

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 210 and 235

[FNS–2017–0039]

RIN 0584–AE60

#### Hiring Flexibility Under Professional Standards

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule adds four flexibilities to the hiring standards for new school nutrition program directors in small local educational agencies (LEAs) and new State directors of school nutrition programs under the Professional Standards regulations for the National School Lunch Program and School Breakfast Program. First, to address hiring challenges faced by small LEAs, which are those with 2,499 or fewer students, this rule requires relevant food service experience rather than school nutrition program experience for new school nutrition program directors. Second, it provides State agencies with discretion to consider documented volunteer or unpaid work as relevant experience for new school nutrition program directors in LEAs with 2,499 or fewer students. Third, it gives State agencies discretion to accept less than the required years of food service experience when an applicant for a new director position in an LEA with fewer than 500 students has the minimum required education. Lastly, this rule adds flexibility to the hiring standards for State directors of school nutrition programs by allowing State agencies to consider applicants with either a bachelor's or advanced degree in specified fields. These changes are expected to expand the pool of candidates qualified to serve as leaders in the school nutrition programs while continuing to ensure that school

nutrition professionals are able to perform their duties effectively and efficiently.

**DATES:** This rule is effective April 30, 2019.

**FOR FURTHER INFORMATION CONTACT:** Tina Namian, Chief, School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, 3101 Park Center Drive, 12th Floor, Alexandria, Virginia 22302; 703–305–2590.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This final rule provides flexibilities to the hiring standards for school nutrition program directors in small LEAs, which are those with 2,499 students or fewer and for State directors of school nutrition programs.

On July 1, 2015, USDA implemented professional standards for school nutrition personnel who manage and operate the National School Lunch Program (NSLP) and the School Breakfast Program (SBP), as required by the final rule *Professional Standards for State and Local School Nutrition Programs Personnel as Required by the Healthy, Hunger-Free Kids Act of 2010* (80 FR 11077) and section 7(g) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1776(g)). The professional standards consist of hiring and continuing education/training requirements for new school nutrition program directors of school food authorities (SFAs), new State directors of school nutrition programs, and other staff noted in the regulation. Hiring and continuing education/training standards for school nutrition program directors and other SFA staff are established at 7 CFR 210.30. Hiring and continuing education/training standards for State directors of school nutrition programs and State directors of distributing agencies are established at 7 CFR 235.11(g).

The professional standards are intended to ensure that school nutrition professionals who manage and operate the NSLP and SBP have adequate knowledge and training to meet program requirements. Requiring set qualifications to operate the NSLP and SBP provides program operators with the knowledge and tools necessary to improve menu planning and service, reduce eligibility and counting errors, and enhance program integrity.

The hiring standards for school nutrition program directors are determined based on student enrollment at three LEA enrollment size levels: 2,499 students or fewer; 2,500–9,999 students; and 10,000 or more students. As discussed in the proposed rule *Hiring Flexibility Under Professional Standards* (83 FR 9447, March 6, 2018), since implementation of the professional standards in 2015, USDA has received multiple inquiries from State agencies on behalf of SFAs that are facing challenges with the hiring standards applicable to LEAs with 2,499 students or fewer. These challenges include limited labor markets and difficulty recruiting qualified candidates for new school nutrition program director positions. To assist the SFAs with these challenges and provide more local control over hiring decisions that reflect their unique labor markets, USDA proposed changes to the hiring standards at 7 CFR 210.30(b)(1)(i) for LEAs with 2,499 students or fewer. Public comments received in response to the proposed rule helped inform the development of this final rule.

For school nutrition program directors in LEAs with 2,499 students or fewer, this final rule:

- Removes the requirement of school nutrition program experience for new directors and instead requires relevant food service experience as the minimum standard to qualify new directors;
- At the discretion of the State agency, allows an SFA to hire a new director with documented volunteer or unpaid relevant food service experience on an individual basis; and
- Allows a State agency to approve an SFA to use the nonprofit school food service account to pay the salary of a school nutrition program director who does not meet the hiring standards so long as the SFA is complying with a State agency-approved plan to ensure the director will meet the professional standards requirements.

For LEAs with fewer than 500 students, this final rule provides State agencies the discretion to approve the hiring of a school nutrition program director who has less than the required years of food service experience, provided the applicant has the minimum education specified in the hiring standards for LEAs with 2,499 students or fewer.

For a new State director of school nutrition programs, the current

regulations at 7 CFR 235.11(g)(1)(i) require a bachelor's degree with an academic major in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field. USDA proposed to allow an individual with a master's degree in one of those specified fields to be hired as a State director of school nutrition programs in recognition that many professionals change careers and gain experience through advanced education in areas relevant to school nutrition and to attract a larger number of professionals qualified to lead and manage the school nutrition programs statewide. This was intended to help ensure that individuals with relevant advanced degrees are not prevented from serving as State directors of school nutrition programs. Therefore, this final rule allows a State agency to hire as a State director of school nutrition programs an individual who has a master's or doctorate degree in one of the specified fields regardless as to the field of their bachelor's degree.

## II. Overview of Public Comments and USDA Response

During the 60-day comment period (March 6, 2018–May 7, 2018), USDA received a total of 79 comments, including 3 non-germane comments and 2 duplicates. All comments, except the non-germane comments, are posted online at [www.regulations.gov](http://www.regulations.gov) (see docket FNS–2017–0039, *Hiring Flexibility under Professional Standards*). These germane comments were submitted by State government personnel, State and national associations, school food service staff, school district personnel, food service management companies, and individuals. USDA appreciates the thoughtful comments submitted by stakeholders and the public.

In general, 36 comments favored the proposed rule in its entirety and 9 comments supported portions of the rule. Commenters in favor of the flexibilities agreed that small LEAs have a difficult time hiring qualified candidates and that the proposed flexibilities would help those struggling LEAs find a qualified director by allowing them to consider relevant food service experience if the applicants do not have specific school nutrition program experience. Three comments opposed the rule in its entirety, and four comments opposed portions of the proposed rule or the existence of Professional Standards for School Nutrition Professionals in general. Commenters opposed to the flexibilities noted that all school nutrition

professionals must follow the same program requirements, regardless of the size of the LEA. Other comments were not clearly in favor of or opposed to the rule, expressed different views, or discussed other areas of school nutrition.

The following discussion includes public comments made in response to specific proposed provisions, as well as other suggestions made by commenters. The discussion does not include the public comments generally supportive of, or opposed to, the rule in its entirety.

### Hiring Standards Flexibilities for School Nutrition Program Directors in LEAs With 2,499 Students or Fewer

In order to assist SFAs operating in LEAs with 2,499 students or fewer, the proposed rule included changes to the hiring standards for school nutrition program directors at § 210.30(b)(1)(i). The proposed changes included:

- Removing the requirement of school nutrition program experience for new school nutrition program directors and instead requiring relevant food service experience to meet the hiring standard;
- Providing State agencies with the discretion to approve the hiring of an applicant with volunteer or unpaid relevant food service experience on an individual basis; and
- For LEAs with fewer than 500 students, providing State agencies with the discretion to approve the hiring of a school food service director who has less than the required years of relevant food service experience, provided that the applicant has the minimum education to satisfy the hiring standards for LEAs with 2,499 students or fewer.

### Proposed Flexibility: Allowing Relevant Food Service Experience in Addition to School Nutrition Program Experience

In recognition of the difficulties that LEAs with 2,499 students or fewer face when seeking to recruit candidates for school nutrition program director, USDA proposed to provide flexibility in § 210.30(b)(1)(i) with regard to the hiring standards for school nutrition program directors to allow for the consideration of relevant food service experience gained inside or outside of school nutrition program operations.

#### Comments

Six commenters specifically voiced their support for the flexibility to allow food service experience that was not school nutrition program-specific in order to expand the pool of qualified applicants for the position of school nutrition program director in LEAs with 2,499 students or fewer. These commenters included four State

agencies, one school food service staff member, and one food service management company. These commenters cited difficulties recruiting to small LEAs individuals who have experience specific to school food service while also pointing out that general food service experience adds value to school food service operations.

Four commenters opposed this flexibility. These commenters included one professional organization, two school food service staff members, and one individual member of the public. These commenters voiced concern that allowing general food service experience to substitute for school nutrition program experience would diminish the standards for school food service in these LEAs.

#### USDA Response

USDA appreciates the comments received on this flexibility. USDA agrees that candidates with school nutrition program experience are best prepared for the school nutrition program director position. These individuals are more likely to be informed of the most current school nutrition practices and regulations and are therefore preferred. However, applicants with experience managing food service operations at a healthcare facility, restaurant, civic/community organization, or other type of establishment have demonstrated transferable skills in food service that could be applied in a school food service setting. Examples of such skills include food handling and preparation, financial management, and customer service. By meeting the requisite number of years of relevant food service experience cited in § 210.30(b)(1)(i)(B), (C), and (D), individuals will have sufficient food service experience to responsibly perform the duties required of school nutrition program directors in these LEAs with proportionate levels of responsibility and complexity.

Program directors are still required to complete annual continuing education/training. Additionally, USDA encourages new school nutrition program directors hired with food service experience that is not specific to school nutrition settings to complete additional school nutrition training or work toward a State-recognized certificate for school nutrition directors. Several entities, such as the Institute for Child Nutrition, offer no-cost or low-cost continuing education/training in a variety of formats, and such training is an allowable use of the nonprofit school food service account.

While we encourage hiring school food service directors who have previous school nutrition experience,

USDA is aware of the difficulties LEAs with 2,499 students or fewer face when recruiting for such positions and wants to provide flexibility to LEAs in meeting their hiring needs. Flexibility to allow relevant food service experience to qualify applicants under the hiring standards for LEAs with 2,499 students or fewer expands the pool of applicants for those LEAs in communities that may have recruitment difficulties. Accordingly, this final rule amends § 210.30(b)(1)(i)(B), (C), and (D) to allow for the consideration of relevant food service experience generally rather than specific school nutrition program experience.

#### **Proposed Flexibility: State Agency Discretion To Consider Volunteer or Unpaid Work Experience**

USDA proposed to provide flexibility in § 210.30(b)(1)(i)(B), (C), and (D) by giving State agencies the discretion to allow LEAs with 2,499 students or fewer to hire school nutrition program directors who have relevant food service experience whether that experience was in a paid or unpaid/volunteer food service position. The State agency would use this discretion on an individual, case-by-case basis. For example, an applicant with paid and/or unpaid experience managing food service operations at a healthcare facility, restaurant, civic/community organization, or other type of establishment could be considered for a director's position, provided that that applicant also has the required education.

#### *Comments*

Five commenters supported accepting unpaid or volunteer experience toward meeting the food service experience standard. Those five commenters were comprised of three State agencies, one food service management company, and one individual.

Four commenters—one State agency, one professional organization and two individuals—opposed the proposed flexibility. Some of these commenters stated that unpaid or volunteer experience would weaken standards when such experience is not substantive and does not equip candidates with the necessary skills and background in school nutrition programs. One commenter suggested requiring verifiable written documentation of the unpaid or volunteer experience.

#### *USDA Response*

USDA affirms the discretion of State agencies to allow LEAs with 2,499 students or fewer to hire school nutrition program directors with unpaid

food service experience on an individual basis, as specified by the State agency. The flexibility to consider unpaid experience acknowledges that in smaller communities there may be fewer employment opportunities in food service, but residents may be able to volunteer to manage food service activities for civic and community organizations. An applicant for a school nutrition program director position may also have relevant experience in an unpaid apprenticeship or internship.

A State agency has the discretion to establish a process to use this flexibility. The existing requirements for experience in § 210.30(b)(1)(i)(B), (C), and (D) are between one and three years of relevant food service experience, depending on the level of education obtained by the applicant. Given the parameters of this flexibility, as well as the necessity of having such a flexibility available in certain cases, this provision is finalized in this rule. However, this final rule requires that unpaid or volunteer work, when used to qualify an individual to be a school nutrition program director, must be documented to verify that the unpaid work is relevant and actually occurred. For example, documentation of volunteer work in a school cafeteria could include a letter from the school nutrition program director stating the amount of time the individual worked, the substantive work they performed, and the skills they learned. Accordingly, this final rule amends § 210.30(b)(1)(i)(B), (C), and (D) to allow State agency discretion to consider relevant food service experience for school nutrition program directors to include documented unpaid or volunteer work. This discretion shall be applied on an individual basis.

#### **Other Comment: Use of the Nonprofit School Food Service Account To Pay Salaries**

The regulations in § 210.30(b)(1)(i) provide that new school nutrition program directors in LEAs with an enrollment of 2,499 students or fewer must meet specific hiring standards. These hiring standards include minimum educational requirements that may be combined with relevant work experience, depending on the educational degree held. Pursuant to §§ 210.2, 210.14(a), 210.18(h), 210.18(l), 210.19(a), and 210.21(a), if a director does not meet the hiring standards, an SFA cannot use the nonprofit school food service account to pay the director's salary.

#### *Comments*

Two commenters suggested that SFAs be permitted to use the nonprofit school food service account to pay the salary of a director who does not meet the hiring requirements, provided that the SFA is implementing a Corrective Action Plan to meet the professional standards requirements.

#### *USDA Response*

USDA agrees with these commenters and recognizes the difficulties some LEAs with 2,499 students or fewer experience when hiring new school nutrition program directors. Generally, if a school nutrition program director does not meet the hiring standards, failure to meet the standards would be considered a finding for purposes of the Administrative Review. In this instance, the State agency could take fiscal action by requiring the SFA to repay with non-Federal funds any of the director's salary paid from the nonprofit school food service account, and disallow further payment to the director with Federal funds, including the nonprofit school food service account. Requirements should be reasonable and achievable, and the fiscal impact of not being able to use the nonprofit school food service account to pay the salary of a school nutrition program director could jeopardize an SFA's financial viability and ability to participate in the NSLP and SBP. Therefore, for LEAs with a student enrollment of 2,499 or fewer, this final rule provides that a State agency may approve an SFA to use the nonprofit school food service account to pay the salary of a school nutrition program director who does not meet the hiring standards so long as the SFA is complying with a State agency-approved plan to ensure the director will meet the professional standards requirements in § 210.30.

The plan must include reasonable timeframes for the SFA to achieve and maintain compliance and ensure the director will meet the qualifications, whether by gaining experience or completing educational requirements. The plan may also include required training and/or educational courses. LEAs with student enrollment of 2,499 or fewer have faced challenges in hiring directors who meet the required qualifications, and this flexibility will help to address the needs of their unique labor markets while ensuring standards are still met. Accordingly, this final rule amends § 210.30(b)(1)(i) to allow a State agency to approve an SFA to use the nonprofit school food service account to pay the salary of a school nutrition program director who does not

meet the hiring standards so long as the SFA is complying with a State agency-approved plan to ensure the director will meet the professional standards requirements.

#### **Other Comment: Higher Educational Degrees**

##### *Comment*

A commenter suggested USDA expand to school nutrition program directors the proposed flexibility for State directors of school nutrition programs to allow a master's degree in a specified field with a bachelor's degree in any field.

##### *USDA Response*

The regulation at § 210.30(b)(1) does not currently allow a master's or doctorate degree in a specified field to supplement a bachelor's degree in any field for school nutrition program directors. USDA recognizes the value of an advanced degree in a specified field, and encourages school nutrition professionals to continue to learn and expand their knowledge in the field. However, the flexibility suggested by the commenter falls outside the scope of the proposed rule and has not been included in this final rule. USDA may consider this suggestion in a future rulemaking regarding professional standards.

#### **Other Comment: Scope of the Flexibilities**

##### *Comments*

Six commenters suggested expanding the scope of the flexibilities beyond those included in the proposed rule. Two State agencies requested the school nutrition director flexibilities for LEAs with fewer than 500 students be expanded to LEAs with an enrollment of 1,000 students. Another State agency requested the flexibilities be applied to all LEAs located in rural settings, regardless of enrollment size. One State association requested the proposed flexibilities be applied to schools of all enrollment categories. An individual requested that LEAs with fewer than 500 students be exempt from the standards entirely, while another individual wanted to expand the enrollment categories from below 2,500 students to 3,500 students.

##### *USDA Response*

USDA does not support expanding the scope of the flexibilities to include LEAs of larger sizes in § 210.30(b)(1)(ii) and (iii). Such an action would be inconsistent with the intent of the proposed rule, which addressed hiring challenges at LEAs with enrollments of

2,499 students or fewer. We note that as LEA size increases, the level of responsibility and complexity also increases, which necessitates higher standards. However, we also note the existing Professional Standards regulation includes several different pathways for candidates to meet the educational and experience requirements for all LEA enrollment size categories. In addition, we do not agree with eliminating the professional standards for schools with fewer than 500 students or expanding the flexibilities for all rural schools. However, we expect that the flexibilities outlined in this final rule will address the specific challenges of such schools because these flexibilities will likely expand the pool of qualified candidates.

#### **Other Comment: School Consolidations**

##### *Comment*

A professional organization provided a comment discussing unique challenges facing small school districts in the process of consolidation with other school districts. The organization noted consolidation could increase the level of student enrollment of an LEA. In that case, the hiring standards for the SFA director could shift into a larger LEA enrollment category under the Professional Standards regulation in § 210.30(b)(1). The organization requested that USDA allow State agencies to work with consolidating school districts and provide a transition period for the affected school nutrition professionals to work towards the professional standards requirements at the school district's new enrollment size category.

##### *USDA Response*

Although USDA recognizes the potential challenges for an SFA making decisions regarding staff when school districts combine, this final rule will not provide the transition period requested by the commenter. It is notable that we did not receive any comments on this issue from State agencies, which would be most affected if USDA were to establish a process for transition during a school district consolidation. Additionally, many factors are involved in staffing decisions when school districts combine. Therefore, instead of developing a regulatory process, USDA will work with the State agency, on an individual basis, when a school district consolidation shifts an SFA into a larger enrollment size category for hiring under Professional Standards in § 210.30(b)(1).

#### **Other Comments: Combinations of Experience, Training, and Education**

##### *Comments*

Nine commenters who identified themselves as school nutrition professionals suggested allowing school nutrition experience to substitute for education. Three of these commenters specifically recommended 10 years of school nutrition experience be allowed to substitute for a bachelor's degree. Two of the nine commenters noted the importance of balancing the education and experience requirements so applicants with a weakness in one area can compensate with strengths in another.

##### *USDA Response*

While USDA understands school nutrition experience is valuable in operating school nutrition programs, this final rule does not allow such experience to substitute for education in § 210.30(b)(1). One of the purposes of this rule is to provide flexibility for the type of experience required for new school nutrition program directors in small LEAs, and it is outside the scope of the rule to allow experience to substitute for education. USDA appreciates the various strengths and experiences that school nutrition program directors bring to the programs they administer but is not expanding the flexibilities to substitute experience for education in this final rule. Educational requirements bolster the credentials of school nutrition program directors and enhance their practical experience with formal academic instruction. However, this rule does not change the current regulation at § 210.30(b)(1) that allows school nutrition program directors hired before July 1, 2015 to remain in their positions or to transfer to other positions in LEAs of the same or smaller enrollment category.

##### *Comment*

One commenter suggested granting flexibility to allow a State-recognized certificate to substitute for education for a school nutrition program director in an LEA of any size.

##### *USDA Response*

USDA will continue to encourage school nutrition professionals to learn and expand their knowledge and skills in the field. USDA recognizes the value of a State-recognized certificate in school nutrition programs as a means to advance the profession. However, the flexibility suggested by the commenter falls outside the scope of the proposed rule and has not been included in this final rule.

### Other Comment: Waivers of the General Professional Standards

#### Comment

One State agency indicated it would like the ability for State agencies to grant waivers to these regulatory requirements on a case-by-case basis for applicants who do not meet the minimum hiring criteria.

#### USDA Response

USDA will not establish through this final rule a separate waiver process for these provisions since there is a general waiver process in place, as prescribed in Section 12(l) of the Richard B. Russell National School Lunch Act, as amended. Under the general waiver process, USDA must determine that a waiver facilitates the State's (or other service provider's) ability to carry out the purpose of the affected program; the entity requesting the waiver must provide notice and information to the public regarding the proposed waiver; and the entity requesting the waiver must demonstrate that the waiver will not increase the overall cost to the Federal Government, or that any additional cost will be paid from non-Federal funds. USDA then periodically reviews the performance of any State or other service provider granted a waiver. This waiver process may be used when seeking waivers from the hiring requirements for a new school nutrition program director, as well as a new State director of school nutrition programs.

### Proposed Flexibility: Years of Experience for School Nutrition Program Directors in LEAs With Fewer Than 500 Students

To provide additional assistance to LEAs with fewer than 500 students, USDA proposed to modify the current optional flexibility at § 210.30(b)(1)(i)(D), which provides State agencies discretion to allow an SFA to hire a new school nutrition program director with a high school diploma or equivalent, and less than the required years of relevant school nutrition program experience. The proposed rule would allow the State agency to approve the hiring of an applicant who has at least a high school diploma or equivalent, but less than the required years of relevant food service experience.

#### Comments

Ten commenters expressed support for the proposed flexibility. These comments were received from four State agencies, five schools or school food service staff, and one food service management company. One commenter

from a professional organization opposed the proposed change, stating it would weaken the overall hiring standards. One commenter from a State agency stated this proposed change should only be acceptable if the new director had a minimum of one year experience in addition to the minimum required education.

#### USDA Response

By expanding the existing optional flexibility at § 210.30(b)(1)(i)(D) to include other, higher educational levels, USDA affirms its commitment to providing LEAs with fewer than 500 students more local control to address their unique hiring challenges. A new director with a high school diploma or equivalent is currently required to have at least three years of experience, while a new director with an associate's degree or a bachelor's degree in any major must have at least one year of experience. Therefore, expanding the existing flexibility to allow an LEA with fewer than 500 students to hire an individual with an academic degree higher than a high school diploma, but less than the required years of experience, would pose little risk to the food service program operation because fewer years of experience is otherwise allowed for an individual with a high school diploma or equivalent. Further, allowing an LEA with fewer than 500 students to hire an individual with the required academic credentials but less experience would expand the pool of potentially suitable candidates and ensure the standards are both reasonable and achievable for these LEAs. Accordingly, this final rule will revise § 210.30(b)(1)(i)(D) and add § 210.30(b)(1)(i)(E) to provide State agencies discretion to allow an LEA with fewer than 500 students to hire a new school nutrition program director with a high school diploma or equivalency, an associate's degree, or a bachelor's degree, but less than the required years of relevant food service experience.

### Proposed Flexibility: Academic Requirements for State Directors of School Nutrition Programs

For a new State director of school nutrition programs, the current regulations at § 235.11(g)(1)(i) require a bachelor's degree with an academic major in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field. Pursuant to § 235.11(g)(1)(i)(iv)(A), a master's degree in one of the specified fields is strongly preferred. To encourage individuals with a master's

degree in one of the specified fields but a bachelor's degree in a non-related field to apply, USDA proposed to add the option for a master's degree in a specified field to the basic qualifications listed in § 235.11(g)(1)(i). However, to emphasize the importance of a foundational background in the specified fields, USDA also proposed to support a preference for both a bachelor's and a master's degree in the specified fields at § 235.11(g)(1)(i)(iv)(A).

#### Comments

Seven commenters expressed support for the option to allow a master's degree in one of the specified fields when hiring a State director. Comments received in support of this flexibility were from four State agencies, two professional organizations, and one individual.

USDA did not receive any comments in opposition to this flexibility. However, several commenters had additional suggestions. One commenter from a State agency suggested requiring that State directors have a master's degree, which is not currently a requirement. A commenter from another State agency suggested allowing the hiring of a State director with a bachelor's degree in any field if the candidate has program and management experience. A trade association suggested allowing varying combinations of educational degrees and years of experience, such as a bachelor's degree in any field and four years of experience managing Federal child nutrition programs at a State agency level; or a bachelor's degree in any field, four years of general program management experience, and a State-recognized certificate for school nutrition directors.

#### USDA Response

To expand opportunities for highly educated individuals to serve as State directors of school nutrition programs, this final rule will allow a State agency to hire a candidate with a master's or doctorate degree in one of the specified fields in § 235.11(g)(1)(i) regardless as to the field of their bachelor's degree. Adding a master's or doctorate degree in one of the specified fields to the basic qualifications acknowledges that many professionals change careers and gain experience through advanced education in areas relevant to school nutrition. It was not our intent to deny highly educated individuals the ability to qualify for these positions. In addition, it was not our intent to exclude a type of advanced degree in the specified fields; therefore, we also add a doctorate

degree to the qualifications. For example, a State agency supervisor who has a bachelor's degree in political science and a doctorate degree in nutrition, who also meets the other qualifications, would have a strong general education plus advanced education in one of the specified areas. This final rule also affirms a preference for both a bachelor's degree and a master's degree, or bachelor's and doctorate, in the specified fields.

While we appreciate the additional suggestions for flexibility, USDA will maintain a hiring standard for State directors of school nutrition programs that is similar in structure to the existing regulations. The existing combination of specific education and experience is straightforward as far as facilitating implementation and is sufficiently rigorous in recognition of the position's significance to school nutrition programs in the States. Accordingly, this final rule amends § 235.11(g)(1)(i) to allow a master's or doctorate degree in specified fields. Additionally, this final rule amends § 235.11(g)(1)(iv)(A) to support a preference for both a bachelor's and a master's or doctorate degree in the specified fields.

#### Procedural Matters

##### Executive Order 12866 and 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 determined to be not significant and was therefore not reviewed further by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

##### Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget, therefore, no Regulatory Impact Analysis is required.

##### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of

small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities.

This rule would not have an adverse impact on small entities in the National School Lunch Program and School Breakfast Program, rather, it will ease program operations by adding flexibility in the hiring standards for new directors in LEAs with 2,499 students or fewer and new directors of State agencies.

*Impact:* The provisions of this rule apply to LEAs with 2,499 students or fewer, and to State agencies operating the National School Lunch Program and School Breakfast Program. These entities meet the definitions of “small governmental jurisdiction” and “small entity” in the Regulatory Flexibility Act. These entities would be able to quickly benefit from the hiring flexibilities in this rule.

##### Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation, control regulatory costs, and provide that the cost of planned regulations be prudently managed and controlled through a budgeting process.

This final rule is an E.O. 13771 deregulatory action that eases the professional standards regulations for State directors of school nutrition programs and for school nutrition program directors in LEAs with 2,499 students or fewer, which are often found in rural communities facing labor market challenges. This rule addresses hiring challenges, such as recruitment of qualified candidates, identified by the State agencies that administer the Child Nutrition Programs. It adds flexibility to hiring standards by expanding the range of allowable education for new State directors, and the range of allowable work experience for new local directors in small LEAs.

##### 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 by State, local, or Tribal governments, in the aggregate, or 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 most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector of \$100 million or more in any one year. Thus, the rule is 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 Number 10.555 and Number 10.553, respectively, and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.) Since the Child Nutrition Programs are State-administered, USDA's Food and Nutrition Service (FNS) Regional Offices have formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operation. Discussions also take place in response to technical assistance requests submitted by the State agencies to the FNS Regional Offices. This regular interaction with State and local operators provides USDA with valuable input that informs rulemaking. Based on the inquiries and waiver requests from the State agencies disclosing challenges with the professional standards regulations, USDA is providing specific flexibilities to address the requirement issues in a manner that promotes program efficiency and effectiveness.

##### Federalism Summary Impact Statement

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.

The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

### Executive Order 12988, Civil Justice Reform

This final 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 and timely implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

### Civil Rights Impact Analysis

USDA has reviewed this final rule in accordance with USDA Regulation 4300-4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on Program participants on the basis of age, race, color, national origin, sex, or disability. After a careful review of the rule's intent and provisions, USDA has determined that this rule is not expected to affect the participation of protected individuals in the National School Lunch Program and School Breakfast Program, or limit the ability of protected classes of individuals to serve as new directors in LEAs and State agencies. The provisions of this rule add flexibility to the existing hiring standards for new directors in order to address difficulties faced by program operators in finding qualified applicants.

### Executive Order 13175

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 on the distribution of power and responsibilities between the Federal Government and Indian Tribes. USDA notified Tribal leaders about the proposed rule to encourage public comments, and briefed Tribal leaders at the conference call scheduled by the FNS Office of Tribal Relations on March 14, 2018. USDA will also notify Tribal leaders about this final rule, and intends to brief Tribal leaders at one of the periodic consultations or conference calls scheduled by the FNS Office of Tribal Relations.

USDA has assessed the impact of this final rule on Indian tribes and determined that this rule does not, to our knowledge, have negative Tribal implications that require Tribal consultation under E.O. 13175. We are unaware of any current Tribal laws that could be in conflict with the provisions of this rule and anticipate that the hiring flexibilities will benefit Tribal schools.

The flexibilities provided by this rule are expected to increase the pool of candidates qualified to serve as new directors of school nutrition programs in small LEAs. This is expected to benefit Tribal communities, which often experience difficulty attracting qualified school nutrition personnel.

### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

### E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promoting 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.

### List of Subjects

#### 7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grant programs—health, Grant programs—education, School breakfast and lunch programs, Nutrition, Reporting and recordkeeping requirements.

#### 7 CFR Part 235

Administrative practice and procedure, Food assistance programs, Grant programs—health, Grant programs—education, School breakfast and lunch programs, Nutrition, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 210 and 235 are amended as follows:

### 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 § 210.30 by:

■ a. Revising paragraph (b)(1)(i) and;

■ b. Revising the table in paragraph (b)(2).

The revisions read as follows:

#### § 210.30 School nutrition program professional standards.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) *School nutrition program directors with local educational agency enrollment of 2,499 students or fewer.* Directors must meet the requirements in paragraph (b)(1)(i)(A), (B), (C), or (D) of this section. However, a State agency may approve a school food authority to use the nonprofit school food service account to pay the salary of a school nutrition program director who does not meet the hiring standards herein so long as the school food authority is complying with a State agency-approved plan to ensure the director will meet the requirements.

(A) A bachelor's degree, or equivalent educational experience, with an academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;

(B) A bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* either a State-recognized certificate for school nutrition directors, or at least one year of relevant food service experience. At the discretion of the State agency, and on an individual basis, documented relevant food service experience may be unpaid;

(C) An associate's degree, or equivalent educational experience, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field *and* at least one year of relevant food service experience. At the discretion of the State agency, and on an individual basis, documented relevant food service experience may be unpaid; or

(D) A high school diploma or equivalency (such as the general educational development diploma), *and* at least three years of relevant food service experience. At the discretion of the State agency, and on an individual

basis, documented relevant food service experience may be unpaid. Directors hired under this criterion are strongly encouraged to work toward attaining an associate's degree in an academic major

in at least one of the fields listed in paragraph (b)(1)(i)(C).  
(E) For a local educational agency with less than 500 students, the State agency may approve the hire of a director who meets one of the

educational criteria in paragraphs (b)(1)(i)(B) through (D) but has less than the required years of relevant food service experience.  
\* \* \* \* \*  
(2) \* \* \*

SUMMARY OF SCHOOL NUTRITION PROGRAM DIRECTOR PROFESSIONAL STANDARDS BY LOCAL EDUCATIONAL AGENCY SIZE

Minimum requirements for directors	Student enrollment 2,499 or less	Student enrollment 2,500–9,999	Student enrollment 10,000 or more
Minimum Education Standards (required) ( <i>new directors only</i> ).	Bachelor's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field OR Bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, and either a State-recognized certificate for school nutrition directors or at least 1 year of relevant food service experience; OR Associate's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; and at least 1 year of relevant school nutrition program experience; OR High school diploma (or GED) and 3 years of relevant food service experience.	Bachelor's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; OR Bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, and a State-recognized certificate for school nutrition directors; OR Bachelor's degree in any academic major and at least 2 years of relevant school nutrition program experience. OR Associate's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; and at least 2 years of relevant school nutrition program experience.	Bachelor's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; OR Bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, and a State-recognized certificate for school nutrition directors; OR Bachelor's degree in any major and at least 5 years of experience in management of school nutrition programs.
Minimum Education Standards (preferred) ( <i>new directors only</i> ).	Directors hired without an associate's degree are strongly encouraged to work toward attaining associate's degree upon hiring.	Directors hired without a bachelor's degree strongly encouraged to work toward attaining bachelor's degree upon hiring.	Master's degree, or willingness to work toward master's degree, preferred.  At least 1 year of management experience, preferably in school nutrition, strongly recommended. At least 3 credit hours at the university level in food service management plus at least 3 credit hours in nutritional sciences at time of hiring strongly preferred.
Minimum Prior Training Standards (required) ( <i>new directors only</i> ).	At least 8 hours of food safety training is required either not more than 5 years prior to their starting date or completed within 30 calendar days of employee's starting date.		

\* \* \* \* \*

**PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS**

■ 3. The authority citation for part 235 continues to read as follows:

**Authority:** Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

**§ 235.11 [Amended]**

■ 4. Amend § 235.11 as follows:  
■ a. In paragraph (g)(1)(i) after the words "Bachelor's degree", add the words "

master's degree, or doctorate degree"; and

■ b. In paragraph (g)(1)(iv)(A), remove the words "Master's degree" and add in their place the words, "Both a bachelor's degree and a master's or doctorate degree".



Dated: February 21, 2019.

**Brandon Lipps,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2019-03524 Filed 2-28-19; 8:45 am]

BILLING CODE 3410-30-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1145

[Doc. No. AMS-DA-18-0097]

#### Reauthorization of Dairy Forward Pricing Program

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule reauthorizes the Dairy Forward Pricing Program (DFPP) in accordance with the Agriculture Improvement Act of 2018 (2018 Farm Bill). Establishing new contracts under the DFPP has been prohibited since the expiration of the program on September 30, 2018. The 2018 Farm Bill reauthorized the program to allow handlers to enter into new contracts until September 30, 2023. Any forward contract entered prior to the September 30, 2023, deadline is subject to a September 30, 2026, expiration date.

**DATES:** *Effective Date:* March 4, 2019.

**FOR FURTHER INFORMATION CONTACT:** Roger Cryan, Director, Economics Division, USDA/AMS/Dairy Programs, Stop 0229—Room 2753-S, 1400 Independence Avenue SW, Washington, DC 20250-0231; telephone: (202) 720-7091; or, email: [roger.cryan@usda.gov](mailto:roger.cryan@usda.gov).

**SUPPLEMENTARY INFORMATION:** The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill)<sup>1</sup> initially established the DFPP.<sup>2</sup> The DFPP allows milk handlers, under the Agricultural Marketing Agreement Act of 1937, (AMAA)<sup>3</sup> to pay producers or cooperative associations of producers a negotiated price for producer milk, rather than the Federal order minimum blend price for non-fluid classes of milk (Classes II, III, and IV under the Federal Milk Marketing Order (FMMO) system). The DFPP does not allow for forward contracting of fluid or Class I milk.

Following the initial expiration of the DFPP which prevented the establishment of new contracts after September 30, 2012, the “American Taxpayer Relief Act of 2012,” (ATRA)<sup>4</sup>

revised the program to allow handlers to enter into new contracts until September 30, 2013. The “Agricultural Act of 2014” (2014 Farm Bill)<sup>5</sup> then extended the program to allow new contracts until September 30, 2018. Establishing new contracts under the DFPP has been prohibited since the expiration of the program on September 30, 2018. Any forward contract established prior to the September 30, 2018, deadline is subject to a September 30, 2021, expiration date.

Participation in the DFPP is voluntary for dairy farmers, dairy farmer cooperatives, and handlers. Handlers may not require producer participation in a forward pricing program as a condition for accepting milk. USDA, including Market Administrator personnel, does not determine the terms of forward contracts or enforce negotiated prices. This regulation also does not affect contractual arrangements between a cooperative association and its members.

Under the DFPP, regulated handlers must still account to the FMMO pool for the classified use value of their milk. Regulated handlers claiming exemption from the Federal order minimum pricing provisions must submit to the Market Administrator a copy of each forward contract. The contract must contain a disclosure statement—either as part of the contract itself or as a supplement—to ensure producers understand the nature of the program as well as the basis on which they will be paid for their milk. Contracts that do not contain a disclosure statement are deemed invalid and returned to the handler. For the first month the program is effective, contracts must be signed on or after the day the program becomes effective, and the contract must be received by the Market Administrator by the 15th day of that month. For example, if the program becomes effective on February 15, contracts for March milk must be signed between February 15 and February 28, and copies must be received by the Market Administrator by March 15.

Handlers with forward contracts remain subject to all other milk marketing order provisions. Payments specified under a forward contract must be made on or before the same date as the federal order payments they replace. Required payment dates are specified in § 1145.2(e) of the regulations.

This final rule reauthorizes producers and cooperative associations of producers to enter into forward price contracts under the DFPP through September 30, 2023. All terms of the

new forward contracts must expire prior to September 30, 2026. All other provisions and requirements of the program as provided for in the final rule<sup>6</sup> published October 31, 2008, are still in effect. This document also provides notice that reauthorization of the DFPP applies to the milk regulated by the recently established California FMMO in addition to the other ten FMMOs.<sup>7</sup>

#### Executive Orders 12866 and 13771

This rule has been determined to be not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB). In addition, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. The adopted amendments do not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to judicial challenge to the provisions of this rule.

#### Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities.

For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a small business if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a small business if it has fewer than 500 employees.

Based on AMS data, the milk of 33,481 dairy farmers was pooled on the Federal milk marketing order system. Of the total, 32,958 dairy farmers, or 98 percent, were considered small businesses. During the same month, 301 handler plants were regulated by or reported their milk receipts to be pooled

<sup>1</sup> Public Law 110–234.

<sup>2</sup> 73 FR 64868.

<sup>3</sup> 7 U.S.C. 601–614.

<sup>4</sup> Public Law 112–240.

<sup>5</sup> Public Law 113–79.

<sup>6</sup> 73 FR 64868.

<sup>7</sup> See addition of 7 CFR 1051.73 in § 1145.2(a).