into software used to conduct nutrient analysis. Upon request, FCS will provide information about the database to software companies that wish to develop school food service software systems.

(ii) Any software used to conduct nutrient analysis shall be evaluated beforehand by FCS or by an FCS designee and, as submitted, has been determined to meet the minimum requirements established by FCS. However, such review does not constitute endorsement by FCS or USDA. Such software shall provide the capability to perform all functions required after the basic data has been entered including calculation of weighted averages and the optional combining of analysis of the breakfast and lunch programs as provided in paragraph (e)(5) of this section.

(5) *Determination of weighted averages.* (i) Menu items and foods offered as part of a reimbursable meal shall be analyzed based on portion sizes and projected serving amounts and shall be weighted based on their proportionate contribution to the meals. Therefore, in determining whether

meals satisfy nutritional requirements, menu items or foods more frequently offered will be weighted more heavily than menu items or foods which are less frequently offered. Such weighting shall be done in accordance with guidance issued by FCS as well as that provided by the software used.

(ii) An analysis of all menu items and foods offered in the menu over each school week shall be computed for calories and for each of the following nutrients: protein; vitamin A; vitamin C; iron; calcium; total fat; saturated fat; and sodium. The analysis shall also include the dietary components of cholesterol and dietary fiber.

(iii) At its option, a school food authority may combine analysis of the National School Lunch and School Breakfast Programs. Such analysis shall be proportionate to the levels of participation in the two programs in accordance to guidance issued by FCS.

(6) *Comparing average nutrient levels.* Once the appropriate procedures of paragraph (e)(5) of this section have been completed, the results shall be compared to the appropriate nutrient and calorie levels, by age/grade group, in paragraphs (b)(1) or (b)(2) of this section or the levels developed in accordance with paragraph (e)(1) of this section, whichever is applicable to determine the school week's average. In addition, comparisons shall be made to the nutrition standards provided in paragraph (a) of this section in order to determine the degree of conformity over the school week.

(7) *Adjustments based on students' selections.* The results obtained under paragraph (e)(5) and (e)(6) of this section shall be used to adjust future menu cycles to accurately reflect production and the frequency with which menu items and foods are offered. Menus may require further analysis and comparison, depending on the results obtained in paragraph (e)(6) of this section when production and selection patterns of students change. The school food authority may need to consider modifications to the menu items and foods offered based on student selections as well as modifications to recipes and other specifications to ensure that the nutrition standards provided in paragraph (a) of this section and the appropriate calorie and nutrient levels in paragraphs (b) or (e)(1) of this section, whichever is applicable, are met.

(8) *Standardized recipes.* Under Nutrient Standard Menu Planning, standardized recipes shall be developed and followed. A standardized recipe is one that was tested to provide an established yield and quantity through

the use of ingredients that remain constant in both measurement and preparation methods. USDA/FCS standardized recipes are included in the National Nutrient Database for the Child Nutrition Programs. In addition, local standardized recipes used by school food authorities shall be analyzed for their calories, nutrients and dietary components, as provided for in paragraph (e)(5)(ii) of this section, and added to the local databases by school food authorities in accordance with guidance issued by FCS.

(9) *Processed foods.* Unless already included in the National Nutrient Database, the calorie amounts, nutrients and dietary components, as provided in paragraph (e)(5)(ii) of this section, of purchased processed foods and menu items used by the school food authority shall be obtained by the school food authority or State agency and incorporated into the database at the local level in accordance with FCS guidance.

(10) *Menu substitutions.* If the need for serving a substitute food(s) or menu item(s) occurs at least two weeks prior to serving the planned menu, the revised menu shall be reanalyzed based on the changes. If the need for serving a substitute food(s) or menu item(s) occurs two weeks or less prior to serving the planned menu, no reanalysis is required. However, to the extent possible, substitutions should be made using similar foods.

(11) *Compliance with the nutrition standards.* If the analysis conducted in accordance with paragraphs (e)(1) through (e)(10) of this section shows that the menus offered are not meeting the nutrition standards in paragraph (a) of this section and the appropriate levels of nutrients and calories in paragraphs (b)(1) or (b)(2) of this section or the levels developed in accordance with paragraph (e)(1), whichever is applicable, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the breakfasts offered to children comply with the nutrition standards established by paragraph (a) of this section and the appropriate levels of nutrient and calories in paragraphs (b) or (e)(1) of this section, whichever is applicable.

(12) *Other programs.* Any school food authority that operates the Summer Food Service Program under Part 225 of this chapter and/or the Child and Adult Care Food Program under Part 226 of this chapter may, at its option and with

State agency approval, prepare meals provided for those programs using the nutrient standard menu planning alternative, except for children under two years of age. For school food authorities providing meals for adults, FCS will provide guidance on the level of nutrients and calories needed.

(f) *Assisted Nutrient Standard Menu Planning.* (1) School food authorities without the capability to conduct Nutrient Standard Menu Planning, as provided in paragraph (e) of this section may choose an alternative which uses menu cycles developed by other sources. Such sources may include but are not limited to the State agency, other school food authorities, consultants, or food service management companies. This alternative is Assisted Nutrient Standard Menu Planning.

(2) Assisted Nutrient Standard Menu Planning shall establish menu cycles that have been developed in accordance with paragraphs (e)(1) through (e)(10) of this section as well as local food preferences and local food service operations. These menu cycles shall incorporate the nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraph (b) or (e)(1) of this section, whichever is applicable. In addition to the menu cycle, recipes, food product specifications and preparation techniques shall also be developed and provided by the entity furnishing Assisted Nutrient Standard Menu Planning to ensure that the menu items and foods offered conform to the nutrient analysis determinations of the menu cycle.

(3) At the inception of any use of Assisted Nutrient Standard Menu Planning, the State agency shall approve the initial menu cycle, recipes, and other specifications to determine that all required elements for correct nutrient analysis are incorporated. The State agency shall also, upon request of the school food authority, provide assistance with implementation of the chosen system.

(4) After initial service of the menu cycle under the Assisted Nutrient Standard Menu Planning, the nutrient analysis shall be reassessed and appropriate adjustments made in accordance with paragraph (e)(7) of this section.

(5) Under Assisted Nutrient Standard Menu Planning, the school food authority retains final responsibility for ensuring that all nutrition standards established in paragraph (a) of this section and the appropriate nutrient and

calorie levels in paragraphs (b) or (e)(1) of this section, whichever is applicable, are met.

(6) If the analysis conducted in accordance with paragraphs (e)(1) through (e)(10) and paragraph (f)(4) of this section shows that the menus offered are not meeting the nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraph (b) of this section or the levels developed in accordance with paragraph (e)(1) of this section, whichever is applicable, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the breakfasts offered to children comply with the nutrition standards established by paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraphs (b) or (e)(1) of this section, whichever is applicable.

(7) Any school food authority that operates the Summer Food Service Program under Part 225 of this chapter and/or the Child and Adult Care Food Program under Part 226 of this chapter may, at its option and with State agency approval, prepare meals provided for those programs using the assisted nutrient standard menu planning alternative, except for children under two years of age. For school food authorities providing meals for adults, FCS will provide guidance on the level of nutrients and calories needed.

(g) *Food-based menu planning.* (1) *Food components.* Except as otherwise provided in this paragraph and in any appendix to this part to be eligible for Federal cash reimbursement, a breakfast planned using the food-based menu planning alternative shall contain, at a minimum, the following food components in the quantities specified in the table in paragraph (g)(2) of this section:

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

(ii) A serving of fruit or vegetable or both, or full-strength fruit or vegetable juice; and

(iii) Two servings from one of the following components or one serving from each:

(A) Grains/breads;

(B) Meat/Meat alternate.

(2) *Minimum quantities.* At a minimum, schools shall serve meals in the quantities provided in the following chart:

Meal component	Minimum quantities required for			
	Ages 1-2	Preschool	Grades K-12	Option for grades 7-12
Milk (Fluid) (As a beverage, on cereal or both).	½ Cup	¾ Cup	8 Ounces	8 Ounces
Juice/Fruit/Vegetable: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice.	¼ Cup	½ Cup	½ Cup	½ Cup

SELECT ONE SERVING FROM EACH OF THE FOLLOWING COMPONENTS OR TWO FROM ONE COMPONENT:

Grains/Breads—One of the following or an equivalent combination:				
Whole-Grain or Enriched Bread.	½ Slice	½ Slice	1 Slice	1 Slice.
Whole-Grain or Enriched Biscuit, Roll, Muffin, Etc.	½ Serving	½ Serving	1 Serving	1 Serving.
Whole-Grain, Enriched or Fortified Cereal.	¼ Cup or ⅓ Ounce	⅓ Cup or ½ Ounce	¾ Cup or 1 Ounce	¾ Cup or 1 Ounce. Plus an Additional Serving of one of the Grains/Breads Above.
Meat or Meat Alternates:				
Meat/poultry or fish	½ Ounce	½ Ounce	1 Ounce	1 Ounce.
Cheese	½ Ounce	½ Ounce	1 Ounce	1 Ounce.
Egg (large)	½	½	½	½.
Peanut butter or other nut or seed butters.	1 Tablespoon	1 Tablespoon	2 Tablespoons	2 Tablespoons.
Cooked dry beans and peas	2 Tablespoons	2 Tablespoons	4 Tablespoons	4 Tablespoons
Nut and/or seeds (as listed in program guidance) ¹ .	½ Ounce	½ Ounce	1 Ounce	1 Ounce.

¹ No more than 1 ounce of nuts and/or seeds may be served in any one meal.

(3) *Offer Versus Serve.* Each school shall offer its students all four required food items as set forth under paragraph (g)(1) of this section. At the option of the school food authority, each school may allow students to refuse *one* food item from any component that the student does not intend to consume. The refused food item may be any of the four items offered to the student. A student's decision to accept all four food items or to decline one of the four food items shall not affect the charge for breakfast.

(4) *Outlying areas.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve a starchy vegetable such as yams, plantains, or sweet potatoes to meet the grain/bread requirement. For the Commonwealth of the Northern Mariana Islands, FCS has established a menu consistent with the food-based menu alternative and with local food consumption patterns and which, given available food supplies and food service equipment and facilities, provides optimum nutrition consistent with sound dietary habits for participating children. The State agency shall attach to and make a part of the written agreement required under § 210.9 of this chapter the requirements of that menu option.

(h) *Milk requirement for children ages 2-17.* (1) A serving of milk as a beverage or on cereal or used in part for each

purpose shall be offered for school breakfasts.

(2) If emergency conditions prevent a school normally having a supply of milk from temporarily obtaining delivery thereof, the State agency, or FCSRO where applicable, may approve reimbursement for breakfast served without milk during the emergency period.

(3) 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 breakfasts without milk if the school uses an equivalent amount of canned or dry milk in the preparation of breakfasts. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk, or as otherwise provided under written exception by FCS.

(i) *Infant meal pattern.* When infants from birth through 11 months of age participate in the Program, an infant breakfast shall be offered. Foods within the infant breakfast pattern shall be of texture and consistency appropriate for the particular age group being served, and shall be served to the infant during a span of time consistent with the infant's eating habits. For infants 4

through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready. Whenever possible, the school should consult with the infant's parent in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food authorized in the meal patterns set forth below must be provided in order to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months or older may be claimed for reimbursement when the other meal component or components are supplied by the school. Although it is recommended that either breast milk or iron-fortified infant formula be served for the entire first year, whole milk may be served beginning at 8 months of age as long as infants are consuming one-third of their calories as a balanced mixture of cereal, fruits, vegetables, and other foods in order to ensure adequate

sources of iron and vitamin C. The infant breakfast pattern shall contain, at a minimum, each of the following components in the amounts indicated for the appropriate age groups:

(1) *Birth through 3 months.* 4 to 6 fluid ounces of iron-fortified infant formula.

(2) *4 through 7 months.* 4 to 8 fluid ounces of iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified dry infant cereal (optional).

(3) *8 through 11 months.* 6 to 8 fluid ounces of iron-fortified infant formula or 6 to 8 fluid ounces of whole milk; 2 to 4 tablespoons of iron-fortified dry infant cereal; and 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(j) *Additional foods.* Additional foods may be served with breakfasts as desired to participating children over 1 year of age.

(k) *Choice.* To provide variety and to encourage consumption and participation, schools should, whenever possible, provide a selection of menu items and foods from which children may make choices. When a school offers a selection of more than one type of breakfast or when it offers a variety of menu items and foods and milk for choice as a reimbursable breakfast, the school shall offer all children the same selection regardless of whether the children are eligible for free or reduced price breakfasts or pay the school food authority designated full price. The school may establish different unit prices for each type of breakfast offered provided that the benefits made available to children eligible for free or reduced price breakfasts are not affected.

(l) *Nutrition disclosure.* School food authorities are encouraged to make

information available indicating efforts to meet the nutrition standards in paragraph (a) of this section.

(m) *Implementation of nutrition standards.* School food authorities shall comply with the *1990 Dietary Guidelines for Americans* as provided in paragraph (a) of this section no later than School Year 1996-97 except that State agencies may grant waivers to postpone implementation until no later than School Year 1998-99. Such waivers shall be granted by the State agency using guidance provided by the Secretary.

5. The section heading of newly redesignated § 220.8a is revised to read as follows:

§ 220.8a Breakfast components and quantities for the meal pattern.

* * * * *

§ 220.9 [Amended]

6. In § 220.9, the first sentence of paragraph (a) is amended by adding the words "or § 220.8a, whichever is applicable," after the reference to "§ 220.8".

7. 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, the State agency shall follow the provisions specified in § 210.19(a)(1) of this chapter.

* * * * *

§ 220.14 [Amended]

8. In § 220.14, paragraph (h) is amended by removing the reference to "§ 220.8 (a)(1), (b)(1), and (b)(3)" and adding in its place the words "§ 220.8 (g), § 220.8 (i)(2) and (i)(3) or § 220.8a (a)(1), (b)(2), and (b)(3), whichever is applicable."

Appendix A—[Amended]

9. In Appendix A, Alternate Foods for Meals, Formulated Grain-Fruit Products, paragraph 1(a) is amended by adding the words "or § 220.8a, whichever is applicable" after the reference to "§ 220.8."

Appendix C—[Amended]

10. In Appendix C, Child Nutrition (CN) Labeling Program:

a. paragraph 2(a) is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "210.10";

b. the first sentence of paragraph 3(c)(2) is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "210.10" and by adding the words "or 220.8a, whichever is applicable," after the reference to "220.8"; and

c. the second sentence of paragraph 6 is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "210.10" and by adding the words "or 220.8a, whichever is applicable," after the reference to "220.8".

Dated: June 6, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

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