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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

[FNS–2011–0025]

RIN 0584–AE15

Certification of Compliance With Meal Requirements for the National School Lunch Program Under the Healthy, Hunger-Free Kids Act of 2010

AGENCY: Food and Nutrition Service, USDA

ACTION: Final rule.

SUMMARY: This final rule adopts, with some revisions, changes to the National School Lunch Program (NSLP) regulations, as set forth in the interim final rule published in the **Federal Register** on April 27, 2012. The changes conform to requirements contained in the Healthy, Hunger-Free Kids Act of 2010 regarding performance-based cash assistance for school food authorities (SFAs) certified compliant with meal pattern and nutrition standards. The changes finalized in this rule include requiring State agencies to certify participating SFAs that are in compliance with meal pattern and nutrition standard requirements as eligible to receive performance-based cash assistance for each reimbursable lunch. This rule also finalizes the requirement in the interim final rule that State agencies disburse performance-based cash assistance to certified SFAs, and withhold the performance-based cash assistance from SFAs determined to be out of compliance with meal pattern or nutrition standards during a subsequent administrative review. Additionally, this final rule is adopting minor changes based on comments on the interim final rule that will help to streamline the certification process. These changes include making permanent the flexibility that State agencies should consider any SFA compliant with the daily and weekly ranges for grain and meat/meat alternates if documentation is compliant with the daily and weekly *minimums.*

DATES: This final rule is effective March 4, 2014.

FOR FURTHER INFORMATION CONTACT: Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

The Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296) (the HHFKA), enacted December 13, 2010, made significant changes to the meal pattern and reimbursement requirements for school breakfasts and lunches served in accordance with the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1751 et seq.).

Section 201 of the HHFKA amended section 4(b) of the NSLA, 42 U.S.C. 1753(b), by requiring the Secretary to update the meal patterns and nutrition standards for the NSLP and School Breakfast Program (SBP) and to issue regulations requiring all SFAs to comply with the updated meal patterns and nutrition standards. On January 26, 2012, the Department issued a final rule, titled *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088). With some exceptions, the implementation date of that final rule was July 1, 2012.

Section 201 of the HHFKA also amended the NSLA to provide for additional payments in the form of performance-based reimbursement of 6 cents per lunch served beginning on October 1, 2012, in SFAs certified by the State agency to be in compliance with the updated meal patterns and nutrition standards.

In response to statutorily imposed effective dates established by section 201 of the HHFKA, the Department published an interim final rule on April 27, 2012 (77 FR 25024), which amended 7 CFR part 210 to include criteria for the certification and validation processes and require State agencies to begin certifying SFAs beginning October 1, 2012. The interim final rule invited public comment for a 90-day period, beginning April 27, 2012 and ending July 26, 2012. During the comment period, FNS received 173 comments on the interim final rule: 117 comments from SFAs, 45 comments from advocacy organizations, 6 from individuals and 5 from State agencies.

II. Discussion of Public Comments and FNS Response

Following an analysis of comments, this rule adopts, as final, the provisions of the interim final rule, with revisions as described below. The finalized provisions include the procedures for performance-based certifications, required documentation and timeframes, validation reviews, compliance and administrative reviews, reporting and recordkeeping, and technical assistance.

Reporting and Recordkeeping

The interim final rule established at 7 CFR 210.5, requirements for State agencies to submit a quarterly report, as specified by FNS, detailing the disbursement of performance-based reimbursements, including the total number of SFAs in the State, the names and locations of certified SFAs, and the total number of lunches earning the performance-based reimbursement for each month.

FNS received feedback from State agencies that some of this information would be particularly difficult and/or burdensome to report by SFAs. In an effort to reduce burden, FNS notified State agencies on January 22, 2013 in memorandum SP 31–2012 (*http://www.fns.usda.gov/cnd/governance/Policy-Memos/2012/SP31-2012osr3.pdf*), and later revisions, that FNS would collect on a quarterly basis, the total number of SFAs in the State and the names of certified SFAs.

Therefore, this rule finalizes this reporting change at 7 CFR 210.5(d)(2)(ii) to require that State agencies only include in this quarterly report the total number of SFAs in the State and the names of certified SFAs.

Additionally, FNS created the quarterly report as way to track the number of SFAs being certified throughout the country. FNS realizes that once all SFAs have been certified, the information reported on the quarterly report will become repetitive and will no longer be useful. Therefore, FNS will no longer require State agencies to submit the quarterly report

once all SFAs in the State have been certified.

Certification Process

The interim final rule established at 7 CFR 210.7, criteria for State agencies and SFAs to follow during the certification process. These criteria include requiring SFAs to submit to their State agency documentation demonstrating that they are in compliance with the new meal pattern and nutrition requirements. State agencies are then required to determine if SFAs are in compliance with meal pattern and nutrition standard requirements, and if so, certify the SFA as eligible to receive the 6 cents performance-based cash assistance for each reimbursable lunch served (an additional 6 cents per lunch became available beginning October 1, 2012 and is adjusted annually thereafter). The interim final rule also required that State agencies disburse performance-based cash assistance to certified SFAs, and withhold the performance-based cash assistance from SFAs determined to be out of compliance with meal pattern or nutrition standards during subsequent administrative reviews.

Several commenters felt that the work required in the certification process was too burdensome for school food service directors. One common complaint was that SFAs that offer a wide variety of menu choices may be forced to limit their menus due to the difficulty with the certification process.

The certification process established in the interim final rule was intended to both meet the intent of the provision (that SFAs demonstrate compliance with the new meal pattern requirements) and impose a reasonable administrative burden on SFAs. FNS provided several training opportunities across the Nation to ensure that our State agency partners were well equipped to train local operators on the new certification process. Representatives from every State agency participated in at least one of these in-person trainings. In addition to in-person trainings, FNS conducted several webinars for both State agencies and SFAs on the certification process and on how to complete certification materials. Finally, FNS issued memoranda including a series of questions and answers related to the 6 cents certification process. Most recently, FNS issued SP 31–2012 (3rd Revision) on January 22, 2013, which included revised questions and answers on the certification process. The memorandum can be found at: *http://www.fns.usda.gov/cnd/governance/Policy-Memos/2012/SP31-2012osr3.pdf*. FNS plans to continue to update the memorandum as more questions from States and SFAs are received.

Based on program data and other information from State agencies, 86 percent of SFAs nationwide have submitted certification materials as of the end of October 2013. By the end of September 2013, 80 percent of SFAs had been certified.

FNS is encouraged by these numbers and feels it demonstrates that a majority of SFAs have an understanding of the certification process. FNS continues to encourage State agencies to provide technical assistance and guidance to those SFAs not engaged in the certification process. Therefore, FNS will not be making changes to the requirements for the certification process in this final rule.

Maximums for Grains and Meats and Frozen Fruit With Added Sugar

As stated above, FNS established procedures for the certification process at 7 CFR 210.7. As part of the certification determination process, State agencies must evaluate whether documentation provided by SFAs (including menus, a menu worksheet measuring components and a nutrient analysis or assessment) is compliant with the updated meal pattern and nutrition requirements. This evaluation includes determining whether the SFA's menu meets the daily and weekly requirements for grains and meat/meat alternates.

Since implementation of the interim final rule, FNS has received feedback from both State agencies and SFAs about the certification process and the new meal pattern requirements in general. A frequent concern expressed by State and SFA partners was significant operational challenges in not exceeding the weekly maximum requirements for the grains and meats/meat alternate components, particularly for SFAs with schools with multiple menu offerings and multiple serving lines during meal service.

SFAs reported that for both grains and meat/meat alternates, some popular products are not yet readily available from suppliers in the wide ranges of serving sizes needed to meet the grain and meat/meat alternate weekly maximum requirements. Additionally, SFAs have reported that they are experiencing challenges with student acceptability of new items and smaller servings of items on their menus.

In response to concerns, FNS issued SP 11–2013 on December 20, 2012 (*http://www.fns.usda.gov/cnd/governance/Policy-Memos/2013/SP11-2013os.pdf*), providing local operators with flexibility in meeting the weekly maximums for grains and meat/meat alternates for compliance purposes in School Year (SY) 2012–2013. The memorandum stated that State agencies should consider any SFA compliant with the weekly ranges for these two components if the FNS-developed or FNS-approved Certification Tool and required supporting documentation indicate the menu is compliant with the daily and weekly *minimums.* SFAs are still expected to fall within the weekly *minimum and maximum* ranges for calories. These flexibilities were extended to School Year 2013–14 in SP 26–2013, which was issued on February 25, 2013 (*http://www.fns.usda.gov/cnd/governance/Policy-Memos/2013/SP11-2013os.pdf*).

Feedback on the memoranda concerning flexibility for weekly maximum grains and meat/meat alternates has been overwhelmingly positive, and there have been numerous requests to further extend this change. This new flexibility for measuring compliance has had a meaningful impact on the certification process by making it less complicated for SFAs to be certified as compliant with the new meal pattern. Allowing for more grain and meat/meat alternates has also increased student acceptability of the new meals they are being served.

Therefore, FNS is making this flexibility permanent by including it in this final rule at 7 CFR 210.7(d)(1). Because ongoing compliance with the meal patterns is assessed during administrative reviews, FNS is further extending this flexibility by including in the final rule at 7 CFR 210.18(g)(2)(vi). When conducting administrative reviews, State agencies should consider any SFA compliant with the weekly ranges for grains and meats if the weekly *minimums* are met. SFAs continue to be required to meet the weekly *minimum and maximum* range requirements for calories and the other dietary specifications.

In addition to concerns about the maximums for grains and meats, FNS received feedback from State and SFA partners concerning the requirement that frozen fruit served in the NSLP contain no added sugar.

Since 2009, USDA has reduced the amount of added sugars in frozen fruits offered to States; however most frozen strawberries, peaches and apricots offered by USDA currently contain added sugar. USDA has reached out to industry concerning reformulating these frozen fruits products to eliminate sugar completely, and industry has been working on this issue since publication of the meal pattern rule. Reformulating

some products has been challenging because sugar acts as an important ingredient in maintaining fruit flavor, appearance, texture and storability of certain frozen fruits. In addition, research on substitute sweeteners has not been successful in maintaining the color, flavor or texture of the fruit being tested.

In response to these concerns, FNS issued SP 20–2012 on February 24, 2012 and a revised version on September 11, 2012 (*http://www.fns.usda.gov/cnd/governance/Policy-Memos/2012/SP20-2012osr.pdf*), providing SFAs the flexibility to continue to use frozen fruit products containing added sugar through SY 2013–14. This was later expanded in SP 49–2013 issued on June 25, 2013, to include both lunch and breakfast through SY 2014–15 (*http://www.fns.usda.gov/sites/default/files/SP49-2013os.pdf*). In an effort to ease burden on program operators, this flexibility was applicable to all frozen fruit products.

Feedback on the memoranda has been positive with numerous requests to extend the flexibility for frozen fruit with added sugar. Thus far, research performed by several different processors for development of an acceptable no-sugar frozen fruit has resulted in an unacceptable product. Processors do not believe a short term solution is feasible as their research requires long term studies because many of the problems with frozen fruit do not develop until the products have been in storage for a reasonable time.

In addition to the challenges associated with processing frozen fruit without sugar, allowing SFAs to use frozen fruit with added sugar will make it less complicated for SFAs to meet meal pattern requirements, and also expand the types of frozen fruit allowable in school meals. It is also consistent with canned fruits since some added sugar is allowed in canned products. Additionally, the calorie limits for meals help preserve the integrity of the updated nutrition standards, as schools have to plan menus and select products carefully, including frozen fruit with added sugar, in order to be in compliance with the standards.

For those reasons, FNS is making this flexibility permanent by including it in this final rule at 7 CFR 210.7(d)(1)(iii)(B). Because ongoing compliance with the meal patterns is assessed during administrative reviews, FNS is further extending this flexibility by including it in the final rule at 7 CFR 210.18(g)(2)(vi). When conducting administrative reviews, State agencies should consider any SFA compliant with the meal pattern requirements even if the SFA serves frozen fruit containing added sugar. This flexibility is also applicable to fruit offered in the School Breakfast Program.

Training

Several comments from SFAs requested that FNS and State agencies provide training on the certification process, how to complete certification documentation, and allowable uses of administrative funds provided pursuant to amendments made by Section 201 of the HHFKA.

In recognition of the significance of changes necessitated by the new regulatory requirements, section 201 of the HHFKA amended section 4(b)(3)(F) of the NSLA authorizes the Secretary to provide up to $47 million to States for each of two years to assist in the implementation of the updated meal patterns, including training, technical assistance, and conducting performance-based certifications. States are using these funds to provide trainings and technical assistance to SFAs.

To address comments about the effective use of section 201 administrative funds, FNS issued two guidance memoranda to provide additional information on allowable uses of these administrative funds. Most recently, on December 6, 2012, FNS issued SP 13–2013 (*http://www.fns.usda.gov/cnd/governance/Policy-Memos/2013/SP13-2013os.pdf*) which provided several best practices State agencies may consider in using these administrative funds to help SFAs implement the new meal pattern.

To support State agency efforts to provide technical assistance and training, FNS offered States the option of postponing administrative reviews for School Year 2012–13. By providing this flexibility, FNS expected State agencies to use this time to certify SFAs and train SFAs that need assistance in becoming certified.

In addition, since the publication of the interim final rule, FNS has conducted several in-person trainings across the Nation. The webinars will help ensure both State agencies and SFAs understand the certification process and how to complete and evaluate certification materials.

FNS will continue to provide technical assistance and guidance, as needed, but no changes will be made in this final rule in regards to training.

Non-Discretionary Items

Several comments related to parts of the regulation over which FNS does not have discretion. Specifically, many comments indicated that 6 cents per lunch is insufficient to cover the costs associated with the new meal pattern requirements. The 6 cents per meal performance-based reimbursement was specifically established in the HHFKA; and therefore, FNS does not have discretion to increase the reimbursement rate. However, commenters should be aware that the HHFKA provided for annual adjustment to reflect changes in the cost of operating the meal programs, as indicted by the change in the series for food away from home of the Consumer Price Index for all Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Several commenters felt that breakfast should not be included as part of 6 cents certification. However, as indicated in the preamble of the interim final rule, the statutory authority for the performance-based reimbursement requires that breakfast must be evaluated as part of the certification process. Further discussion of this issue is found in the **Federal Register** at 77 FR 25025.

IV. Procedural Matters

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been designated an ''economically significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Pursuant to that review, it has been determined that this rule will not have a significant impact on a substantial number of small entities.

While there may be some SFA burden associated with initial certification for the performance-based reimbursement in this rule, the burden will not be significant and will be outweighed by

the benefits of increased Federal reimbursement for school lunches.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The National School Lunch Program and School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under No. 10.555 and 10.553. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. In developing this rule, FNS gathered input from State and local program operators, and other stakeholders, via listening sessions held at the School Nutrition Association Legislative Action Conference in March 2012, and at the School Nutrition Association Annual National Conference in July 2012. Additionally, FNS held a State agency meeting to discuss issues pertaining to the new meal pattern and certification in December 2012.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation with State Officials:

Prior to drafting this final rule, FNS staff received informal input from various stakeholders while participating in various State, regional, national, and professional conferences. The School Nutrition Association, the Center for Science in the Public Interest, and the American Dietetic Association shared their views about performance-based reimbursement. Numerous stakeholders, including State agencies and local program operators, also provided input at public meetings held by the School Nutrition Association.

Nature of Concerns and the Need to Issue this Rule:

State agencies and SFAs want to provide the best possible school meals through the NSLP and SBP but are concerned about the costs and administrative burden associated with increased program oversight. While FNS is aware of these concerns, Section 4(b)(3)(D) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1753(b)(3)(D), requires that State agencies certify whether SFAs are in compliance with meal pattern and nutrition standards, and disburse performance-based reimbursement to eligible SFAs.

Extent to Which We Meet Those Concerns:

FNS has considered the impact of this final rule on State and local program operators and has attempted to develop a rule that would implement the performance-based reimbursement in the most effective and least burdensome manner. FNS recognizes that implementing the new performance-based reimbursement certification process will require a significant effort on the part of State and local program operators. This final rule simplifies the certification process by allowing State agencies to consider any SFA compliant with the component requirements for grains and meat/meat alternates if the menu is compliant with the daily and weekly minimums for these components. Additionally, FNS has provided several trainings and guidance to ensure State agencies understand performance-based funding requirements and provide SFAs with the training and technical assistance needed to implement the improved school meal patterns. Finally, per the requirements of the HHFKA, FNS provided $47 million to State agencies in fiscal years 2012 and 2013 to assist with meal pattern implementation, training, technical assistance, and performance-based certification activities. These funds are available for obligation by State agencies through September 2015.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This 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 rule is not intended to have retroactive effect unless specified in the DATES section of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with Departmental Regulations 4300–4, ''Civil Rights Impact Analysis'', and 1512–1, ''Regulatory Decision Making Requirements.'' After a careful review of the rule's intent and provisions, FNS has determined that this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits on the basis of their race, color, national origin, sex, age or disability nor is it intended to have a differential impact on minority owned or operated business establishments, and woman-owned or operated business establishments that participate in the Child Nutrition Programs.

Paperwork Reduction Act

FNS reduced the data required for the quarterly report associated with this final rule. In the interim rule, FNS required State agencies to submit a quarterly report detailing the disbursement of performance-based reimbursement, including the total number of SFAs in the State, the names and locations of certified SFAs, and the total number of lunches earning the performance-based reimbursement for each month. The burden estimate for this quarterly report was one hour. FNS received comments from State agencies that some of this information would be particularly difficult and/or burdensome to report by SFAs.

In an effort to reduce burden, this rule finalizes a reporting change at 7 CFR 210.5(d)(2)(ii) to require that State agencies only include in this quarterly report the total number of SFAs in the State and the names of certified SFAs.

This reduces the estimated burden for State agencies from one hour per quarterly report to 15 minutes per quarterly report.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0584–0567, Certification of Compliance with Meal Requirements for the National School Lunch Program Under the Healthy, Hunger-Free Kids Act of 2010.

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act, 2002 to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or distribution of power and responsibilities between the Federal government and Indian tribes.

FNS provides regularly scheduled quarterly consultation sessions as a venue for collaborative conversations with Tribal officials or their designees. The most recent Quarterly Consultation Conference Calls were coordinated by FNS and held on the following dates: November 2, 2011; February 29, 2012; May 2, 2012; August 29, 2012; February 13, 2013.

There were no comments about this regulation received during any of the aforementioned Tribal Consultation sessions. Reports from these consultations are part of the USDA annual reporting on Tribal consultation and collaboration. FNS will respond in a timely and meaningful manner to Tribal government requests for consultation concerning this rule.

Regulatory Impact Analysis Summary

As required for all rules that have been designated significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this final rule. The following is a summary of the RIA. The full RIA is included as an Appendix to this rule.

Need for Action

Section 201 of the Healthy Hunger-Free Kids Act of 2010 provides for a 6 cent per lunch performance-based reimbursement to SFAs that comply with the National School Lunch program (NSLP) and School breakfast Program (SBP) meal standards that took effect on July 1, 2012. This rule finalizes the interim rule's regulatory framework for establishing initial school food authority (SFA) compliance with the new meal standards and for monitoring ongoing compliance. In addition, the final rule makes minor changes to the interim rule that are intended to facilitate the certification of SFA compliance with the meal patterns.

Benefits

The impact analysis for the interim rule estimated that full compliance with the new meal patterns would increase SFA revenues by more than $300 million per year in the aggregate. The changes contained in the final rule are expected to facilitate compliance with the meal patterns, allowing SFAs to take full advantage of the additional revenue. Granting some flexibility on meat, grains, and frozen fruit is an effort by USDA to work with schools that are making serious efforts to comply with the rule's standards but are having some difficulty finding products that have been resized or reformulated specifically to meet the requirements of the rule. To the extent that a little flexibility at the margins encourages schools to plan menus that meet the new standards, students benefit from receiving meals that comply with the new standards rather than receiving meals that do not comply with the new standards.

Even with the added flexibility, schools have to meet all of the meal patterns' minimum food group requirements and stay within its calorie maximums. The benefits to children who consume school meals that follow DGA recommendations are detailed in the impact analysis prepared for the final meal patterns rule.[1] As discussed in that document, the 2010 Dietary Guidelines Advisory Committee emphasizes the importance of a diet consistent with DGA recommendations as a contributing factor to overall health and a reduced risk of chronic disease.[2] The new meal patterns are intended not only to improve the quality of meals consumed at school, but to encourage healthy eating habits generally. Those goals of the meal patterns rule are furthered to the extent that this rule contributes to full compliance with the meal patters by all SFAs.

Further, the changes adopted in the final rule are intended to facilitate SFA compliance with the meal pattern requirements and reduce State agency reporting and recordkeeping burden. By making permanent the flexibility on weekly maximum servings of grains and meat/meat alternates, and by allowing frozen fruit with added sugar to credit toward the meal pattern requirement for fruit, the final rule will make it easier for some SFAs to plan menus that comply with the meal pattern requirements. The effect of these provisions is to reduce the costs of compliance for the small minority of SFAs that would otherwise not have been certified eligible to receive the performance-based 6 cent reimbursement by the end of SY 2013–2014, though we do not estimate those potential cost savings in this analysis.[3] The savings generated by reducing State agency reporting and recordkeeping burden is minimal.[4]

Costs

These provisions will likely result in a small increase in cost to the Federal Government (as a result of a small number of schools receiving the performance-based reimbursement that might have otherwise not received it), though we expect this potential increase to fall within the cost range estimated for the interim final rule.[5]

List of Subjects in 7 CFR Part 210

Grant programs-education; Grant programs-health; Infants and children; Nutrition; Penalties; Reporting and recordkeeping requirements; School breakfast and lunch programs; Surplus agricultural commodities.

Accordingly, the interim final rule published at 77 FR 25024 on April 27, 2012, is adopted as final with the following changes:

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[1] **Federal Register,** Vol. 77, No. 17 pp. 4088–4167.

[2] Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans, 2010, p. B1–2. (*http://www.cnpp.usda.gov/DGAs2010-DGACReport.htm*).

[3] Since these provisions are options (not requirements) and because we have no data on how many schools might avail themselves of these options, we do not estimate those cost savings in this analysis.

[4] Although the relative burden decrease of 75% seems substantial, the absolute burden decrease (as measured in the dollar value of State agency staff time) is only about $4,000 per year across the entire United States.

[5] **Federal Register,** Vol. 77, No. 82 pp. 25024–25036.

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. Amend § 210.5 by revising paragraph (d)(2)(ii) to read as follows:

§ 210.5 Payment process to States.

* * * * *

(d) * * *

(2) * * *

(ii) Each State agency shall also submit a quarterly report, as specified by FNS, detailing the disbursement of performance-based cash assistance described in § 210.4(b)(1). Such report shall be submitted no later than 30 days after the end of each fiscal year quarter. State agencies will no longer be required to submit the quarterly report once all SFAs in the State have been certified. The report shall include the total number of school food authorities in the State and the names of certified school food authorities.

* * * * *

■ 3. Amend § 210.7 by redesignating paragraphs (d)(1)(iii) through (vii) as paragraphs (d)(1)(iv) through (viii) and adding a new paragraph (d)(1)(iii) to read as follows:

§ 210.7 Reimbursement for school food authorities.

* * * * *

(d) * * *

(1) * * *

(iii) State agencies must review certification documentation submitted by the school food authority to ensure compliance with meal pattern requirements set forth in § 210.10, § 220.8, or § 220.23, as applicable. For certification purposes, State agencies should consider any school food authority compliant:

(A) If when evaluating daily and weekly range requirements for grains and meat/meat alternates, the certification documentation shows compliance with the daily and weekly minimums for these two components, regardless of whether the school food authority has exceeded the maximums for the same components.

(B) If when evaluating the service of frozen fruit, the school food authority serves products that contain added sugar.

* * * * *

■ 4. Amend § 210.18 by adding paragraph (g)(2)(vi) to read as follows:

§ 210.18 Administrative reviews.

* * * * *

(g)* * *

(2)* * *

(vi) For purposes of paragraphs (g)(2)(i) through (v) of this section, State agencies should consider any school food authority compliant:

(A) If when evaluating daily and weekly range requirements for grains and meat/meat alternates, the documentation shows compliance with the daily and weekly minimums for these two components, regardless of whether the school food authority have exceeded the maximums for the same components.

(B) If when evaluating the service of frozen fruit, the school food authority serves products that contain added sugar.

* * * * *

Dated: December 24, 2013.

Kevin Concannon,

Under Secretary, Food, Nutrition and Consumer Services.

Note: The following appendix will not appear in the Code of Federal Regulations

Appendix A

Regulatory Impact Analysis

Agency: Food and Nutrition Service.

Title: Certification of Compliance with Meal Requirements for the National School Lunch Program under the Healthy, Hunger-Free Kids Act of 2010.

Nature of Action: Final Rule.

Need for Action: Section 201 of the Healthy Hunger-Free Kids Act of 2010 provides for a 6 cent per lunch performance-based reimbursement to SFAs that comply with the National School Lunch program (NSLP) and School Breakfast Program (SBP) meal standards that took effect on July 1, 2012. This rule finalizes the interim rule's regulatory framework for establishing initial school food authority (SFA) compliance with the new meal standards and for monitoring ongoing compliance. In addition, the final rule makes minor changes to the interim rule that are intended to facilitate the certification of SFA compliance with the meal patterns.

Affected Parties: The programs affected by this rule are the NSLP and the SBP. The parties affected by this regulation are local school food authorities, State education agencies and the USDA.

Contents

I. Background

The National School Lunch Program (NSLP) is available to over 50 million children each school day; an average of 31.6 million children per day ate a reimbursable lunch in fiscal year (FY) 2012. Schools that participate in NSLP receive Federal reimbursement and USDA Foods (donated commodities) for meals that meet program requirements.

Sections 4 and 11 of the Richard B. Russell National School Lunch Act (NSLA) govern the Federal reimbursement of school lunches. Reimbursement for school breakfasts is governed by Section 4(b) of the Child Nutrition Act. Reimbursement rates for both NSLP and SBP meals are adjusted annually for inflation under terms specified in Section 11 of the NSLA.

Federal reimbursement for program meals and the value of USDA Foods totaled $14.9 billion in FY 2012. Table 1 summarizes FNS projections of reimbursable meals served and the value of Federal reimbursements and USDA Foods through FY 2017.

The baseline for this analysis is the cost estimate published with the interim final rule.[6]

TABLE 1—PROJECTED NUMBER OF MEALS SERVED AND TOTAL FEDERAL PROGRAM COSTS[7]

[in billions]

	Fiscal year				
	2013	2014	2015	2016	2017
NSLP					
Lunches Served	5.3	5.4	5.4	5.4	5.5

[6] **Federal Register,** Vol. 77, No. 82 pp. 25024–25036.

TABLE 1—PROJECTED NUMBER OF MEALS SERVED AND TOTAL FEDERAL PROGRAM COSTS [7]—Continued

[in billions]

	Fiscal year				
	2013	2014	2015	2016	2017
Program Cost	$12.3	$12.6	$12.7	$12.9	$13.0
SBP					
Breakfasts Served	2.3	2.4	2.4	2.5	2.5
Program Cost	$3.6	$3.8	$4.0	$4.1	$4.2

[7] USDA projections of reimbursable lunches and breakfasts served, and total NSLP and SBP program costs, prepared for the FY 2014 President's Budget. NSLP program cost includes entitlement commodity assistance, but is not adjusted for the projected additional amount necessary to bring total commodity assistance up to 12 percent of the combined value of the Section 4 and 11 reimbursements as required by NSLA section 6(e) (42 U.S.C. 1755(e)). Note that the estimate for the cost of NSLP as given in on p. 175 of the 2014 President's budget appendix does not include estimated entitlement commodity assistance, unlike Table 1. In addition, although the USDA projections in the FY 2014 President's Budget included the cost of the extra 6 cents per meal (and assumed that all meals served would be eligible for the extra 6 cents per meal), the projections presented here do not include the value of the 6 cents—instead, program costs are presented as if no meals receive the 6 cents reimbursement, to provide a basis for comparison for the rest of the estimates in this RIA. The projected number of meals has changed from the estimated projections in the interim rule on account of updated projections provided in the 2014 President's Budget.

Table 2 provides additional detail on the components of the school year (SY) 2012–2013 Federal reimbursement rates for lunches and breakfasts that meet program requirements. The figures in Table 2 exclude the 6 cents for meals that comply with the new meal patterns.

TABLE 2—FEDERAL PER-MEAL REIMBURSEMENT AND MINIMUM VALUE OF USDA FOODS, SY 2012–2013

	Breakfast reimbursement		Lunch reimbursement					Minimum value of donated foods
	Section 4(b) of Child Nutrition Act		Section 4 NSLA		Section 11 NSLA	Combined Reimbursement, NSLA Sections 4 & 11		
	Schools in "Severe Need"	Schools not in "Severe Need"	SFAs that serve fewer than 60% of lunches free or at reduced price	SFAs that serve at least 60% of lunches free or at reduced price		SFAs that serve fewer than 60% of lunches free or at reduced price	SFAs that serve at least 60% of lunches free or at reduced price	Additional Federal assistance for each NSLP lunch served
Contiguous States								
Free	$1.85	$1.55	$0.27	$0.29	$2.59	$2.86	$2.88	$0.2275
Reduced Price	1.55	1.25	0.27	0.29	2.19	2.46	2.48	0.2275
Paid	0.27	0.27	0.27	0.29	n.a.	0.27	0.29	0.2275
Alaska								
Free	$2.97	$2.48	$0.44	$0.46	$4.19	$4.63	$4.65	$0.2275
Reduced Price	2.67	2.18	0.44	0.46	3.79	4.23	4.25	0.2275
Paid	0.41	0.41	0.44	0.46	n.a.	0.44	0.46	0.2275
Hawaii								
Free	$2.16	$1.81	$0.32	$0.34	$3.03	$3.35	$3.37	$0.2275
Reduced Price	1.86	1.51	0.32	0.34	2.63	2.95	2.97	0.2275
Paid	0.31	0.31	0.32	0.34	n.a.	0.32	0.34	0.2275

II. Need for Action

Section 201 of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) directs the USDA to issue regulations to update the NSLP and SBP meal patterns to align them with the *Dietary Guidelines for Americans* (DGA). The Department published a proposed rule in January 2011.[8] A final rule was published on January 26, 2012.[9] The new standards took effect on July 1, 2012, the start of SY 2012–2013.

HHFKA Section 201 also provides for a 6 cent increase to the USDA reimbursement for lunches served on or after October 1, 2012 that meet the new meal standards. The interim rule provided the regulatory structure necessary to establish initial school food authority (SFA) compliance with the new meal standards and to monitor ongoing compliance. This final rule responds to concerns raised by comments given in response to the interim rule.

III. Key Provisions of the Interim Rule

The interim rule included provisions that govern initial certification of SFA compliance with the breakfast and lunch meal patterns that took effect on July 1, 2012, ongoing monitoring of compliance by State agencies, consequences for non-compliance, and administrative responsibilities of SFAs and State agencies. SFAs began receiving an additional 6 cents for each reimbursable lunch served on or after October 1, 2012 that was determined to comply with the new meal standards. Key provisions of the interim rule included:

• *Defining compliance:* SFAs must be compliant with breakfast and lunch meal pattern requirements to receive the performance-based 6 cent lunch reimbursement. All meal components must be present in appropriate quantities. The meals offered to students must also comply

[8] **Federal Register**, Vol. 76, No. 9, pp. 2494–2570.

[9] **Federal Register**, Vol. 77, No. 17, pp. 4088–4167.

with sodium, calorie, saturated fat, and trans fat standards.

• *Initial certification of SFA eligibility for performance-based lunch reimbursement:* SFAs may be certified eligible for the performance-based lunch reimbursement in one of several ways. Procedures for submitting certification documentation will be developed by State agencies. Final certification decisions will also be made by State agencies. However, standards for certification and the materials used in the certification process will be developed by FNS and specified in guidance. The interim rule provided for the following certification methods:

i. Nutrient analysis: SFAs may submit to their State agency one week of each menu used by the SFA, along with the results of a nutrient analysis on each menu, and a menu worksheet.

ii. Practices and indicators documentation: SFAs may submit to their State agency responses to a series of questions on program operations, a week of each menu used by the SFA, and a menu worksheet.

iii. State agency reviews: SFAs may be certified in the process of a normal State agency administrative review. An SFA determined by the State agency to be compliant with all meal pattern and nutrient standards during an administrative review will be certified eligible for the performance-based lunch reimbursement.

iv. HealthierUS School Challenge: Individual schools that receive HealthierUS School Challenge awards after July 1, 2012 will be certified eligible for the performance-based lunch reimbursement without further action by the school or SFA.

• *Ongoing compliance:* SFAs must be held compliant with meal pattern and nutrient standards at subsequent State administrative reviews to remain eligible for the performance-based lunch reimbursement.

• *Consequences of non-compliance:* SFAs that are determined non-compliant with meal pattern or nutrient standards, either through State review of the SFAs' initial certification materials, or in an initial or future State administrative review, will not be eligible (or will lose eligibility) for the performance-based lunch reimbursement. State agencies that find SFAs to be non-compliant with meal pattern or nutrient standards must provide technical assistance and encourage SFA corrective action and re-application for certification.

• *State agency validation reviews:* State agencies must perform on-site validation reviews of a 25 percent random sample of certified SFAs during SY 2012–2013. Each validation review can substitute for an administrative review that the State agency would otherwise have to perform during SY 2012–2013.

• *Federal assistance to State agencies:* HHFKA Section 201 provided $50 million in each of the fiscal years 2012 and 2013 to assist States with training, technical assistance, certification, and oversight. As provided by HHFKA, the preamble to the interim rule specified that $3 million would be retained for Federal administration and $47 million would be distributed to the States in each of these 2 years.

IV. Key Provisions of the Final Rule

This rule finalizes the provisions of the interim rule, including the procedures for performance-based certifications, required documentation and timeframes, validation reviews, compliance and administrative reviews, reporting and recordkeeping, and technical assistance, with a few revisions:

• This final rule amends the reporting requirement at 7 CFR 210.5(d)(2)(ii) to require that State agencies only include in their quarterly SFA performance-based certification report the total number of SFAs in the State and the names of certified SFAs. This represents a simplification of the reporting requirement from the interim rule. The change formalizes the simplification previously adopted by USDA and communicated to State agencies through Policy Memo SP 31–2012.

• This final rule at 7 CFR 210.7(d)(1) makes permanent a flexibility in requirements for weekly maximum grains and meat/meat alternates as originally outlined in Policy Memo SP 26–2013 and the flexibility for serving frozen fruit with added sugar as originally outlined in Policy Memo SP 20–2012. These changes make it easier for SFAs to meet the requirements of the school meals rule, which is a prerequisite for certification for the performance-based reimbursement.

V. Addressing Comments on the Interim Rule and RIA

The interim rule generated about 200 comments. As noted in the preamble to the final rule, most of the comments pertained to either the school meals rule (e.g., commented on the new meal patterns) or to statutory requirements as set forth in HHFKA (e.g., commented on whether 6 additional cents are sufficient to cover the costs of the new meal patterns). As this RIA does not address the school meals rule and as FNS has no discretion to change the statutory requirements of the rule, this RIA will not address those comments.

A. Concerns About State Administrative Costs

A few comments raised concerns about the cost of the States' quarterly reporting requirement on SFA certification. These comments viewed the reporting requirements as overly burdensome.

In response to these concerns, FNS decreased the amount of information required from States in the quarterly report, as noted above. This change decreases the estimated time it takes one State to prepare and submit a quarterly certification report from one hour under the interim rule to 15 minutes under this final rule. These reports will no longer be required once all SFAs have been certified to receive the performance-based reimbursement.

B. Concerns About Certification Costs

A few comments raised concerns about State or SFA administrative costs to comply with the certification process and with a lack of adequate guidance and training of State agency officials by FNS. Other comments indicated that small SFAs do not have the staff resources, computers, or computer skills necessary to develop compliant menus or to complete the certification process. Some comments questioned whether the additional administrative costs are worth the additional 6 cent reimbursement, and they raised concerns about SFAs' abilities to meet certification requirements in a timely manner.

As noted in the preamble, FNS is encouraged by the number of SFAs that have already completed the certification process successfully. In October 2013, State agencies reported that, as of the end of June 2013, approximately 80 percent of all SFAs participating in the NSLP had submitted certification documentation to their respective State agency for review and certification, with more expected by the end of the school year. In addition, 90 percent of all lunches served in May 2013 received the extra 6 cent reimbursement.

With regard to the training provided to State agencies by FNS, we note that FNS led in-person training sessions with every State agency to assist them with the task of helping SFAs navigate the certification process. FNS also developed webinars, spreadsheet tools, documentation, and other training resources to assist State agencies and SFAs. All of these resources remain available on the FNS Web site.[10] The spreadsheet tools, in particular, are intended to assist SFAs that may not have the time or resources to develop or purchase their own software.[11] FNS recognizes, however, that some SFAs may continue to have difficulty with the process despite these resources. FNS is committed to assisting those SFAs, and the State agency staff who are working with them, by answering additional questions on the certification process as we receive them. FNS also encourages the States to provide additional assistance to SFAs that have not yet submitted requests for certification.

The final rule does not, however, change the requirements in the certification process. Consequently, we also make no fundamental change in the RIA concerning the costs of certification, although we do provide updated estimates of the cost of the interim rule based on the most recent data available. Nevertheless, we note that the other major change between the interim and final rule (i.e., making permanent the flexibility for weekly maximum grains and meat/meat alternates as original outlined in Policy Memo SP 26–2013 and the flexibility for serving frozen fruit with added sugar as originally outlined in Policy Memo SP 20–2012) should make it easier for SFAs to comply with the school meals rule (a prerequisite to becoming certified), though this does not change the certification process

[10] See *http://www.fns.usda.gov/outreach/webinars/child_nutrition.htm* and *http://www.fns.usda.gov/cnd/Governance/Legislation/certificationofcompliance.htm.*

[11] Some comments indicated that the FNS-developed spreadsheet tools were difficult to work with. While FNS will not be changing the tool at this time, FNS has conducted several in-person trainings and webinars to assist State agencies and SFA having difficulties using the tools. Additionally, the FNS Web site lists other commercially available tools that SFAs may find more appropriate or helpful.

itself. As discussed in the preamble and below in Section VI.A.1., we do not find that making permanent these flexibilities negatively impacts the nutritional profile of NSLP meals.

VI. Cost/Benefit Assessment

A. Final Rule

1. Benefits

The impact analysis for the interim rule [12] (and updated below) estimated that full compliance with the new meal patterns would increase SFA revenues by more than $300 million per year in the aggregate. The changes contained in the final rule are expected to facilitate compliance with the meal patterns, allowing SFAs to take full advantage of the additional revenue. Granting some flexibility on meat, grains, and frozen fruit is an effort by USDA to work with schools that are making serious efforts to comply with the rule's standards but are having some difficulty finding products that have been resized or reformulated specifically to meet the requirements of the rule. To the extent that a little flexibility at the margins encourages schools to plan menus that meet the new standards, students benefit from receiving meals that comply with the new standards rather than receiving meals that do not comply with the new standards.

The benefits to children who consume school meals that follow DGA recommendations are detailed in the impact analysis prepared for the final meal patterns rule.[13] As discussed in that document, the 2010 Dietary Guidelines Advisory Committee emphasizes the importance of a diet consistent with DGA recommendations as a contributing factor to overall health and a reduced risk of chronic disease.[14]

The link between poor diets and health problems such as childhood obesity are a matter of particular policy concern given their significant social and economic costs. Obesity has become a major public health concern in the U.S., second only to physical activity among the top 10 leading health indicators in the United States Healthy People 2020 goals. According to data from the National Health and Nutrition Examination Survey 2007–2008, 34 percent of the U.S. adult population is obese and an additional 34 percent are overweight.[15]

The trend towards obesity is also evident among children; 33 percent of U.S. children and adolescents are now considered overweight or obese,[16] with current childhood obesity rates four times higher in children ages 6 to 11 than they were in the early 1960s (19 vs. 4 percent), and three times higher (17 vs. 5 percent) for adolescents ages 12 to 19.[17] These increases are shared across all socio-economic classes, regions of the country, and have affected all major racial and ethnic groups.[18]

Excess body weight has long been demonstrated to have health, social, psychological, and economic consequences for affected adults.[19] Recent research has also demonstrated that excess body weight has negative impacts for obese and overweight children. Research focused specifically on the effects of obesity in children indicates that obese children feel they are less capable, both socially and athletically, less attractive, and less worthwhile than their non-obese counterparts.[20]

Further, there are direct economic costs due to childhood obesity; $237.6 million (in 2005 dollars) in inpatient costs [21] 70 and annual prescription drug, emergency room, and outpatient costs of $14.1 billion.[22]

Childhood obesity has also been linked to cardiovascular disease in children as well as in adults. Freeman, Dietz, Srinivasan, and Berenson found that ''compared with other children, overweight children were 9.7 times as likely to have 2 [cardiovascular] risk factors and 43.5 times as likely to have 3 risk factors'' (p. 1179) and concluded that ''[b]ecause overweight is associated with various risk factors even among young children, it is possible that the successful prevention and treatment of obesity in childhood could reduce the adult incidence of cardiovascular disease'' (p. 1175).[23] It is known that overweight children have a 70 percent chance of being obese or overweight as adults. However, the actual causes of obesity have proven elusive.[24] While the relationship between obesity and poor dietary choices cannot be explained by any one cause, there is general agreement that reducing total calorie intake is helpful in preventing or delaying the onset of excess weight gain.

There is some recent evidence that food standards can improve children's dietary quality:

- Taber, Chriqui, and Chaloupka compared calorie and nutrient intakes for California high school students—with food standards in place—to calorie and nutrient intakes for high school students in 14 States with no food standards.[25] They concluded that California high school students consumed fewer calories, less fat, and less sugar at school than students in other States. Their analysis ''suggested that California students did not compensate for consuming less within school by consuming more elsewhere'' (p. 455). The consumption of fewer calories in school suggests that competitive standards ''. . . may be a method of reducing adolescent weight gain'' (p. 456).
- A study of competitive food policies in Connecticut concluded that ''removing low nutrition items from schools decreased students' consumption with no compensatory increase at home.'' [26]
- Similarly, researchers for Healthy Eating Research and Bridging the Gap found that ''[t]he best evidence available indicates that policies on snack foods and beverages sold in school impact children's diets and their risk for obesity. Strong policies that prohibit or restrict the sale of unhealthy competitive foods and drinks in schools are associated with lower proportions of overweight or obese students, or lower rates of increase in student BMI.'' [27]

[12] **Federal Register,** Vol. 77, No. 82 pp. 25024–25036.

[13] **Federal Register,** Vol. 77, No.17 pp. 4088–4167.

[14] Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans, 2010, p. B1–2. (*http://www.cnpp.usda.gov/DGAs2010-DGACReport.htm*).

[15] C.L. Ogden and M.D. Carroll (2010), ''Prevalence of Overweight, Obesity, and Extreme Obesity among Adults: United States, Trends 1976–1980 through 2007–2008,'' National Center for Health Statistics, June 2010, as cited in *Food Labeling: Calorie Labeling of Articles of Food in Vending Machines,* NPRM (2011). Preliminary Regulatory Impact Analysis, Docket No. FDA–2011–F–0171.

[16] M.A. Beydoun and Y. Wang (2011), ''Socio-demographic disparities in distribution shifts over time in various adiposity measures among American children and adolescents: What changes in prevalence rates could not reveal,'' *International Journal of Pediatric Obesity,* 6:21–35, as cited in *Food Labeling: Calorie Labeling of Articles of Food in Vending Machines,* NPRM (2011). Preliminary Regulatory Impact Analysis, Docket No. FDA–2011–F–0171.

[17] Institute of Medicine (2007), *Progress in Preventing Childhood Obesity: How do we Measure Up? Committee on Progress in Preventing Childhood Obesity,* edited by J.P. Koplan, C.T. Liverman, V.I. Kraak, and S.L. Wisham, Washington, DC: The National Academies Press, p. 24.

[18] S.J. Olshansky, D.J. Passaro, R.C. Hershow, J. Layden, B.A. Carnes, J. Brody, L. Hayflick, R.N. Butler, D.B. Allison, and D.S. Ludwig (2005). ''A Potential Decline in Life Expectancy in the United States in the 21st Century,'' *The New England Journal of Medicine,* 352:1138–1145.

[19] J. Guthrie, C. Newman, and K. Ralston (2009), ''USDA School Meal Programs Face New Challenges,'' *Choices: The Magazine of Food, Farm, and Resource Issues,* 24 (available online at *http://www.choicesmagazine.org/magazine/print.php?article=83*); and Y. Wang, M.A. Beydoun, L. Liang, B. Cabellero and S.K. Kumanyika (2008), ''Will all Americans Become Overweight or Obese? Estimating the Progression and Cost of the US Obesity Epidemic,'' *Obesity,* 16: 2323–2330.

[20] A. Riazi, S. Shakoor, I. Dundas, C. Eiser, and S.A. McKenzie (2010), ''Health-related quality of life in a clinical sample of obese children and adolescents,'' *Health and Quality of Life Outcomes,* 8:134–139.

[21] L. Trasande, Y. Liu, G. Fryer, and M. Weitzman (2009), ''Trends: Effects of Childhood Obesity on Hospital Care and Costs, 1999–2005,'' *Health Affairs,* 28:w751–w760.

[22] J. Cawley (2010), ''The Economics of Childhood Obesity,'' *Health Affairs,* 29:364–371, as cited in *Food Labeling: Calorie Labeling of Articles of Food in Vending Machines,* NPRM (2011). Preliminary Regulatory Impact Analysis, Docket No. FDA–2011–F–0171.

[23] D.S. Freeman, W.H. Dietz, S.R. Srinivasan, and G.S. Berenson (1999), ''The Relation of Overweight to Cardiovascular Risk Factors Among Children and Adolescents: The Bogalusa Heart Study,'' *Pediatrics,* 103:1175–1182.

[24] ASPE, Health & Human Services (No Date), ''Childhood Obesity,'' Assistant Secretary for Planning and valuation, U.S. Department of Health & Human Services. Available online at *http://aspe.hhs.gov/health/reports/child_obesity.*

[25] D.R. Taber, J.F. Chriqui, and F.J. Chaloupka (2012), ''Differences in Nutrient Intake Associated With State Laws Regarding Fat, Sugar, and Caloric Content of Competitive Foods,'' *Archives of Pediatric & Adolescent Medicine,* 166:452–458.

[26] M.B. Schwartz, S.A. Novak, and S.S. Fiore (2009), ''The Impact of Removing Snacks of Low Nutritional Value from Middle Schools,'' *Health Education & Behavior,* 36:999–1011, p. 999.

[27] Healthy Eating Research and Bridging the Gap (2012), ''Influence of Competitive Food and Beverage Policies on Children's Diets and

Continued

Pew Health Group and Robert Wood Johnson Foundation researchers noted that the prevalence of children who are overweight or obese has more than tripled in the past three decades,[28] which is of particular concern because of the health problems associated with obesity. In particular, researchers found an increasing number of children are being diagnosed with type 2 diabetes, high cholesterol, and high blood pressure. These researchers further observed that children with low socioeconomic status and black and Hispanic children are at a higher risk of experiencing one or more of these illnesses (pp. 39–40, 56). Their analysis also noted that: [T]here is a strong data link between diet and the risk for these chronic diseases. Given the relationship between childhood obesity, calorie consumption, and the development of chronic disease risk factors at a young age, this report proposes that a national policy could alter childhood and future chronic disease risk factors by reducing access to certain energy-dense foods in schools. To the extent that the national policy results in increases in students' total dietary intake of healthy foods and reductions in the intake of low-nutrient, energy-dense foods, it is likely to have a beneficial effect on the risk of these diseases. However, the magnitude of this effect would be proportional to the degree of change in students' total dietary intake, and this factor is uncertain (p. 68).

In summary, the most current, comprehensive, and systematic review of existing scientific research concluded that foods standards can have a positive impact on reducing the risk for obesity-related chronic diseases. Because the factors that contribute both to overall food consumption and to obesity are so complex, it is not possible to define a level of disease or cost reduction that is attributable to the changes in foods resulting from implementation of this rule. USDA is unaware of any comprehensive data allowing accurate predictions of the effect of increasing the flexibility in meeting certain dietary requirements by SFA's to certify compliance for the National program and subsequent changes in consumer choice and, especially among children. But to illustrate the magnitude of the potential benefits of a reduction in childhood obesity, based on $237.6 million in inpatient costs and $14.1 billion in outpatient costs, a one percent reduction in childhood obesity implies a $143 million reduction in health care costs.

Some researchers have suggested possible negative consequences of regulating nutrition content in school foods. They argue that not allowing access to low nutrient, high calorie snack foods in schools may result in overconsumption of those same foods outside the school setting (although as noted earlier, Taber, Chriqui, and Chaloupka concluded overcompensation was not evident among the California high school students in their sample).

The new meal patterns are intended not only to improve the quality of meals consumed at school, but to encourage healthy eating habits generally. Those goals of the meal patterns rule are furthered to the extent that this rule contributes to full compliance with the meal patterns by all SFAs.

The changes adopted in the final rule (summarized in Section IV) are intended to facilitate SFA compliance with the meal pattern requirements and reduce State agency reporting and recordkeeping burden. By making permanent the flexibility on weekly maximum servings of grains and meat/meat alternates, and by allowing frozen fruit with added sugar to credit toward the meal pattern requirement for fruit, the final rule will make it easier for some SFAs to plan menus that comply with the meal pattern requirements.[29]

The added flexibility on weekly maximum servings of grains and meat/meat alternates will benefit SFAs who may continue to rely on prepared foods or recipes that ensure compliance with daily and weekly minimum quantities but may exceed weekly maximums in some weeks. However, because the meal patterns' weekly calorie requirements remain in place, the added flexibility on grains and meat/meat alternates is unlikely to have a significant effect on the overall quantity of food served, the cost of acquiring that food, or the nutritional profiles of the meals served.

Allowing frozen fruit with added sugar to credit toward the meal patterns' fruit requirement also provides SFAs greater flexibility in purchasing foods for use in the school meal programs. Permitting schools to make use of a wider range of currently available frozen fruit products may reduce the administrative costs of finding and acquiring compliant foods for use in the meal programs. But, like the grains and meat/meat alternate provision, because the calorie limits are still in place, allowing added sugar in frozen fruit products will not undermine the updated nutrition standards.[30]

It is important to emphasize that menus developed by SFAs that are certified eligible for the additional 6 cent reimbursement must meet all of the minimum food group requirements contained in the final school meals rule, whether or not those SFAs take advantage of the added flexibilities of this rule. In addition, all SFAs are held to the same maximum calorie standards contained in the final school meals rule. Those standards are not meal-based. Instead, SFA compliance with the food group standards is assessed by comparing the weighted average amounts served across all meals served per day or in an entire week. Children in SFAs that are certified compliant under the modified standards of this rule will be served meals that satisfy *the same minimum requirements* as meals served in SFAs that were certified compliant under the original terms of the final school meals rule. Even in the absence of the flexibility added by this rule, the amount of meat and grains served in individual meals will vary significantly from the weighted average minimum and maximum amounts required over the course of a day or week. The changes in this rule recognize that additional flexibility on the upper end of the required range for meat and grains allows SFAs to use products that were formulated prior to the final school meal rule standards and to satisfy student demand. This rule does not offer SFAs a way to reduce the minimum amounts served from any of the food groups emphasized by the final school meal rule. And because this rule does not modify the final school meal rule's maximum calorie requirements, the new flexibility is limited and does not weaken the school meal standards' focus on childhood obesity.[31]

The final school meal rule establishes a primarily food-based set of requirements; these are designed to comply with the recommendations of the DGAs regarding the consumption of a variety of foods from key food groups. The school meal rule sets just a handful of macronutrient standards (for calories, saturated fat, sodium, and trans fat). The changes contained in this rule require SFAs to serve meals that satisfy the same minimum requirements from each of the food groups identified in the final school meal rule without relaxing any of that rule's macronutrient standards. In short, this rule's additional flexibility, designed to make it marginally easier to meet compliance with the new meal standards.

Schools that adopt healthier food standards for their school lunch programs will improve the dietary intake for children at school and make it more likely that those students will have improved health outcomes. However, by allowing greater flexibility in meeting the school lunch dietary standards, it may be that some compliant SFAs relax their implementation of those guidelines somewhat.

USDA has not quantified what changes may result to the overall nutritional content of SFAs availing themselves of those

Childhood Obesity,'' p. 3. Available online at *http://www.healthyeatingresearch.org/images/stories/her_research_briefs/Competitive_Foods_Issue_Brief_HER_BTG_7-2012.pdf.*

[28] Pew Health Group and Robert Wood Johnson Foundation (2012), *Heath Impact Assessment: National Nutrition Standards for Snack and a la Carte Foods and Beverages Sold in Schools.* Available online at *http://www.pewhealth.org/uploadedFiles/PHG/Content_Level_Pages/Reports/KS%20HIA_FULL%20Report%20062212_WEB%20FINAL-v2.pdf.*

[29] As explained in this section and in the preamble to the rule, making permanent this flexibility does not compromise the nutritional profile of school meals. IOM's recommendations were to serve food in minimum amounts subject to maximum calorie limits; the additional flexibility allowed by these provisions is still subject to the maximum calorie limits for school meals.

[30] We note that, in SY 2009–2010, frozen fruit accounted for only 17% of the fruit used by US schools. See p. 83 of USDA/FNS, School Food Purchase Study III (2012). Available online at *http://www.fns.usda.gov/Ora/menu/Published/CNP/FILES/SFSPIII_Final.pdf.*

[31] The final rule's flexibility on sugar contained in frozen fruit is also constrained by the retention of the interim rule's calorie restrictions. Because the interim rule already allowed for added sugar in canned fruit, the final rule's modification of the frozen fruit standard is primarily a means to widen the selection of processed fruit available to SFAs under nutrient standards that are comparable to the standards already allowed under the interim rule for other processed fruit. In the absence of the final rule provision on frozen fruit with added sugar, SFAs remained free to serve canned fruit in light syrup rather fresh or processed fruit without added sugar.

flexibility provisions. There are relatively few SFAs (relative to the total number of SFAs complying with school lunch dietary guidelines) that would significantly change the dietary composition of their school lunch program one way or the other. Those two effects (described above) are offsetting and so the net effects of these changes on the benefits to school children are likely to be marginal relative to the overall benefits afforded by the dietary standards.

Because of the macronutrient requirement is not adjusted, any resulting changes to the nutritional quality of the NSLP and SBP meals served by SFAs are expected to marginal, and so there would likely be few changes to the benefits to children relative to the final school meal rule or to the interim rule on certification for the 6 cent reimbursement.

2. Costs and Transfers

The baseline for our estimate of the cost of the final rule is the estimate for the interim final rule, which we update below using the latest President's Budget projections and preliminary data on certifications for the performance-based reimbursement.

The provisions in the final rule will likely result in a small increase in cost to the Federal Government (as a result of a transfer of Federal funds in the form of additional performance-based reimbursements to a small number of schools receiving the performance-based reimbursement that might have otherwise not received it), though we expect this potential increase to fall within the cost range estimated for the interim final rule, as updated below.

The effect of the provisions in the final rule (i.e. increased flexibility on grains, meats, and frozen fruits with added sugar) is to reduce the costs of compliance for the small minority of SFAs that would otherwise not have been certified compliant with the new meal standards by the end of SY 2013–2014. The policy memos issued by FNS in September 2012 and February 2013 had already extended these provisions through the end of SY 2013–2014.

These provisions are essentially administrative efficiency measures that will reduce meal pattern compliance costs at the margin for some SFAs; the provisions are not expected to have a significant effect on food costs. Since these provisions are options (not requirements) and because we have no data on how many schools might avail themselves of either of these options, we do not estimate those cost savings in this analysis.

Given these assumptions about a phased certification process for some SFAs, the estimated cost of Federal performance-based reimbursements (and the value of additional SFA revenue) is $1.54 billion through FY 2017 (1 percent less than the $1.55 billion estimated with full implementation).

To the extent that the additional flexibilities afforded SFAs, this rule could result in marginally lower costs to SFAs relative to the interim final rule baseline. USDA has not quantified those changes as there are relatively few SFAs (relative to the total number of SFAs complying with school lunch dietary guidelines) that would significantly change the dietary composition of their school lunch program one way or the other.

The added flexibility on weekly maximum servings of grains and meat/meat alternates could benefit SFAs who may continue to rely on prepared foods or recipes that ensure compliance with daily and weekly minimum quantities but may exceed weekly maximums in some weeks. That provision may reduce the administrative costs of meal planning for some SFAs, and may reduce the costs associated with modifying recipes or finding new prepared foods in the market with slightly different formulations than products currently purchased.

Because the flexibility on grains, meat/meat alternates, and frozen fruit had previously been extended by FNS through SY 2013–2014, the effect of these provisions on the initial certification of SFAs for the performance-based reimbursement is expected to be very small. Administrative data on certifications approved or pending through May 2013 indicate that only a small minority of SFAs are likely to remain uncertified by the end of SY 2013–2014. For those SFAs, these provisions may help reduce the costs of certification after that time.[32] For all other SFAs, these provisions will make it marginally easier to maintain compliance with daily and weekly meal pattern requirements, a necessary condition for continued receipt of the performance-based reimbursement. We expect these provisions to generate a small but uncertain cost savings for SFAs through a small reduction in SFA compliance costs.

The rule also finalizes the change in State agency quarterly reporting requirement on SFA certification. That change, previously adopted through Policy Memo SP–31–2012, reduces quarterly State agency reporting burden to an estimated 15 minutes per quarter per State agency.[33] The last change, contained in the preamble to the final rule, will eliminate the requirement that State agencies submit quarterly reports on SFA certification for the performance-based rate increase once all SFAs have been certified. The administrative savings from this provision is minimal.[34]

[32] As we note above, approximately 80 percent of SFAs had submitted documentation to their respective State agencies for review and certification as of June 2013. Administrative data also show that many SFAs are being certified retroactively as the processing of applications and approval of certification requests catch up with SFAs' documented compliance with the new meal patterns. With or without the changes contained in the final rule, State agency technical assistance will likely concentrate on this subset of uncertified SFAs during SY 2013–2014. Those efforts are likely to substantially reduce the number of non-certified SFAs by the end of SY 2013–2014. It is that remaining subset of SFAs that may benefit most from the permanent extension of the grains, meat/meat alternate, and frozen fruit policy changes contained in the final rule.

[33] Estimate developed for Paperwork Reduction Act reporting and contained in the preamble to the rule. Because this change was already adopted by USDA through a policy memo, the reduction in burden for State agencies is part of our baseline, and the formalization of that policy by the final rule does not further reduce State agency reporting costs.

[34] Although the relative burden decrease of 75% seems substantial, the absolute burden decrease (as measured in the dollar value of State agency staff time) is only about $4,000 per year across the entire United States.

B. Updated Analysis of Interim Rule Effects

The analysis provided below updates a similar analysis prepared for the interim rule impact analysis.[35] We update the figures here using data on actual SFA certifications that were not available when the interim rule was published in April 2012, as well as new financial and participation projections provided in the 2014 President's Budget. The data collected since April 2012 allows for a more precise estimate of SFA certifications and receipt of performance-based reimbursements in FY 2013 and projections for fiscal years 2014 through 2017. This analysis is presented for the information of those interested in the effects of the rule on SFAs, State agencies and USDA. It provides estimates of the economic impact of the rule overall, not just the incremental effects of the final rule.

Two estimates are provided in recognition of the uncertainty of how quickly SFAs will be determined compliant with the new meal standards and, therefore, how soon they will be eligible for the performance-based rate increase. Data available as of October 2013 shows that 73% of meals served in FY2013 have been certified for the performance-based reimbursement as of July 2013, with 90% of meals served in May 2013 certified as of July 2013. Given the rate of retroactive certification of SFAs and meals, our upper bound (primary) estimate assumes that all SFAs will be certified by the end of FY 2013 and that 80% of the lunches served in FY 2013 will eventually be certified to receive the additional 6 cent reimbursement.

As of October 2013, administrative data that indicate that 80 percent of SFAs had been certified or had submitted certification documentation to their respective State agency for review and certification by the end of June 2013. It assumes that the remaining 20 percent of SFAs will be certified (or certified retroactively) in the remaining months of the fiscal year. Administrative data also indicate that 90 percent of meals served in May 2013 qualified for the extra 6 cent reimbursement, and that many SFAs are being certified retroactively as the processing of applications and approval of certification requests catch up with SFAs' documented compliance with the new meal patterns.[36]

Our alternate scenario relies on administrative data on certifications through the first several months of SY 2012–2013 to estimate the revenues and costs of a phased implementation that assumes full compliance during FY 2014. For both estimates, we assume that 80% of the meals served in FY 2013 will qualify for the additional 6 cent reimbursement; in the alternate estimate, we assume 95% of meals will qualify in FY 2014, and 100% will qualify in FY 2015 and beyond. In addition, in this second scenario

[35] **Federal Register,** Vol. 77, No. 82 pp. 25024–25036.

[36] I.e., the number of meals certified for the performance-based reimbursement in the early months of the school year increases with each additional month of administrative data reported by the States.

we assume that roughly 90 percent of SFAs will be found compliant by the end of FY 2013, or certified compliant retroactively to the start of FY 2014. We further assume that the remaining 10% of SFAs will be certified sometime during FY 2014, and that 95% of FY 2014 lunch reimbursements will include the performance-based 6 cents. We assume that 100 percent of SFAs (and, consequently, 100 percent of meals) will be certified to receive the performance-based reimbursement in FY 2015 and beyond.

TABLE 3—SUMMARY OF REVENUE AND COST IMPACT, UPDATED ESTIMATE FOR INTERIM RULE, FY 2013–2017 [37]

[millions]

	Fiscal year					
	2013	2014	2015	2016	2017	Total (FY 2013–2017)
Upper bound (primary) estimate						
SFAs and State agencies						
SFA revenue (NSLP reimbursements)	$255.3	$321.3	$323.3	$325.4	$327.6	$1,553.0
Federal transfer to States for technical assistance	47.0	0.0	0.0	0.0	0.0	47.0
State agency and SFA reporting and recordkeeping	−2.9	**	**	**	**	−2.9
Federal						
Technical assistance to States	−50.0	$0.0	$0.0	$0.0	$0.0	−50.0
NSLP reimbursements	−255.3	−321.3	−323.3	−325.4	−327.6	−1,553.0
Alternate estimate						
SFAs and State agencies						
SFA revenue (NSLP reimbursements)	255.3	305.2	323.3	325.4	327.6	1,536.9
Federal transfer to States for technical assistance	47.0	0.0	0.0	0.0	0.0	47.0
State agency and SFA reporting and recordkeeping	−2.5	−0.4	**	**	**	−2.9
Federal						
Technical assistance to States	−50.0	0.0	0.0	0.0	0.0	−50.0
NSLP reimbursements	−255.3	−305.2	−323.3	−325.4	−327.6	−1,536.9

** Estimated at less than $50,000.

NOTE: Positive values indicate increase in revenues; negative values indicate increase in costs.

1. Methodology

The estimated increase in the Federal cost of NSLP reimbursements is a straightforward calculation of the number of meals that are certified in compliance with the new meal standards times 6 cents (adjusted for inflation). This approach applies the additional 6 cents to USDA's baseline projection of lunches. The 6 cents is subject to the same inflation adjustment applied to the Section 4 and Section 11 components of the lunch reimbursement, rounded down to the nearest cent.[38] The interim rule inflates the 6 cents separately from the Section 4 or Section 11 rates. Given our projected increase in the CPI Food Away from Home, we estimate that the 6 cents will remain unchanged through FY 2017.[39]

Full Implementation by October 1, 2013

If all SFAs are certified eligible for the performance-based 6 cent lunch rate increase as of October 1, 2013 (as assumed in the primary estimate), then the Federal cost and SFA revenue increase from FY 2013 through FY 2017 would total about $1.55 billion. This upper bound estimate (our primary estimate) assumes full compliance with the new breakfast and lunch meal patterns' food group and nutrient requirements by the start of (or retroactive to the start of) SY 2013–2014.

The added revenue will be distributed across SFAs in proportion to the number of reimbursable lunches served. Because students eligible for free or reduced-price meals participate in the school meals programs at higher rates than other students, revenue per enrolled student will tend to be higher in SFAs with the greatest percentage of free and reduced-price certified students. However, eligibility for free or reduced price meals is not the only factor that impacts student participation in the NSLP. Other factors that vary by SFA include the distribution of students by grade level, prices charged for paid lunches, availability of offer vs. serve (in elementary and middle schools), the variety of entrees offered, and school geography.[40]

[37] We note that the estimates in this table are largely consistent with the estimates published with the interim rule; the main differences are caused by (1) the exclusion of FY 2012 and the inclusion of FY 2017 in the above table, and (2) a small downward revision in the estimated number of lunches served in future Fiscal Years, resulting in an decrease in estimated Federal transfers to SFAs for reimbursable lunches. We also note that the 2014 President's Budget likely overstates the final number of lunches that will be served in FY2013, but we use the 2014 President's Budget as our basis of analysis for consistency's sake, both for internal consistency and consistency with past estimates.

[38] The fractional cents are not lost; they are added back to the base rate before applying the next year's inflation adjustment.

[39] The CPI Food Away From Home Index is the factor specified by NSLA Section 11 to adjust the reimbursement rates for school lunch and breakfast. Our projected values for this index are those prepared by OMB for use in the 2014 President's Budget.

[40] *School Nutrition Dietary Assessment Study-III,* Vol. 2, Table IV.2. Mathematica Policy Research, Inc. for U.S. Department of Agriculture, Food and Nutrition Service, 2007. Available online at *http://www.fns.usda.gov/ora/MENU/Published/CNP/cnp.htm.*

The data available do not allow us to account for each of those variables here. Instead we estimate the distribution of revenue across SFAs under the assumption that revenue is proportional to enrollment. Table 4 provides estimated revenue distributions across SFAs by SFA size, geography, and incomes of enrolled students.[41]

TABLE 4—ESTIMATED DISTRIBUTION OF ADDITIONAL REVENUE FROM PERFORMANCE-BASED RATE INCREASE [42]

	Percent of students	Share of new revenue: primary estimate, FY 2013–17 (if proportional to enrollment)
LEA enrollment		
1–500	3	$42.8
501–1,000	4	62.3
1,001–2,500	11	172.4
2,501–5,000	14	223.4
5,001–10,000	15	229.8
10,001–25,000	19	290.0
25,001–50,000	15	226.2
50,001 +	20	306.3
All	100	1,553.0
Census region		
Northeast	16	251.8
Midwest	21	332.7
South	37	581.7
West	24	370.6
Territories	1	16.2
All	100	1,553.0
Urbanicity		
City	31	479.5
Suburb	38	584.8
Town	12	183.3
Rural	20	305.4
All	100	1,553.0
Percent of enrollment certified for free or reduced price school meals		
0.0–19.9%	14	218.2
20.0–39.9%	23	361.1
40.0–59.9%	33	507.6
60.0–79.9%	23	350.5
80.0–100.0%	7	115.5
All	100	1,553.0

Phased Implementation Within 2 Years

As we note above, State agencies reported in October 2013 that more than 80 percent of all SFAs participating in the NSLP had submitted certification documentation to their respective State agency for review and certification by the end of June 2013, and that 90 percent of meals qualified for the higher reimbursement in May. Administrative data also show that many SFAs are being certified retroactively as the processing of applications and approval of certification requests catch up with SFAs' documented compliance with the new meal patterns. Consequently, we feel comfortable assuming for this alternate analysis that roughly 90 percent of SFAs will be found compliant by the end of FY 2013, or certified compliant retroactively to the start of FY 2014.

We further assume that the remaining 10% of SFAs will be certified sometime during FY 2014, and that 95% of FY 2014 lunch reimbursements will include the performance-based 6 cents. We assume that 100 percent of SFAs (and, consequently, 100 percent of meals) will be certified to receive the performance-based reimbursement in FY 2015 and beyond.

Given these assumptions about a phased certification process for some SFAs, the estimated cost of Federal performance-based reimbursements (and the value of additional SFA revenue) is $1.54 billion through FY 2017 (1 percent less than the $1.55 billion estimated with full implementation).

2. Administrative Costs

Our updated estimate of administrative costs differs only slightly from the estimate published with the interim final rule.[43] The only change is a slight shifting in when

[41] Table 4 is based on SY 2009–2010 data for public local educational agencies (LEAs) from the Common Core of Data, U.S. Department of Education, National Center for Education Statistics. *http://nces.ed.gov/ccd/*. LEA and SFA boundaries are generally the same, but do vary in some instances.

[42] The distribution of States by Census region was taken from *http://www.census.gov/geo/www/us_regdiv.pdf*. The territories included here are Puerto Rico, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

The urbanicity categories are U.S. Department of Education, National Center for Education Statistics ''urban-centric local codes.'' ''City'' is any territory, regardless of size, that is inside an urbanized area and inside a principal city. ''Suburb'' is any territory, regardless of size, inside an urbanized area but outside a principal city. ''Town'' is a territory of any size inside an urban cluster but outside an urbanized area. ''Rural'' is a Census-defined rural territory outside both an urbanized area and an urban cluster. These definitions are contained in documentation for the SY 2009–2010 Common Core of Data, *http://nces.ed.gov/ccd/*.

Percent of enrollment certified for free or reduced-price meals is also an NCES Common Core of Data variable.

[43] **Federal Register** Vol. 77, No. 82 pp. 25024–25036.

certification expenses were incurred (or are estimated to be incurred), based on administrative data on certifications received after publication of the interim rule, as well as accounting for additional wage inflation.

As most SFAs submitted documentary materials in FY 2012 or FY 2013, most of the cost of this administrative burden was realized in those years, and we note that FY 2012 is not subject to this formal cost analysis. States reported 23.4 percent of SFAs were certified to receive the performance-based reimbursement for October 2012 and therefore incurred certification costs in FY2012. For purposes of our primary analysis, we assume that the remaining 76.6 percent did so by the end of FY 2013 (as described above, we currently only have data through June 2013).

Based on this updated information on when certifications occurred, we estimate in our primary estimate that State agency and SFA administrative costs associated with the rule totaled $3.7 million across FY 2012 and FY 2013 if all SFAs were determined compliant with the new meal standards based on an initial submission of SFA documentation. $2.9 million of these costs were realized in FY 2013 and are therefore included in the tables above. The ongoing burden created by reporting and recordkeeping requirements are not expected to be appreciably higher than they were before the implementation of the interim rule.

Under our alternate scenario, we assume that an additional 66.6 percent of SFAs submitted documentation by the end of FY 2013 and that the remaining 10 percent of SFAs did not submit applications to their State agencies in FY 2013.[44] For this estimate, we assume that these SFAs will take the steps necessary to reach compliance in FY 2014, and will submit documentation to their State agencies in that fiscal year, so those certification costs for both the States and remaining SFAs are realized in FY 2014.

Administrative costs will be similar, but will be spread over two years under our alternate scenario of less than 100 percent SFA compliance with the new standards by the start of SY 2013–2014. The cost of preparing and processing initial certification claims in FY 2012 and FY 2013 by 90 percent of SFAs will equal $3.4 million, of which $2.5 million was realized in FY 2013. The cost of submitting and processing the remaining claims will equal $0.4 million in FY 2014.

Due to inflation, SFAs and State agencies that submit or process documentation in FY 2014 will face slightly higher labor costs than those that submitted documentation in prior fiscal years, though this cost increase is too small to appear in our tables at the level of detail presented.

3. Uncertainties

The most significant unknown in this analysis is the length of time it will take all SFAs to reach full compliance. Our primary revenue and cost estimate developed in the previous section assumes full compliance by October 2013.[45] Our alternate estimate assumes that 10 percent of SFAs are certified compliant with the rule sometime in FY 2014.

Because the economic effects are essentially proportionate to the level of SFA compliance, the effects of more or less optimistic scenarios can be estimated by scaling the effects of our alternate scenario upward or downward by the assumed rates of initial and future year compliance.

Another important unknown is the student response to the introduction of new meal patterns. Although the introduction of healthier meals may attract new participants to the school meals program, the replacement or reformulation of some favorite foods on current school menus may depress participation, at least initially. As we did in the impact analysis for the school meal patterns rule, we provide alternate estimates given a 2 percent increase and a 2 percent decrease in student participation. The estimates shown here are simply 2 percent higher (or lower) than our estimates in Table 3. That is, we estimate the effect of changes in student participation on the value of the performance-based rate increase alone.

Changes in participation would also affect the current Section 4 and Section 11 reimbursements and student payments for paid and reduced price lunches. Because those effects are not a consequence of the 6 cent rate increase, but rather a consequence to the change in the content of the meals served, we exclude them from Table 5.

Table 5 does not show the effects on administrative costs (reporting and recordkeeping by State agencies and SFAs, and the technical assistance funds transferred by the Federal government to the States). Those are unchanged from Table 3.

TABLE 5—ALTERNATE REVENUE AND COST IMPACTS

[in millions]

	Fiscal year					
	2013	2014	2015	2016	2017	Total (FY 2013–2017)
2 Percent Increase in Student Participation						
Full Implementation						
SFA revenue (NSLP reimbursements)	$260.5	$327.7	$329.8	$332.0	$334.1	$1,584.0
Phased Implementation						
SFA revenue (NSLP reimbursements)	260.6	311.3	329.8	332.0	334.1	1,567.6
2 Percent Decrease in Student Participation						
Full Implementation						
SFA revenue (NSLP reimbursements)	250.2	314.8	316.9	318.9	321.0	1,521.9
Phased Implementation						
SFA revenue (NSLP reimbursements)	250.2	299.1	316.9	318.9	321.0	1,506.2

[44] Our alternate estimate of Federal reimbursements in Section V.B. assumes that 90 percent of SFAs will be certified compliant by the start of FY 2014, *or retroactively back to the start of FY 2014.* That allows for the possibility that fewer than 90 percent of SFAs will submit applications for certification before the end of FY 2013. For the sake of simplicity, we assume in the alternative administrative cost section of this analysis that 90 percent of applications for certification *are submitted before the end of FY 2013.*

[45] Note that, even though this RIA was most recently revised in October 2013, data were only available through June 2013.

4. Benefits

The interim rule will result in a transfer from the Federal government to SFAs of as much as $1.55 billion through FY 2017 to implement the new breakfast and lunch meal patterns that took effect on July 1, 2012. The Federal cost is fully offset by an identical benefit to SFAs and State agencies.

The interim rule generates significant additional revenue for SFAs that partially offset the additional food and labor costs to implement the improved meal standards more fully aligned with the *Dietary Guidelines for Americans.* For example, USDA previously estimated that the improved meal standards would cost an additional $1,220.2 million in FY 2015 (the first year in which the new standards are fully implemented).[46] The rule will generate $323.3 million in additional SFA revenue in the same fiscal year, helping school districts cover about 26% of this additional cost. USDA has also estimated that the paid lunch pricing and non-program food revenue provisions of HHFKA sections 205 and 206 will generate $7.5 billion in revenue for SFAs through FY 2015.[47] In the aggregate, therefore, these provisions provide a net gain in SFA revenue that exceeds the estimated cost of serving school meals that follow the *Dietary Guidelines.*

The benefits to children who consume school meals that follow DGA recommendations is detailed in the impact analysis prepared for the final meal patterns rule.[48] As discussed in that document, the 2010 Dietary Guidelines Advisory Committee emphasizes the importance of a diet consistent with DGA recommendations as a contributing factor to overall health and a reduced risk of chronic disease.[49] The new meal patterns are intended not only to improve the quality of meals consumed at school, but to encourage healthy eating habits generally. Those goals of the meal patterns rule are furthered by the funding made available by this final rule.

VII. Alternatives

The substantive differences between the interim and final rules are:

1. Decreasing the amount of information required in the States' quarterly certification reports and clarifying that the reports need not be submitted once all SFAs are certified for the performance-based reimbursement; and

2. making permanent the increased flexibility for SFAs regarding weekly maximum grains and meat/meat alternates and the serving of frozen fruit with added sugar.

These changes all decrease the administrative and/or compliance burden on States and SFAs and/or increase the flexibility for SFAs in serving lunches and breakfasts that comply with the school meal patterns, thereby decreasing costs to States and SFAs. The primary alternative considered in the course of developing the final rule was not to make these changes.

We do not provide a separate cost estimate for this ''doing nothing'' alternative because the decrease in burden associated with the shorter quarterly reports for States is small[50] (less than $50,000 per year) and because the additional transfers possibly attributable to the increase in flexibility to SFAs are likely within the cost estimate range published with the interim rule[51] and updated above.

VIII. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf*), we have prepared an accounting statement showing the annualized estimates of benefits, costs and transfers associated with the provisions of this final rule.

The figures in the accounting statement are the estimated discounted, annualized costs and transfers of the rule. The figures are computed from the nominal 5-year estimates developed above and summarized in Table 3. The accounting statement contains figures computed with 7 percent and 3 percent discount rates for both our upper bound (primary) estimate and our alternate estimate.

Note that we only provide an accounting statement for the final rule, not for the interim rule (as the interim rule was the baseline for our cost analysis for the final rule). As noted in the above analysis, any possible changes in costs or transfers attributed to the final rule are small and are likely within the cost estimate range published with the interim rule and updated above.

Illustration of computation:

The annualized value of this discounted cost stream over FY 2013–2017 is computed with the following formula, where PV is the discounted present value of the cost stream, *i* is the discount rate (e.g., 7 percent), and *n* is the number of years (5)[52]:

$$PV \div \left[\frac{1 - \frac{1}{(1+i)^{(n-1)}}}{i} + 1 \right]$$

	Estimate	Year dollar	Discount rate (percent)	Period covered
Benefits				
Qualitative: Compared with the interim rule, the final rule slightly decreases the reporting burden on States and makes permanent the increased flexibility for SFAs regarding weekly maximum grains and meat/meat alternates and the serving of frozen fruit with added sugar.				
Costs				
Annualized Monetized	n.a.	2013	7	FY2013–2017
($millions/year)	n.a.	2013	3	
As discussed in Section V.A., the reduction in administrative costs to State agencies as a result of the reduced quarterly reporting requirement on SFA compliance is already in our baseline. The reduction in burden for State agencies who will no longer have to submit quarterly reports on SFA compliance once all SFAs have been certified is minimal. The final rule may also slightly reduce the costs of complying with the meal patterns for some SFAs, and reduce the costs of maintaining compliance by others. This reduction in SFA cost is not estimated, and likely lies within our range of alternate estimates for the interim rule.				

[46] **Federal Register**, Vol. 77, No. 17 pp. 4088–4167.

[47] USDA estimate contained in the regulatory impact analysis for the interim rule, ''National School Lunch Program: School Food account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010.'' **Federal Register** Vol. 76, No. 117, pp. 35301–35318.

[48] **Federal Register**, Vol. 77, No. 17 pp. 4088–4167.

[49] Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans, 2010, p. B1–2. (*http://www.cnpp.usda.gov/DGAs2010-DGACReport.htm*).

[50] Furthermore, we do not estimate any Federal administrative savings as a result of the shorter quarterly reports.

[51] **Federal Register**, Vol. 77, No. 82 pp. 25024–25036.

[52] The Excel formula for this is PMT (rate num; periods, PV, 0, 1)

	Estimate	Year dollar	Discount rate (percent)	Period covered
Transfers				
Annualized Monetized	n.a.	2013	7	FY2013–2017
(millions/year)	n.a.	2013	3	

The changes in the final rule that are designed to facilitate compliance with the new meal patterns are expected to increase slightly the number of SFAs that are certified by their State agencies to receive the additional 6 cents per reimbursable lunch. This increased transfer from the Federal government to SFAs will be realized after the end of SY 2013–2014 (primarily in FY 2014 and beyond) when the grains, meat/meat alternate, and frozen fruit provisions contained in FNS policy memos would have expired in the absence of the rule. This possible, small increase in Federal transfers to SFAs also likely lies within our range of alternate estimates for the interim rule.

[FR Doc. 2013–31433 Filed 12–31–13; 11:15 am]
BILLING CODE 3410–30–P

FEDERAL RESERVE SYSTEM

12 CFR Part 237

[Docket No. R–1458; RIN 7100 AD 96]

Prohibition Against Federal Assistance to Swaps Entities (Regulation KK)

AGENCIES: Board of Governors of the Federal Reserve System (''Board'').

ACTION: Final rule.

SUMMARY: The Board is adopting a final rule that treats an uninsured U.S. branch or agency of a foreign bank as an insured depository institution for purposes of section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') and establishes a process by which a state member bank or uninsured state branch or agency of a foreign bank may request a transition period to conform its swaps activities to the requirements of section 716 of the Dodd-Frank Act.

DATES: This rule is effective on January 31, 2014.

FOR FURTHER INFORMATION CONTACT: Laurie Schaffer, Associate General Counsel, (202) 452–2272, Victoria Szybillo, Counsel, (202) 475–6325, Christine Graham, Counsel, (202) 452–3005, or Michelle Kidd, Senior Attorney, (202) 736–5554, Legal Division; or Jordan Bleicher, Supervisory Financial Analyst, (202) 973–6123, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION: On June 5, 2013, the Board sought comment on an interim final rule that addressed the application of section 716 of the Dodd-Frank Act (''section 716'') to swaps entities that are uninsured U.S. branches or agencies of foreign banks and established the process by which a state member bank and an uninsured state branch or agency of a foreign bank may request transition period relief in order to conform its swaps activities to the requirements of section 716 (''interim final rule'').

Section 716 generally prohibits the provision of ''Federal assistance'' to any ''swaps entity'' with regard to any swap, security-based swap, or other activity of the swaps entity.[1] ''Federal assistance'' is defined by section 716 to include ''advances from any Federal Reserve credit facility or discount window that is not part of a program or facility with broad-based eligibility under section 13(3)(A) of the Federal Reserve Act'' and Federal Deposit Insurance Corporation (''FDIC'') insurance or guarantees.[2] For purposes of section 716, the term ''swaps entity'' generally includes any swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant that is registered under the Commodity Exchange Act or the Securities Exchange Act of 1934, as applicable.[3]

Section 716 includes several provisions applicable to insured depository institutions. It provides a specific exclusion from the definition of ''swaps entity'' for any insured depository institution that is a major swap participant or major security-based swap participant,[4] and provides that the prohibition on Federal assistance does not apply to an insured depository institution that limits its swaps activities to certain specified activities.[5] Section 716 provides insured depository institutions with a transition period to facilitate compliance with the requirements of the section. By its terms, section 716 applies to insured depository institutions only with respect to swaps and security-based swaps entered into after the expiration of the transition period.

The provisions of section 716 became effective on July 16, 2013.[6]

I. Description of Final Rule

A. Treatment of Uninsured U.S. Branches and Agencies of Foreign Banks

As discussed in the interim final rule, the structure, language, and purpose of section 716 create an ambiguity as to whether the term ''insured depository institution'' includes uninsured U.S. branches and agencies of foreign banks for purposes of the various provisions of section 716. The term ''insured depository institution'' is not defined for purposes of these provisions. Section 2 of the Dodd-Frank Act provides that ''except as the context otherwise requires. . .,''[7] the definition of ''insured depository institution'' has the same meaning as in the Federal Deposit Insurance Act. ''Insured depository institution'' is defined by section 3(c)(2) of the Federal Deposit Insurance Act to mean a bank or savings association the deposits of which are insured by the FDIC, and, for some purposes under section 3(c)(3), an uninsured U.S. branch or agency of a foreign bank.[8]

The interim final rule resolved this ambiguity by providing that the term ''insured depository institution'' included uninsured U.S. branches and agencies of foreign banks for purposes of

[1] *See* Section 716(a) of the Dodd-Frank Act; 15 U.S.C. 8305(a).

[2] Section 716(b) of the Dodd-Frank Act; 15 U.S.C. 8305(b).

[3] *Id.*

[4] *Id.* This exclusion is available to major swap participants and major security-based swap participants that are not otherwise swap dealers or security-based swap dealers.

[5] *See* section 716(d) of the Dodd-Frank Act; 15 U.S.C. 8305(d). Those identified activities are: (i) Hedging and other similar risk-mitigating activities directly related to the activities of the insured depository institution, and (ii) acting as a swaps entity for swaps or security-based swaps involving rates or reference assets permissible for investment by a national bank pursuant to 12 U.S.C. 24(Seventh), other than acting as a swaps entity for non-cleared credit default swaps. Section 716(b)(2) of the Dodd-Frank Act; 15 U.S.C. 8305(b)(2).

[6] *See* Guidance on the Effective Date of Section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 77 FR 27465 (May 10, 2012).

[7] *See* section 2 (chapeau) and (18)(A) of the Dodd-Frank Act; 12 U.S.C. 5301 (chapeau) and (18)(A).

[8] *See* 12 U.S.C. 1813(c)(2), (c)(3).