

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

RIN 0584-AC38

**National School Lunch Program and School Breakfast Program: Additional Menu Planning Alternatives**

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** The National School Lunch Act requires that schools that are participating in the National School Lunch or School Breakfast Programs claim reimbursements only for lunches or breakfasts which meet the nutrition standards of the National School Lunch Act, including compliance with the Dietary Guidelines for Americans. The Healthy Meals for Children Act expanded the number of menu planning alternatives available to school food authorities participating in the National School Lunch and School Breakfast Programs. In accordance with that legislation, this proposed rulemaking would reinstate the menu planning system in effect for School Year 1994-95 (the traditional meal pattern) as one of the menu planning alternatives available to local school food authorities. In addition, this proposal would permit school food authorities to use "any reasonable approach" to plan menus to meet the nutrition standards. The Department is also proposing to clarify and simplify several State agency monitoring responsibilities associated with the implementation of the nutrition standards of the National School Lunch Act.

**DATES:** To be assured of consideration, comments must be postmarked or e-mail comments dated on or before November 2, 1998.

**ADDRESSES:** Comments must sent to: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302 or via the Internet at CNDProposal@FCS.USDA.GOV. All written submissions will be available for public inspection in Room 1007, 3101 Park Center Drive, Alexandria, Virginia during regular business hours (8:30 a.m. to 5:30 p.m.), Monday through Friday.

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

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This proposed rule has been determined to be significant and is subject to review by the Office of Management and Budget under Executive Order 12866.

**Public Law 104-4**

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 Food and Nutrition Service generally 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 Food and Nutrition Service 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 proposed rule contains no Federal mandates (under 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, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. However, a Regulatory Cost/Benefit Assessment is provided in the Appendix to this preamble.

**Regulatory Flexibility Act**

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Under Secretary for Food, Nutrition and Consumer Services has certified that this rule will not have a significant economic impact on a substantial number of small entities. The Department of Agriculture (the Department or USDA) does not anticipate any adverse fiscal impact on local schools as the proposal would expand the number of options available to plan menus for school meals.

**Executive Order 12372**

The National School Lunch Program and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.553, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with

State and local officials. (7 CFR Part 3015, Subpart V and final rule-related notice at 48 FR 29112, June 24, 1983.)

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this proposed rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program and School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of Food and Nutrition Service (FNS) findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, this notice invites the general public and other public agencies to comment on the information collection.

Written comments must be received on or before July 6, 1998.

Comments concerning the information collection aspects of this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Room 3208, New Executive Office Building, Washington, DC. 20503, Attention : Laura Oliven, Desk Officer for FNS. A copy of these comments may also be sent to Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble. Commenters are asked to separate their information collection requirements comments from their comments on the remainder of this proposed rule.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation

between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulation.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology.

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

*Title:* 7 CFR Part 210, National School Lunch Program.

*OMB Number:* 0584-0006.

*Expiration Date:* October 31, 1999.

*Type of Request:* Revision of currently approved collection.

*Abstract:* The National School Lunch Act requires that schools that are participating in the school lunch program claim reimbursements only for lunches under the program which meet

the nutrition standards of the Act, including compliance with the Dietary Guidelines for Americans. The Healthy Meals for Children Act expanded the number of menu planning alternatives available to school food authorities participating in the NSLP. In accordance with that legislation, this proposed rulemaking would reinstate the menu planning system in effect for school year 1994-95 (the traditional meal pattern) as one of the menu planning alternatives available to local school food authorities. In addition, this proposal would permit school food authorities to use "any reasonable approach" to meet the requirements.

In accordance with the Paperwork Reduction Act of 1995, the Department is providing the public with the opportunity to provide comments on the information collection requirements of the proposed rule as noted below:

BILLING CODE 3410-30-U

**Estimated Annual Recordkeeping Burden:**

	Section	Annual Number of Respondents	Annual Frequency	Average Burden per Response	Annual Burden Hours
State agency establishes guidelines and approves school food authorities menu planning alternatives:					
Total Existing	7 CFR 210.10(l)	0	0	0	0
Total Proposed	7 CFR 210.10(l)	58	1	1	58
State agency modifies menu planning alternatives or develops menu planning alternatives:					
Total Existing	7 CFR 210.10(l)	0	0	0	0
Total Proposed	7 CFR 210.10(l)	5	1	20	100
School food authorities adopt menu planning alternatives:					
Total Existing	7 CFR 210.10(l)	0	0	0	0
Total Proposed	7 CFR 210.10(l)	2,500	1	10.5	26,250
School food authorities modify menu planning alternatives or develop menu planning alternatives and submit them to the State agency for approval:					
Total Existing	7 CFR 210.10 (l)	0	0	0	0
Total Proposed	7 CFR 210.10(l)	100	1	20	2,000
Total Recordkeeping Burden:					
Total Existing	0				
Total Proposed	+28,408				
Change	+ 28,408				

## Background

On June 13, 1995, USDA published a final rule (60 FR 31188) updating the nutrition standards for the National School Lunch Program (NSLP) and School Breakfast Program (SBP). That rulemaking was the foundation of the Department's School Meals Initiative for Healthy Children, an integrated, comprehensive plan for promoting the health of the Nation's school children by updating the nutrition standards for school meals and by providing State agencies and local food service operators with the technical assistance to meet these standards. In addition to announcing a fundamental change in the direction of the school meals programs, the rulemaking implemented section 106(b) of Public Law 103-448, the Healthy Meals for Healthy Americans Act of 1994, which was enacted on November 2, 1994. That provision amended section 9(f) of the National School Lunch Act (NSLA) (42 U.S.C. 1758(f)) to require that school meals meet the Dietary Guidelines for Americans (hereinafter referred to as the Dietary Guidelines) by School Year 1996/1997, unless an implementation waiver of up to two years was approved by the State agency. The rule also established specific minimum standards for key nutrients (protein, calcium, iron, Vitamin A and Vitamin C), and calories which school meals must meet. (As discussed later, these standards are now also included in section 9(f) of the NSLA.)

To assist schools with implementation of the updated nutrition standards, the School Meals Initiative (SMI) rule provided three menu planning alternatives: Nutrient Standard Menu Planning (NSMP), Assisted Nutrient Standard Menu Planning (ANSMP) and a food-based menu planning alternative. After publication of the final SMI rule, Public Law 104-149, the Healthy Meals for Children Act, was enacted on May 29, 1996. It expanded the number of menu planning alternatives which school food authorities have available to them by including the menu planning system that was in effect for School Year 1994-95, as a permanent option as well as "any reasonable approach, within guidelines established by the Secretary \* \* \*"

Before a proposed rule to implement Public Law 104-149 could be published, Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, was enacted on August 22, 1996. This law further amended section 9(f)(1)(B) of the NSLA to mandate that school

lunches and breakfasts provide, over a week, one-third and one-fourth, respectively, of the Recommended Dietary Allowances (RDA) established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. Because these requirements are already included in the regulations establishing the new specific nutrition standards for school lunches and breakfasts (§ 210.10(b) and § 220.8(a), respectively), this proposal would only add the appropriate RDA requirements for the traditional meal pattern.

## Menu Planning Systems

The sole menu planning system that was in effect for School Year 1994-95 was a meal pattern (the "traditional" meal pattern) which stipulated the food components (meat/meat alternate, fruits/vegetables, bread/bread alternate, and milk) and the minimum quantities of those components that had to be offered to children of specific age/grade groups. This meal pattern was virtually unchanged since the establishment of the NSLP in 1946 and, until the June 13, 1995, rulemaking, was the only menu planning system available to school food authorities.

In order to provide flexibility as well as the tools that school food authorities would need to meet modern nutrition standards for children, the Department developed new menu planning alternatives designed to facilitate compliance with the Dietary Guidelines and the other nutrition-related requirements of section 9(f) of the NSLA. NSMP and ANSMP provide menu planners with more flexible approaches by eliminating the strict component and quantity requirements. Also, NSMP and ANSMP provide actual nutrient information, including fat and saturated fat levels, to menu planners on an on-going basis. In addition, after the initial proposal in 1994, the Department developed the enhanced food-based menu planning option which increased the minimum number of servings over a week's time for the fruits/vegetables and grains/breads components in order to maintain calorie levels while keeping the percentages of calories from fat and saturated fat to 30 percent and less than 10 percent, respectively, as required. School food authorities were given the option of choosing which of these menu planning alternatives best suited their particular circumstances.

The Department developed these menu planning alternatives with the Dietary Guidelines nutrition standards of the NSLA as the fundamental element. The Department continues to believe that the enhanced food-based,

NSMP and ANSMP alternatives best support compliance with the Dietary Guidelines. However, the Department acknowledges that some school food authorities are progressing toward meeting the Dietary Guidelines under the traditional meal pattern. Therefore, the Department has concluded that, with increased emphasis on vegetables, fruits and grain products and with appropriate modifications to preparation techniques and product specifications, the traditional meal pattern may support all of the nutrition standards required by the NSLA. In recognition of this potential, the President signed Public Law 104-149 which amended section 9(f) of the NSLA to authorize the traditional meal pattern as a permanent menu planning alternative as well as any other reasonable approaches to menu planning under guidelines established by the Secretary.

The remainder of this preamble discusses the proposed implementation of the recent statutory amendments. This proposal also clarifies monitoring procedures for assessing compliance with the Dietary Guidelines and the other nutrition standards for all menu planning alternatives.

## The 1994-95 Meal Pattern (The Traditional Meal Pattern)

This proposal would reinstate the menu planning system in effect for School Year 1994-1995 as a permanent alternative for planning school menus under the NSLP and SBP. The SMI final rulemaking did not allow continued use of the traditional meal pattern after June 30, 1998, the latest date that school food authorities could be authorized to delay compliance with the Dietary Guidelines. Therefore, the provisions for the traditional meal pattern for the NSLP were moved to a separate section (§ 210.10a) so that schools could continue using the traditional meal pattern until the newer menu planning alternatives had been fully implemented. Similarly, the traditional meal pattern for the SBP was redesignated as § 220.8a.

Now that Public Law 104-149 has reinstated the traditional meal pattern as a permanent, food-based menu planning alternative, this proposal would incorporate it into paragraphs (d) and (k) of § 210.10 and into paragraphs (c) and (g) of § 220.8 where the requirements for the food-based menu planning alternative established by the June 13, 1995, final rule are set forth. Sections 210.10a and 220.8a would be removed. Please note that, due to the statutory amendment made after publication of the final rule, the

traditional menu planning approach will remain in effect after the July 1, 1998, implementation deadline in § 210.10 (o) and § 220.8(m). To distinguish between the two food-based systems, the meal pattern in effect for School Year 1994/1995 would be formally renamed the "traditional food-based menu planning alternative." The food-based menu planning alternative established in the June 13, 1995, rulemaking would be renamed the "enhanced food-based menu planning alternative."

#### *RDA for the Traditional Food-Based Menu Planning Alternative*

One proposed revision to § 210.10(d) of the NSLP regulations would add a chart indicating the amounts of calories and required nutrients that equal one-third of the RDA for key nutrients and calories for the age/grade groups of the traditional food-based menu planning alternative. A similar chart showing one-fourth of the RDA for key nutrients and calories for breakfasts would be added to § 220.8(c). These additional charts are necessary as the traditional food-based menu planning alternative follows different age/grade groupings than used for the NSMP, ANSMP, and enhanced food-based menu planning alternatives.

The Department recognizes the importance of offering meals that provide a proportionate share of the nutritional needs of the nation's schoolchildren, and that determination of whether those needs are being met must be based on the most accurate data available. To this end, the Department has calculated the RDA for each age group using computer software specifically designed for this purpose. In creating the enhanced food-based menu planning alternative, the Department developed age/grade groupings that were averaged to more precisely meet the calorie and nutrient levels at each age or stage of development. Uniform groupings, based as closely as possible on the actual nutritional needs of the various ages, for the two food-based systems would be preferable. However, section 9(f)(4)(A)(i) of the NSLA requires the availability of the traditional meal pattern as it existed in the 1994-1995 school year. The Department, therefore, does not want to add complexity to the traditional approach by proposing to make more precise age/grade groupings apply to both food-based menu planning alternatives. While this means menu planners using the traditional meal pattern may continue to meet a single set of quantity requirements for all children in the school, regardless of

their age or grade, the Department is concerned that this practice could undermine the nutrition goals of the programs, since the food service would not be as responsive to respond to the varying needs of children of different ages. The Department recognizes the need to provide the traditional approach without additional requirements but is also concerned with the need to meet the appropriate nutrition standards. Therefore, interested parties in the food service, nutrition and scientific communities may wish to comment on the appropriateness of allowing a single age/grade grouping and the associated nutrition standards.

#### **"Any Reasonable Approach"**

Public Law 104-149 amended section 9(f)(4) of the NSLA to permit school food authorities to use "any reasonable approach" to menu planning not specifically delineated in section 9(f) (3) and (4) of the NSLA. The law makes it clear, however, that "reasonable approaches" must meet guidelines established by the Secretary. In developing appropriate guidelines, the Department believes there will be two distinct classes of proposed alternative approaches. First, some proposed alternatives will consist of relatively minor modifications to one or another of the four existing menu planning systems. For this type of suggested alternative, the Department is proposing to allow State agencies to establish a general policy allowing school food authorities to adopt such approaches without prior Departmental approval. The second class of alternatives will involve unique proposals that depart significantly from existing systems. The Department is proposing to redesignate § 210.10(l) through (o) as § 210.10(m) through (p) and to add a new § 210.10(l) to establish basic requirements for authorizing both classes of alternate menu planning approaches. For the SBP, § 220.8(h) through (m) would be redesignated as § 220.8(i) through (n) and § 220.8(h) would provide for alternate menu planning approaches.

#### *Minor "Pre-Approved" Modifications*

The first proposed class of alternate approaches is specific, minor modifications to provisions of the existing menu planning alternatives and would be added at § 210.10(l)(1) and § 220.8(h)(1). While the State agency may require prior approval or may establish additional guidelines for their adoption, these modifications would be considered "pre-approved" in that State agencies may allow their use without any additional review. Of course, as part of their general oversight

responsibilities under the NSLA, State agencies must ensure that the school food authority's operations, including these "pre-approved" options, are consistent with the NSLP and SBP regulatory standards, even if State agencies do not require pre-approval. The modifications are: a weekly meat/meat alternate standard (for the NSLP only) and flexible age/grade groupings for the food-based menu planning alternatives (for both the NSLP and SBP). While only two modifications are proposed, the Department solicits suggestions on similar variations that could be included under this category of other approaches.

The Department was also asked to consider extending a policy currently applicable only to lunches planned under the enhanced food-based menu planning approach to the traditional food-based menu planning approach. This policy, at § 210.10(k)(2), allows menu planners to credit up to one grain-based dessert daily towards the weekly grain/bread requirements. This policy was established to provide additional flexibility for menu planners as the number of required grain/bread items increased substantially over the number required for the traditional food-based menu planning approach. For example, for grades 7-12, the traditional food-based alternative required eight servings (but recommended 10) while 15 servings are required for the enhanced food-based approach.

The Department gave this suggestion serious consideration. However, crediting up to one grain-based dessert daily as a serving of grains/breads for the traditional food-based menu planning alternative is too significant a proportion of the total number of required grain/bread items. A child selecting a grains-based dessert on a daily basis would have the majority of their grains/breads component over the week met through the consumption of dessert. Given this concern, the Department is not proposing to extend this policy to the traditional food-based menu planning approach. However, the Department would appreciate comments on this issue.

#### **1. Weekly Meat/Meat Alternate Quantity Standard**

Some food service directors have indicated that it is not always practical to offer the full daily minimum portion of the meat/meat alternate component required for the NSLP under the food-based menu planning alternatives. For example, a serving of less than the required four tablespoons of peanut butter or two ounces of cheese in a sandwich may produce a more

appealing entree while the full amount required can lead to waste. To address this situation, those school food service directors have suggested that schools using either of the food-based menu planning systems be allowed the flexibility to vary the quantity of meat/meat alternate on a daily basis as long as the total amount served over the course of the school week equals the minimum daily quantity multiplied by the number of serving days in the week. For example, the amount of meat/meat alternate served on a given day could be only one ounce or the equivalent provided that the full 10 ounces (for grades 4–12) or equivalent of meat/meat alternate were available over a five day week. This alternative would enable meal planners using a food-based alternative much of the same flexibility enjoyed by their counterparts using NSMP while still ensuring that minimum quantities of essential foods were offered to children over a week's time.

After considering this suggestion, the Department agrees that it could provide additional flexibility without compromising the nutritional integrity of the meals served over the course of the school week. However, the Department does not believe that the school food authority's ability to vary the quantity of this component should be completely unrestricted. Therefore, the Department is proposing to require that a minimum of one ounce or its equivalent of meat/meat alternate be offered daily. This proposal would ensure that the amount of meat/meat alternate offered to the student will be reasonably consistent each day while still providing menu planners with enhanced flexibility. The Department emphasizes that the option to vary the size of the meat component would not apply to those situations in which the minimum quantity requirement is one ounce or less.

The Department is not proposing to extend this option to the meat/meat alternate-grains/breads component of school breakfasts because flexibility is already provided under the food-based menu planning alternatives. However, comments are requested on whether extending the weekly meat/meat alternate to the SBP would be useful and appropriate.

In proposing this option, the Department recognizes that there will be complexities with its implementation, especially in schools that offer multiple entree choices, since children may not select items over the week that equal the full weekly meal component requirement. Therefore, comments are particularly requested on these and

other potential difficulties as well as any suggestions on ways to ensure that the nutritional integrity of the meal service is not compromised. The modification for the meat/meat alternate component is proposed at § 210.10(l)(1)(i).

## 2. Flexible Age-Grade Groupings for Food-Based Alternatives

Children enrolled in a given school may span different age/grade groupings for purposes of the nutrient and calorie level requirements and corresponding portion sizes for components under the food-based menu planning alternatives. Under the NSMP and ANSMP menu planning alternatives, if only one age or grade is outside the established nutrient and calorie level requirements for the majority of children, schools are permitted, under § 210.10(i)(1)(ii) and § 220.8(e)(1)(ii), to use the nutrition standards for that majority. In the interests of consistency and flexibility, the Department is proposing to extend this option to the food-based alternatives as well.

Under the proposal, schools using the enhanced food-based alternatives would be permitted to plan menus using the minimum quantity requirements applicable to the majority of children *provided* that no more than one age or grade falls outside the requirements for the majority of children. For example, if a school following the enhanced food-based menu planning alternative serves children in grades 6, 7 and 8, the school may, if it chooses, plan menus meeting the nutrient levels and quantities for grades 7 through 12 in lieu of varying the menus and portion sizes for the children in grade 6. This option would eliminate the need to meet two sets of nutrient and calorie levels as well as portion requirements when only a limited number of children are affected. The Department notes that this option will generally be applicable to schools using the enhanced food-based alternative since it is not needed for the traditional food-based menu planning alternative because of the broader range of the groups and because schools may use the portion sizes for the grades 4–12 group when the school has a large number of grades. However, under the proposal, this option could be adopted by schools using either food-based menu planning alternative. This proposed change would be found at § 210.10(l)(1)(ii) for the lunch program and at § 220.8(h)(1) for the breakfast program.

The Department believes that school food authorities should plan menus and offer meals that best meet the nutrient and calorie levels for each age or grade

group of all of the children. The age/grade groupings are geared to best meet the recommended levels of calories and other nutrients for a particular period in a child's development. However, the Department also recognizes that allowing the proposed option for schools using the food-based alternatives provides increased flexibility.

## Major Changes or New Alternatives

The second class of alternate approaches concerns major changes to one of the existing menu planning systems and may be developed by either school food authorities or State agencies. Within this second class, the regulations, as proposed, would require that any major change or new alternative developed by a school food authority be subject to State agency review and approval. State agency approval is critical because major variations developed and used only by a school food authority need to be carefully assessed to gauge potential impact on the delivery of meals to children, both nutritionally and fiscally. Further, school food authority-level approaches would not have the benefit of the State agency's expertise when forming their approach. State agency-developed alternatives would be subject to Departmental review and approval unless there was an on-going State agency/school food authority partnership and enough school food authorities intending to adopt the alternate approach to warrant the significant involvement of the State agency.

## Written Submissions

The Department is proposing that any alternate approach developed by either a school food authority or State agency be committed to writing prior to its implementation. The written description must outline the intended procedures as well as indicate how the required elements for alternate approaches (as proposed under § 210.10(l)(3) and § 220.8(h)(3) for the lunch and breakfast programs, respectively) will be met. For those approaches subject to prior review, a written submission is needed to ensure a comprehensive review. For those approaches not subject to prior review, a written description needs to be available for monitoring purposes. The Department is not, however, proposing any specific format or requiring a formal plan, other than proposing that the intended procedures and the required elements be addressed in writing for any proposed alternative approach. This

provision is proposed at § 210.10(l)(2) and § 220.8(h)(2).

*State Agency-Developed Systems: Approval Procedures*

Some State agencies have developed or intend to develop their own menu planning alternatives for use by their school food authorities. State agency-developed alternatives could involve either extensive modifications to one of the existing menu planning alternatives or development of an altogether new alternative. As mentioned above, the Department is proposing different approval procedures for State agency-developed approaches depending on whether there is on-going, operational support from the State agency.

For the purpose of approval, the first type of a State-agency developed alternate approach is one that the State agency develops and then makes available to its school food authorities without on-going support and assistance. Because the State agency will not have any on-going operational role in such approaches, the Department believes independent review is essential prior to implementation of an alternate approach by any school food authority. This review would ensure that the changes or the new alternative adequately meets program requirements and goals. Therefore, the Department is proposing to require State agencies to submit this type of alternate approach to the Food and Nutrition Service (FNS) for review and approval before implementation. The approval procedures are proposed at § 210.10(l)(2) and § 220.8(h)(2), respectively, for the lunch and breakfast programs.

The second type of alternate approach would also involve either extensive modifications to one of the existing menu planning alternatives or development of an altogether new alternative. The Department is proposing that these approaches not be subject to approval by FNS when the State agency is an active and on-going partner with the school food authorities, if there are a sufficient number of school food authorities adopting it to warrant the State agency's commitment of resources necessary to its successful operation and the State agency issues an announcement notifying the public of the alternate approach. With the State agency's active involvement, there is oversight as well as the ability to promptly adjust the policies and procedures of the approach to ensure efficient and effective operation and compliance with all applicable requirements. The Department is proposing that these approaches must

be adopted by at least five school food authorities within the State. The proposed requirement for a public announcement allows for review of the State agency's approach by any concerned parents, students, program administrators, etc. In addition to the public announcement, the Department considered requiring that State agencies hold public hearings (in accordance with established State procedures) on these types of alternative approaches. The Department would appreciate comments on whether public hearings, in addition to the public announcement, are a more effective way to notify the public and whether the benefits of conducting a hearing outweigh the costs to the State agency.

This type of State agency-developed alternate approach is intended to allow innovative, large-scale State agency-sponsored menu planning systems to operate without prior approval. An example of a large-scale system that extensively modifies current regulatory requirements (specifically the weighting component and software requirements for NSMP) is the Shaping Health as Partners in Education (SHAPE) program, which has been successfully operated in California for several years. Because the SHAPE program is already operational, the requirement for issuing a public announcement is not applicable.

The Department emphasizes that the different approval requirements for the State agency-developed alternate approaches are based on the differing degrees of State agency involvement. When the State agency is acting as a partner and is routinely assisting school food authorities and providing technical assistance, it can, if needed, quickly determine if implementation at the local level is not successful or if the system itself needs to be modified to meet the required elements such as compliance with the nutrition standards. In the other situations, there is no continuous State agency presence. Instead, the State agency simply makes the system available to local school food authorities as another option from which they may chose and would only be able judge its effectiveness under normal review procedures. Therefore, the Department is proposing, at § 210.10(l)(2)(iii) and § 220.8(h)(2)(iii), that any State-agency developed system is not subject to prior FNS approval if five or more school food authorities adopt the approach, if the State agency maintains on-going oversight including making adjustments to the approach's policies and procedures, as needed, to ensure compliance with the nutritional and other meal service requirements, and if the State agency makes a public

announcement concerning the alternate menu planning approach prior to its implementation by any school food authority. Please keep in mind, though, that all alternate approaches would be subject to the proposed minimum requirements discussed below.

*Required Elements for Alternate Approaches*

In devising the guidelines for reasonable approaches other than the proposed "pre-approved" modifications, the Department balanced the necessity to foster innovation and flexibility with the equally compelling need to maintain program accountability administratively, fiscally and nutritionally. The basic consideration is that every menu planning alternative, regardless of the source or the level of approval, must meet all statutory requirements. Also, the Department is proposing to include a limited number of guidelines that are based on discretionary regulatory procedures that the Department feels are essential to effective and efficient program management unless the alternate approach is one of the distinct situations with on-going State involvement (the second type discussed above). With this extra involvement and oversight by the State agency, school food authorities would be provided additional flexibility.

*Offering Fluid Milk*

Section 9(a)(2) of the NSLA (42 U.S.C. 1758(a)(2)) requires that school food authorities offer fluid milk to children participating in the NSLP. Section 4(e)(1)(A) of the Child Nutrition Act of 1966 (CNA), (42 U.S.C. 1773 (e)(2)), requires that a combination of foods be served in the SBP and that breakfasts " \* \* \* meet minimum nutritional requirements prescribed by the Secretary \* \* \*". The provision of fluid milk is one of the minimum nutritional requirements established for the SBP under § 220.8(h). Therefore, any alternate menu planning approach must also offer fluid milk for both the NSLP and SBP. The provisions requiring milk to be offered in the school programs for any alternate approach are proposed at § 210.10(l)(3)(i) and § 220.8(h)(3)(i), for the NSLP and SBP, respectively.

**Offer Versus Serve (OVS)**

Section 9(a)(3) of the NSLA (42 U.S.C. 1758(a)(3)) requires that schools implement OVS in the NSLP for senior high school children; at local option, school food authorities may adopt OVS in the lunch program for lower grades as well. Under section 4(e)(2) of the CNA (42 U.S. C. 1773 (e)(2)), local

school food authorities may also implement OVS for the SBP. OVS encourages children to make selections that they prefer, thus helping to reduce plate waste. Because of the statutory mandate, any menu planning alternative designed by a school food authority or State agency for use in the NSLP must include OVS for senior high school children. OVS will continue to be optional at the discretion of school food authorities in the SBP.

While OVS would continue to be required for senior high school students, school food authorities and State agencies would be permitted by this rulemaking to propose alternatives to the OVS approaches currently permitted in the regulations. Such approaches must be based on the existing regulatory OVS structures as much as possible. For example, OVS for alternate food-based systems must be patterned on the OVS requirements in § 210.10(k)(6) and § 220.8(g)(3), while those for alternate NSMP approaches must be based on the requirements of § 210.10(i)(2)(ii) and § 220.8(e)(2)(ii).

If the existing OVS procedures in § 210.10(k)(6)/§ 220.8(g)(3) or § 210.10(i)(2)(ii)/§ 220.8(e)(2)(ii) are not followed, the description of the alternate approach must indicate what age/grade groups are included, how plate waste would be reduced and how the meal, as taken, will provide a reasonable level of nutrients and calories. As discussed in more detail below, any modifications to the existing OVS procedures must include the number and type of items (and, if applicable, the quantities for the items) that constitute a reimbursable meal. These provisions on OVS in alternate menu planning approaches are proposed at § 210.10(l)(3)(ii) and § 220.8(h)(3)(vi) for the lunch and breakfast programs, respectively.

#### *Nutrition Standards*

As discussed earlier, the NSLA requires school lunches to approximate, over a week's time, one-third of the RDA needed by growing children of different ages. School breakfasts must provide one-fourth of the RDA. In addition, the menus must comply with the recommendations of the Dietary Guidelines. These requirements cannot be modified.

Therefore, any alternate menu planning approach must ensure that these standards, as implemented in § 210.10(b)(1)–(b)(4) for the NSLP and § 220.8(a)(1)–(a)(4) for the SBP, would be met or exceeded for the age/grade groups to be served. In addition, the alternate approach must indicate how the proposal is designed to meet these

standards. The requirements are proposed at § 210.10(l)(3)(iii) and § 220.8(h)(3)(ii).

#### *Competitive Foods*

For both the NSLP and SBP, Section 10(a) of the CNA (42 U.S.C. 1779(a)), requires regulations “\* \* \* relating to the service of food \* \* \* in competition with the [school meals] programs \* \* \*.” To implement this provision, § 210.11(b) and § 220.12(a) prohibit the sale of foods of “minimal nutritional value” in the cafeteria area during the service of meals. Appendix B to each of these parts lists the foods considered to be foods of minimal nutritional value. Any alternate approach may not alter this statutory provision and the implementing regulations. This restriction is proposed at § 210.10(l)(3)(iv) and § 220.8(h)(3)(iii) for the lunch and breakfast programs, respectively.

#### *Crediting Foods Under Food-Based Type Approaches*

Paragraphs (k)(3)–(k)(5) and (m) of § 210.10; § 220.8(g)(2) and (i); and the Appendices to Parts 210 and 220 provide the basic crediting policies for food items offered in the school meals programs for food-based menu planning alternatives. These crediting policies are expanded upon in FNS instructions and guidance. This proposal would require that any alternate food-based menu planning approaches follow the existing food crediting policies for school meals. The Department's standards for crediting food items are designed to maintain the nutritional integrity of school meals by ensuring that foods used to satisfy quantity and component requirements provide a sufficient amount of the component or its equivalent to count toward meeting the meal requirements.

To be credited, foods must be both present in the minimum required quantities and identifiable as at least one of the required food components of the meal pattern (meat/meat alternate, fruits/vegetables, grains/breads and fluid milk). These foods may be served as single food items or as combinations in recipes or in commercially processed foods. To assist in the identification of the definition of the basic foods, the Department relies on government and industry standards of identity and/or specifications. These standards are essential to ensuring that the individual meal merits Federal reimbursement and that the meal service, over time, complies with the programs' nutrition standards. Therefore, the Department is proposing at § 210.10(l)(3)(v) and § 220.8(h)(3)(v) that the minimum

quantities established to credit food items as components under the food-based menu planning systems be adhered to in any food-based menu planning alternate approach.

#### *Identification of a Reimbursable Meal*

The concept of a reimbursable meal is essential to program integrity. Sections 210.10 and 220.8 of the regulations establish definitions of a reimbursable meal for the four menu planning alternatives currently recognized by the NSLA. Under the traditional meal pattern and the enhanced food-based menu planning system for lunches, the school food authority must offer minimum quantities of a meat/meat alternate, a grain/bread item, two separate fruits/vegetables and fluid milk as a beverage. This requirement is found at § 210.10(k). Under NSMP and ANSMP, the school must offer an entree, fluid milk and at least one additional menu item for lunches. This requirement is found at § 210.10(i)(2)(i) for the NSLP. The parallel requirements for the SBP are at § 220.8 (e) and (g).

This proposal would require that any alternate approach comply with the current requirements for reimbursable meals to the extent possible. When the existing procedures are not followed, the proposed alternate approach must detail what constitutes a reimbursable meal, including the number and type of item (and if applicable, the quantities for each item) and how a reimbursable meal is to be identified at the point of service by the children, the cashiers, and any reviewers. The proposals appear at § 210.10(l)(3)(vi) and § 220.8(h)(3)(v), respectively, for the school lunch and breakfast programs.

#### *Monitoring Compliance*

Section 210.18 of the regulations establishes methods for determining if school food authorities are meeting the administrative requirements for the school meals programs while § 210.19 provides for reviewing compliance with the nutrition standards. In determining the essential elements for any alternate approach, the Department believes that these monitoring aspects must be incorporated so that the State agency can determine if reimbursable meals are being offered, accepted, and properly counted and if the meal service is in compliance with all of the nutrition and administrative standards.

The Department expects that, in most cases, alternate approaches can be monitored within the existing criteria for both coordinated review effort (CRE) and nutrition reviews. As discussed below, some aspects of Performance Standard 2 in § 210.18 must be modified



to take into account the flexibility for alternate approaches. However, the Department does not believe that the procedures for conducting CRE reviews will need to be revised in order to accommodate alternate approaches. Therefore, this rule would require, in § 210.10(l)(vii) and § 220.8(h)(3)(vi), that the alternate approach be subject to CRE reviews under the current procedures provided in § 210.18.

However, in some cases, the proposed alternate approach may not lend itself to the established nutrition review methods. Therefore, to allow the State agency to ensure that an alternate approach can be reviewed adequately for compliance with the nutrition standards, any alternate approach must include either an explanation of how the alternate approach could be monitored within the existing criteria in § 210.19 or a comprehensive nutrition monitoring plan that the State agency could follow. As part of this plan, the alternate approach must include a description of the records it will maintain to document compliance with administrative and nutrition requirements. This provision is proposed at § 210.10(l)(3)(vii) and § 220.8(h)(3)(vi) for both the administrative and nutrition review aspects. Conforming amendments are also proposed to § 210.19(a) and are discussed in greater detail later in this preamble.

#### *Weighted Averages for NSMP/ANSMP*

Sections 210.10(i)(5) and 220.8(e)(5) require school food authorities using NSMP or ANSMP to conduct nutrition analyses by weighting all foods planned as part of the reimbursable meal service. This weighting is done according to the frequency with which each food is actually offered. The purpose of weighting is to assist in ensuring that meals actually offered to children meet the nutrition standards. The Department acknowledges that weighted averages are not the only way to ensure compliance with the nutrition standards. In fact, in order to make the transition to the updated menu planning methods easier and to ensure that every avenue for promoting sound nutrition is explored, the Department has authorized temporary waivers of this regulatory requirement. The waivers allow the Department the opportunity to evaluate weighted and unweighted averages to determine their accuracy in indicating determinations of compliance with the nutrition standards. The Department believes that this temporary postponement through a State agency waiver is the appropriate way to ease implementation and to permit further

evaluation of this requirement. As part of this evaluation process, the Department is particularly interested in receiving comments on the use of a weighted nutrient analysis versus nonweighted approaches. Comments from operators using nutrient analysis and their experiences with weighting would be especially helpful. The Department would also like comments from State agency reviewers and their experiences with weighting when evaluating meal services.

However, until the Department determines that alternatives to weighted averages adequately ensure that meals comply with the nutrition standards, weighted averages continue to be required for NSMP systems other than those for which a waiver has been granted. Accordingly, the Department is proposing to require compliance with the weighting requirements for alternate NSMP-type approaches. However, the Department is proposing to provide added flexibility in those instances in which the State agency has developed the alternate approach and is a partner with at least five school food authorities and maintains on-going oversight of the operation and evaluation. The level and consistency of the State agency's involvement coupled with a more rapid response to problems in order to make needed adjustments allows for further innovation. These provisions are proposed at § 210.10(l)(3)(viii) and § 220.8(h)(3)(vi).

#### *Approved Software for NSMP and ANSMP*

Sections 210.10(i)(4) and 220.8(e)(4) require menu planners using NSMP or ANSMP to conduct or to have their analyses conducted using software that incorporates the National Nutrient Database for Child Nutrition Programs and is approved by FNS. The software must meet the minimum requirements established by FNS such as having the capability to perform all functions required after the basic data has been entered, including calculating weighted averages, and the optional combining of the analyses of the NSLP and SBP. The Department is aware that there are many nutrition software packages available; however, many of these are for individuals or for clinical settings such as hospitals. The software approved by FNS is designed to meet the needs of school food service professionals and fulfills two essential criteria—the ability to perform all the requirements of the regulations and the achievement of uniform results. The Department also notes that the number and variety of software packages approved to date ensures that school food authorities

have extensive flexibility in choosing a package that best meets their individual needs. Therefore, this proposal would require, at § 210.10(l)(3)(viii) and § 220.8(h)(3)(vii), that any alternate approach use approved software.

Again, however, the Department is proposing to allow modification of the required specifications for software for any alternate approach under the same limited circumstances allowing for modification of weighted analysis. In those situations in which the State agency developed the alternate approach and remains an active partner and five or more school food authorities adopt the alternate approach, the Department is proposing, at § 210.10(l)(3)(viii) and § 220.8(h)(3)(vii), to permit the use of software which does not meet the regulatory requirements. While this means that the software would not need to incorporate the National Nutrient Database nor would it be required to have prior FNS approval, the alternate approach would still need to meet all the nutrition standards. Again, the Department believes that the on-going State agency oversight provides sufficient assurance that any software will provide appropriate nutrient analysis and, to the extent that deficiencies are identified, that they will be rapidly addressed.

The Department also wishes to emphasize that weighted analyses and standard software packages do not, in and of themselves, determine the kinds and amounts of foods provided. Rather, they are fundamentals in the internal monitoring system which enables schools, school food authorities, and State agencies to measure the success of the food service in complying with the nutrition standards. Consequently, modification of these requirements, without substantial care and involvement by the State agency, may undermine the accuracy of the nutrition analysis and compromise the ability of menu planners to make necessary adjustments. This is the basis for the Department's decision to not apply the weighting and software specification requirements to those situations in which there will be substantial State agency involvement and oversight.

#### **Monitoring Requirements for Compliance With the Nutrition Standards**

The Department is proposing to clarify some aspects of the nutrition monitoring requirements in order to ensure appropriate State agency oversight of all menu planning alternatives. In addition, some conforming amendments are proposed due to the reinstatement of the

traditional food-based menu planning alternative and the availability of alternate approaches.

#### *Monitoring Procedures for the Traditional System and for Alternate Approaches*

The current monitoring provisions for the food-based and nutrient standard menu planning alternatives are found at § 210.18 and § 210.19. As discussed earlier, any alternate approach must be capable of being monitored under § 210.18. In addition, if the alternate approach cannot be monitored under § 210.19, there must be a description of alternate monitoring procedures to ensure compliance with the fiscal, administrative and nutrition standards.

This proposed rule would amend § 210.18 and § 210.19 to make clear that the existing monitoring requirements apply to the traditional food-based menu planning alternative as well as to the enhanced food-based and nutrient standard menu planning systems. In addition, technical amendments are made to modify the terminology in § 210.18 and § 210.19 related to Performance Standard 2 which establishes review criteria to assure that the lunches served by schools are reimbursable. In other words, any school lunch must contain whatever meal elements that are required for reimbursable lunches under each of the menu planning alternatives. In order to clarify that all the various menu planning approaches are subject to Performance Standard 2, technical amendments are proposed to § 210.18(b)(2)(ii), (g)(2), and (i)(3)(ii) and to § 210.19(c)(6)(i) to reference the various terms used to stipulate the elements in a reimbursable meal.

Finally, § 210.19 would be amended to make clear that the nutrition review procedures for food-based and nutrient standard alternate approaches are the same as those for food-based and nutrient standard menu planning systems, respectively, except for those alternate approaches that do not lend themselves to existing nutrition review procedures. In those cases, the nutrition review procedures are those review procedures developed under § 210.10(l).

#### *Adjustments to Review Periods*

The Department is proposing to adjust the review period for nutrition reviews. Currently, paragraphs (a)(1)(i) and (ii) of § 210.19 stipulate that the State agency is to review the school's nutrition analysis or conduct an independent analysis for the last completed week prior to the review. The intent of this provision was to ensure that the analysis reflected the current state of the

meal service. However, some State agencies have noted that, under CRE, as detailed in § 210.18, State agencies select the month prior to the month of the review as the sample period. Consequently, State agencies which would elect to conduct nutrition reviews concurrently with CRE reviews will likely need to look at two different review periods during the same visit. Therefore, in the interests of efficiency, this proposal would permit reviewers to conduct the assessment of compliance with nutrition standards for any week of the current school year prior to the month of the review. However, the week selected must continue to represent the current state of the meal service. The State agency could select, for example, a week for the nutrition review that was in the same month in which a CRE was scheduled. The Department believes that this proposed provision will still allow State agencies to determine whether the program is in compliance with the nutrition standards and, if necessary, prescribe appropriate steps for improvements by requiring review of a relatively current period that is typical of the on-going meal service. This change is proposed at § 210.19(a)(1)(i).

#### *Extent of Reviews*

Another proposal would amend § 210.19(a) to clarify that, during the review cycle, State agencies must review at least one school for each type of menu planning alternative used by the school food authority. For example, if eight schools in a school food authority use the traditional meal pattern, three use the enhanced food-based system and five use NSMP, the State would select at least one school from each category. The Department recognizes that, in some cases, this requirement would result in more schools being visited for nutrition compliance than are required to be reviewed under CRE. The Department believes, however, that this coverage is essential to ensure that the school food authority is following all alternatives correctly. For example, a school food authority may be achieving great success with the enhanced food-based system but may not be conducting NSMP properly. The only way for the State agency to identify this problem, provide appropriate technical assistance and require corrective action is to examine the school food authority's experience with all alternatives in use. This amended is proposed at § 210.19(a)(1).

The proposal would also clarify that State agencies are required to perform the necessary nutrition review on only the lunch program unless the school

food authority uses a particular menu planning alternative only for the breakfast program. For example, if all of the schools in a school food authority use either NSMP or the enhanced food-based system for lunch, and at least some of the schools use the traditional food-based menu planning alternative for breakfast, the State agency would need to conduct two lunch reviews (one of a school using NSMP and one of a school using the enhanced food-based system) and one review of a breakfast program which uses the traditional meal pattern. However, if all three of these alternatives are used for the lunch program in the school food authority, no review of the breakfast program would be needed. The Department cautions, however, that if the lunch review indicates that the school food authority needs technical assistance and/or corrective action, the State agency may wish to review a breakfast program as well to determine if the school food authority needs to take specific corrective action for that program as well. In these cases, the review of the breakfast program could be done either at the time of the initial lunch review or as part of any follow-up needed to further evaluate the results of technical assistance or corrective action.

#### *Conforming Review Cycles*

Finally, the Department is proposing a minor technical amendment to § 210.19(a)(1)(i) to make the cycle for nutrition reviews consistent with the cycle for administrative reviews under CRE. The SMI rule established a five-year cycle for reviews of nutrition compliance and intended that cycle to run concurrently with the CRE cycle so that those States electing to conduct nutrition reviews at the same time as administrative reviews could do so efficiently. The regulation currently stipulates that the first five-year cycle would begin on July 1, 1996, unless the State agency authorized a temporary waiver of compliance with the nutrition standards, in which case the first year of the cycle could begin as late as July 1, 1998. Consequently, the first five-year cycle would end as early as June 30, 2001 or as late as June 30, 2003, depending upon actual implementation. The current CRE cycle ends on June 30, 1998, however, and the next cycle will end on June 30, 2003. Therefore, the two review cycles would be out of sequence for State agencies which implement the regulations before School Year 1998/1999.

While State agencies are not required to conduct nutrition reviews at the same time as administrative reviews, the Department proposes to make the two

review cycles coincide so that State agencies may avail themselves of this option efficiently. To achieve this goal, therefore, the Department is proposing to establish an initial cycle of seven years for nutrition reviews, from July 1, 1996 through June 30, 2003. Thereafter, review cycles would be five years in length. This expanded cycle would allow State agencies more flexibility during the implementation phase to complete reviews and provide schools with necessary assistance.

The Department notes that the extended time frame for completing nutrition reviews increases the need for State agencies to identify school food authorities that may have menu planning difficulties in order to schedule visits to them as early as possible in the cycle. The Department also would like State agencies to comment on any increased potential for noncompliance that might result from this extension and whether or not the Department should consider establishing intermediate review goals within the cycle.

#### Updating the Dietary Guidelines and Other Technical Changes

Section 9(f)(1)(A) of the NSLA requires that schools offer meals consistent with the goals of the "most recent Dietary Guidelines for Americans." The June 13, 1995, SMI rulemaking incorporated the 1990 edition of the Dietary Guidelines as program requirements because they were, at that time, the latest official version. The Department indicated, however, that later editions would be incorporated to reflect any revisions to the recommendations. In December 1995, the Department, in partnership with the Department of Health and Human Services, issued the 1995 edition. While there were no substantive differences between the 1995 edition and the 1990 edition, there were some minor language revisions. Therefore, the Department is taking this opportunity to propose amending § 210.10(b)(3) and § 220.8(a)(3) to incorporate the minor wording changes of the 1995 guidelines, and to change references to the 1990 guidelines to 1995.

The 1995 Dietary Guidelines also include the suggestion that the diets of children between the ages of two and five should be gradually altered so that, by age five, they receive no more than 30 percent of their calories from fat. Since the Dietary Guidelines do not treat this suggestion as a formal recommendation, the Department is not incorporating it into § 210.10(b)(3) or § 220.8(a)(3), where the Dietary Guidelines' recommendations are

enumerated. However, a footnote containing this information would be added to the charts in § 210.10(c)(1), § 210.10(c)(2), § 210.10(d), § 220.8(b)(1), § 220.8(b)(2) and § 220.8(c)(1). The Department is also aware that the RDA are in the process of being reviewed and that an update is scheduled to be released in 1999. At that time, the Department will propose any needed revisions to the key nutrient and calorie levels.

The name of the database used in the nutrient analysis software has been changed from the "National Nutrient Database for the Child Nutrition Programs" to the "Child Nutrition Database." This proposal would, therefore, update the references to the database in § 210.10(i) and § 220.8(e).

It was brought to the Department's attention that there was a misstatement in the preamble of the final regulation published on June 13, 1995. The regulation, Child Nutrition Programs: School Meal Initiatives for Healthy Children, was published in the **Federal Register** at 60 FR 31188. The erroneous statement at 60 FR 31203 was:

\* \* \* program regulations (§ 210.11(a) and § 220.12(a)) prohibit the sale of certain foods of minimal nutritional value in the food service area between the start of school and the last lunch period of the day.

The correct policy is contained in § 210.11(b) for the NSLP. The correct policy is:

Such rules or regulations [established by State agencies or school food authorities] shall prohibit the sale of foods of minimal nutritional value, as listed appendix B of this part, in the food service areas *during the lunch periods*.

(Emphasis added)

This policy may found for the SBP at § 210.12(a).

Although the statement in the preamble was incorrect, the actual regulatory language contained in § 210.11 (b) was correct. The Department regrets any confusion this error may have caused.

#### Appendix to Preamble—Regulatory Cost/Benefit Assessment

1. Title: National School Lunch Program and School Breakfast Program: Additional Menu Planning Alternatives.

2. Background:

a. Need for Action: Public Law 104-149, the Healthy Meals for Children Act, amended the National School Lunch Act by expanding the number of alternatives available to plan menus for the school meals programs. Section 9(f) of the National School Lunch Act was amended to allow schools to continue using the meal planning system in effect in School Year 1994-95 as well as the other meal planning alternatives already available. In addition, the Act was amended to allow

schools to use "any reasonable approach, within guidelines established by the Secretary \* \* \*".

The menu planning system in effect in School Year 1994-95 was the "traditional pattern" which has been in use for many years, and which requires four components (meat/meat alternate, breads/grains, fruits/vegetables and milk) and five items. Because this alternative was to be deleted from the regulations at the end of the implementation period (July 1, 1998), this proposal would reinstate this alternative permanently. In addition, this proposal would establish the guidelines for "any reasonable approach" to ensure that schools continue to serve reimbursable meals and provide proper accountability for Federal reimbursement while still having the flexibility to design a menu planning alternative that meets their particular needs.

Before the Department issued a proposal to implement Public Law 104-149, Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 was enacted on August 22, 1996. This law further amended the National School Lunch Act to mandate that school lunches provide, over a week, one-third of the Recommended Dietary Allowances (RDA) and that school breakfasts provide one-fourth of the RDA. These requirements are, however, already included in the school programs' regulations.

b. Affected parties: The entities affected by this proposal are State agencies, school food authorities, the nation's school children, and the Food and Nutrition Service.

c. Promotes the President's Priorities: This proposal would promote the President's commitment to flexibility for program administrators while continuing to support the objectives of providing meals to the nation's school children that meet the Dietary Guidelines for Americans and other established nutrition standards.

3. Statutory Authority: Public Law 104-149.

4. Cost-Benefit Assessment of Economic and Other Effects:

#### Reinstatement of the Traditional Meal Pattern

Background: The proposed regulation would reinstate the meal pattern in effect in School Year 1994-1995 as one menu planning alternative. The meal pattern would be incorporated into the section of the regulation establishing the food-based menu planning alternatives and would be entitled the "traditional food-based menu planning alternative." The food-based alternative implemented in the June 5, 1995, final rule would be renamed "the enhanced food-based menu planning alternative." The provision would provide a table with the minimum levels of nutrients (calories, protein, calcium, iron, Vitamin A, and Vitamin C) for the age/grade groups of the meal pattern. Further, the provision makes minor conforming amendments to allow for monitoring compliance with the nutrition standards for this additional menu planning alternative.

#### Effects of Reinstating the Traditional Meal Pattern

Benefits: The provision permanently reinstating the meal pattern in effect during

School Year 1994–1995 will allow schools to use a meal pattern with which they are familiar. Extensive experience with the traditional meal pattern has allowed schools to successfully develop menus that meet program requirements and are popular with students. The reinstatement of the traditional meal pattern provides schools with an additional menu planning option and even greater flexibility in meeting the nutritional needs of students.

The rule extends nutrition monitoring provisions pertaining to reviews of the enhanced food-based menu planning option to reviews of schools using the traditional meal pattern. School lunches are required to provide, over a week's time, one-third of the RDA for key nutrients (protein, calcium, iron, vitamin A and vitamin C) and calories needed by growing children of different ages. School breakfasts are required to provide, over a week's time, one-fourth of the RDA for key nutrients (protein, calcium, iron, vitamin A and vitamin C) and calories needed by growing children. In addition, schools should be making progress towards providing meals which comply with the Dietary Guidelines, including the recommendations that no more than 30 percent of calories come from fat and that saturated fat be limited to less than 10 percent of calories. The extension of this provision to the traditional food-based meal planning systems will ensure that children in schools using this system will receive meals of comparable nutritional quality as children in schools using the enhanced food-based menu plan. This provision does not require any additional burden of school food authorities as regulations require any menu planning system to provide comparable levels of RDAs for key nutrients and comply with the Dietary Guidelines.

Costs: The 1993 USDA School Nutrition Dietary Assessment Study (SNDA) assessed the nutritional quality of lunches served under the traditional meal pattern. SNDA found that the amount of nutrients in the average school lunch provided under the traditional meal pattern exceeded the standard of one-third of the daily RDA for the age groups at the elementary, middle, and high school level for most nutrients. However, the average percentage of food energy from total fat offered in school lunches was 38 percent, compared with the Dietary Guideline goal of not more than 30 percent; the percentage from saturated fat was 15 percent, compared with the Dietary Guideline of less than 10 percent.<sup>1</sup> In addition, the Continuing Survey of Food Intake by Individuals (CSFII), 1989–91 found that school-age children have average daily intakes of 33.7 to 34.7 percent of calories from fat, and 12.6 to 13.3 percent of calories from saturated fat depending on age-sex group.

The SNDA and CSFII findings heightened awareness of the need to improve the nutritional quality of school meals. In response the Department initiated the School Meals Initiative for Healthy Children, the

first program-wide reform of the school meals program since its establishment in 1946. Since the introduction of the School Meals Initiative the Department has provided training and technical assistance designed to assist school food service personnel in implementing the Dietary Guidelines. FNS has sponsored training on the preparation of healthier meals; provided recipes which are lower in fat and sodium; and issued grants to assist State agencies in establishing statewide training systems to assist local agencies in implementing the Dietary Guidelines. The Department has also increased efforts to provide lower fat commodities to local school districts.

Even with increased efforts by the Department, State agencies and school food authorities to provide schools with the knowledge and skills necessary to successfully implement the Dietary Guidelines, the possibility still exists that it might prove difficult for some schools using the traditional food-based meal pattern to comply with the recommendations. In these instances, it may be necessary for the school food authority or the State agency to provide further training of the school food service personnel to enable them to successfully develop meal patterns which comply with the Dietary Guidelines.

The State agency will be responsible for monitoring progress towards meeting the Dietary Guidelines and nutrition standards and for making adjustments in procedures that schools follow in order to ensure effective progress toward eventual compliance with the updated nutritional requirements. Should a number of schools using the traditional food-based menu pattern encounter difficulty in meeting the Dietary Guidelines, the State agency will need to cooperate with the school food authority in designing corrective action to rectify the deficiencies. Additionally, the State agency will need to monitor the execution of corrective action taken by the school food authority to ensure that progress is being made towards meeting the Dietary Guidelines.

Since most State agencies used the 1996–1997 school year to train staff to conduct the nutrient analyses, the number of analyses that were actually completed was fewer than expected. As a result, there is no data available on the number of school food authorities that fail to meet the nutrient standards and need to take corrective action.

#### *Any Reasonable Approach to Meal Planning*

Benefits: Public Law 104–149 permits school food authorities to use “any reasonable approach” to menu planning not specifically delineated in the regulations. The law makes it clear, however, that approval of other “reasonable approaches” must be in accordance with guidelines established by the Secretary. In developing appropriate guidelines, the Department considers that there are two classes of additional reasonable approaches. The first class of reasonable approaches consists of alternatives which are essentially relatively minor modifications to one or another of the existing menu planning systems. The second class of alternatives would involve unique

proposals that depart significantly from the existing systems.

#### *Minor Modifications*

The Department believes that minor modifications to existing meal planning systems do not pose significant questions about nutritional content or program integrity. Therefore, to reduce unnecessary paperwork, the Department is proposing to authorize State agencies to permit their school food authorities to choose any of the following adaptations without applying to the State agency for approval. The decision to authorize any or all of these modifications rests entirely with the State agency. State agencies may establish a general policy allowing school food authorities to adopt any or all of these approaches without prior approval or chose to review requests from school food authorities. The preapproved approaches are:

1. Weekly Meat/Meat Alternate Quantity Standard: Schools using one of the food-based menu planning systems would be allowed the flexibility to vary the quantity of the meat/meat alternate on a daily basis as long as the total amount served over the course of the school week equals the minimum daily quantity multiplied by the number of serving days in the week. Schools would still be required to serve a minimum of one ounce of meat/meat alternate daily.

2. Flexible Age-Grade Groupings for Food-Based Systems: Under the analysis-based menu planning options, if only one age or grade in a school is outside the established RDA and calorie requirements for the majority of students, schools are permitted to use the nutrition standards for that majority. In the interests of consistency and flexibility, the Department is proposing to extend this option to the food-based systems as well.

#### *Innovative Approaches*

The second class of other reasonable approaches involves innovative systems that are not currently established in program regulations and guidance. These innovative menu planning systems could be developed by school food authorities for use in their schools, or developed by State agencies and made available to their school food authorities. The Department envisions two approaches that State agencies could take in developing menu planning systems. It would be possible for a State to develop a unique menu planning system and then refrain from being involved in the operation or evaluation of the system. In these cases, the system would have to be submitted to the Department for approval before implementation. The second scenario involves systems developed by the State, used by multiple school food authorities (at least five) within the State, and the State agency remains an active partner in the operation and evaluation of the system on an ongoing basis and issues an announcement notifying the public of the alternate menu planning approach. In this case, the State would not be required to submit the system to the Department for approval prior to implementation.

Any meal planning system proposed by a school food authority or a State agency

<sup>1</sup> Burghardt, JC, A. Gordon, N. Chapman, P. Gleason, T. Fraker (1993). The School Nutrition Dietary Assessment Study: School Food Service, Meals, and Dietary Intakes. October 1993.

would have to be assessed for its potential impact on the delivery of meals to children, both nutritionally and fiscally. To achieve these goals, the Department is proposing to establish a framework and criteria for consideration and approval of such requests. Any approach developed by a State agency or a school food authority would need to ensure that the following areas, which are critical to the proper and efficient operation of the program, be satisfied:

1. **Identification of Reimbursable Meals:** The definition of a reimbursable meal is essential to program integrity. The four menu planning systems specifically recognized by the statute have specific requirements for a reimbursable lunch or breakfast. In keeping with these principles, the school food authority would need to outline, in any proposed menu planning alternative, what constitutes a reimbursable meal; how these will be identified by the students in the line and by food service staff at the point of service; and how reviewers will be able to document compliance. Likewise, the State agency must determine that the reimbursable meal will offer sufficient nutrition on a daily basis to justify Federal reimbursement.
2. **Provide for Offer versus Serve:** When developing a menu planning alternative, school food authorities must provide for offer versus serve (OVS), as appropriate. Section 9(a)(4) of the NSLA requires that schools implement OVS in the NSLP for senior high students; at local option, school food authorities may adopt OVS in the lunch program for lower grades as well. Local school food authorities may also implement OVS for the SBP. The purpose of OVS is to encourage students to make selections that they prefer, thus helping to reduce plate waste. Therefore, because of the statutory mandate, any menu planning approach proposed by a school food authority or State agency must include OVS for senior high students at a minimum.
3. **Compliance with Nutrition Standards:** By law, school lunches are required to provide, over a week's time, one-third of the RDA for key nutrients and one-third of the calories needed by growing children of different ages. In addition, the meals must comply with the recommendations of the Dietary Guidelines. School breakfasts must provide one-fourth of the RDA and calorie needs and also must comply with the Dietary Guidelines. Under no circumstances can these requirements be modified. Therefore, any request to employ an alternate menu planning approach would need to demonstrate, to the satisfaction of the State agency, that the menus would continue to meet or exceed these standards. Furthermore, because the RDA can vary by age and/or grade group, the school food authority would need to specify which age/grade groups will be served and indicate what the appropriate RDA and calorie levels are for each age/grade group.
4. **Ability to Monitor:** Any alternate approach must be capable of being monitored by the State agency to determine that reimbursable meals are being offered, accepted, and properly counted and that the meal service is in compliance with all of the nutrition standards.

While the Department wishes to provide school food authorities with maximum flexibility to develop alternate menu planning approaches, this proposed rule would prohibit State agencies from approving modifications to the existing four menu planning options beyond those discussed above as automatic options. The Department considers that certain requirements governing these options must remain intact except for limited exceptions for special State-wide systems. Consequently, the following operational components of the established menu planning systems may not be modified except as discussed below:

1. **Weighted Averages for NSMP/ANSMP:** The regulations require schools employing NSMP or ANSMP to conduct their analyses by weighting all foods planned as part of the reimbursable meal service according to the amount of each food actually intended to be produced, based on production records or experience. However, in order to make the transition to updated menu planning methods as smooth as possible and to ensure that every avenue for promoting sound nutrition while minimizing burden is explored, the Department authorized a delay in implementing this regulatory requirement for all schools adopting NSMP until the Department has the opportunity to evaluate the ability of weighted and unweighted averages to provide accurate determinations of compliance with the nutrition standards.
  2. **Use of Approved Software for NSMP and ANSMP:** The regulations also require menu planners electing to use NSMP or ANSMP to conduct or to have their analyses conducted using software approved by the Department. The Department is aware that there are many nutrition software packages available; however, many of these are for individuals or for clinical settings such as hospitals. The software approved by USDA is designed to meet the needs of school food service professionals and fulfills essential school-based needs.
  3. **Crediting Requirements for Food-Based Alternatives:** This proposed rule would prohibit State agencies from disregarding any of the Department's crediting policies for schools electing to use a food-based menu planning system. The Department's standards for crediting food items are designed to maintain the nutritional integrity of school meals by ensuring that foods used to satisfy quantity and component requirements provide a sufficient amount of the component or its equivalent to count toward meeting the meal requirements, standards of identity and/or specifications.
  4. **Foods of Minimal Nutritional Value:** The Department also wishes to emphasize that States may not, under any circumstances, approve the sale of foods of minimal nutritional value as defined in program regulations.
- However, the Department is also proposing that, in certain limited situations, menu planning systems, supported by the knowledge and resources of a State agency, can operate with modifications beyond those available to school food authorities while maintaining the necessary control over the nutritional content of their meals. Therefore, this proposal would authorize modification

in some menu planning systems of the provisions on weighted nutrient analysis and approved software, provided that: these systems are operated under policies and procedures developed or adopted by a State agency; the State agency remains an active participant in the operation and evaluation of the project on an ongoing basis; and the system is used by multiple school food authorities (at least five) within the State and the State agency issues a public announcement concerning the alternative menu planning approach.

*Effects of Implementing "Any Reasonable Means"*

**Benefits:** The provision permitting the use of "any reasonable approach" to menu planning will provide school food authorities with even greater flexibility in developing a menu service which meets the needs and preferences of local children. The rule contains a provision allowing school food authorities to make minor modifications to existing meal planning systems. The rule also contains provisions which allow school food authorities or States to make extensive modifications to existing menu planning systems or to develop innovative systems that are not currently established in program regulations and guidance.

The rule proposes that certain minor modifications by a school food authority to one or another of the existing meal systems would be allowed, at the discretion of the State agency, without prior approval. An example of the additional flexibility to be gained by individual schools is the ability to vary the amount of meat/meat alternate served on daily basis. This provision provides schools with an option that allows them to produce a more appealing entree or to reduce the amount of plate waste while still meeting the minimum weekly serving requirement of a meat/meat alternate.

A school food authority desiring to make more than minor modifications would be permitted to develop a proposal which differs significantly from the existing meal planning systems. The authority to develop their own menu planning systems will allow school food authorities to take into consideration any unique local food preferences or dietary needs when planning such systems.

The provisions of this rule allow State agencies to develop their own menu planning alternatives and make them available to local school food authorities. State agencies will have the opportunity to develop, in consultation with school food authorities within their State, a menu planning system designed to meet the specific needs of the children of their State rather than one designed for the tastes and needs of the national student population.

The rule allows such a menu planning system to use alternate weighting procedures and software while continuing to operate within normal regulatory authority, provided that the system is used by at least five school food authorities within the State, the State agency remains an active participant in the

operation and evaluation of the system on an ongoing basis and notifies the public about their alternative menu planning approach. This provision would provide State agencies with increased flexibility in the selection of software used to conduct the nutrient analyses.

**Costs:** While it is entirely possible that local menu planners may devise systems which produce nutritious meals which are appealing to children, these innovative systems are, by their very nature, untested and subject to unforeseen consequences. Any unique meal planning system will be required to serve meals which provide the same level of key nutrients as any of the prescribed meal patterns. It is possible that a locally developed system might have difficulty complying with the recommendations. In these instances, school food authorities and States might find it necessary to provide additional training and technical assistance to those schools failing to meet the nutrition requirements. However, it is also reasonable to expect that innovation may result in lower costs methods being devised. In either case, the nutrient standards remain the same; and the anticipated impacts on agriculture and the children's health are verifiable.

As noted previously, the percentage of total calories from fat consumed by school aged children in the late 1980's and early 1990's was above what was recommended by the Dietary Guidelines for Americans. Because States will conduct reviews once every five years, several years may pass before problems in meeting the nutritional guidelines will be detected. If schools fail to meet the nutrient standards using innovative systems, it is possible that the nutritional quality of some school meals may be deficient for a period of up to five years. However, FNS has anecdotal evidence that school food authorities have made improvements in their ability to meet the Dietary Guidelines.

As with the traditional meal pattern, the State agency will still be responsible for monitoring the progress these locally developed systems make toward complying with the Dietary Guidelines and nutrition standards. Should any such system or systems fail to comply with these standards, the State agency would need to work with the school food authorities to devise corrective action that would ensure that the menu planning systems would make progress towards, and eventually comply with, the Dietary Guidelines. If locally developed systems prove to have difficulty meeting the required nutritional requirements, the State agency would be faced with an increased monitoring burden without a concomitant reduction in any other monitoring burdens.

At this time it is impossible to determine the additional burden that will be required of State agencies as a result of school food authorities developing their own menu planning systems and failing to meet the nutrition standards. As stated earlier, the 1996-1997 school year is the first one in which States have been required to conduct the nutrient analyses so no data is available as to the number of schools failing to meet the standards. Additionally, FNS has no indications as to how many local agencies

might choose to develop their own menu planning systems. It is also impossible to determine the additional nutritional risk placed on children in schools that have difficulty meeting the Dietary Guidelines. However, because there is a certain amount of uncertainty regarding the ability of schools to meet the nutritional requirements under innovative systems, FNS acknowledges that nutritional risk exists.

#### *Miscellaneous Monitoring Provisions*

**Background:** The Department is also proposing a number of amendments to the requirements for nutrition monitoring designed to ensure appropriate State agency oversight of all menu planning alternatives and to clarify some existing provisions.

First, the nutrition monitoring provisions pertaining to reviews of the enhanced food-based menu planning option would be extended to reviews of schools using the traditional meal pattern and other reasonable approaches. As part of these reviews, the State agency must conduct a nutrient analysis using the regulatory procedures schools follow for NSMP.

Second, the Department is proposing to redefine the review period for nutrition reviews which is currently the last completed week prior to the review in order to expedite concurrent reviews of the nutrition standards and reviews for compliance with serving reimbursable meals and free/reduced price application requirements as conducted under coordinated review effort (CRE) reviews. The proposal would permit reviewers to conduct the nutrition review for any week prior to the month of review as is allowed in other reviews.

A third proposed provision would clarify that State agencies must conduct at least one review of every menu planning option employed by the school food authority. The proposal also clarifies that State agencies would be required to review only the lunch program unless the school food authority uses a particular menu planning option for breakfast but not for lunch, in which case at least one school's breakfast program would need to be reviewed.

A fourth proposed change would require State agencies to ensure that there are appropriate methods for monitoring compliance with the nutrition standards in schools using approved reasonable approaches. At a minimum, nutrition monitoring in these schools would be required to include a nutrient analysis by the State agency using software approved for NSMP.

Finally, the Department is proposing a minor technical amendment to make the cycle for nutrition reviews consistent with the cycle for administrative reviews under CRE. The cycle for conducting nutrition standard reviews was intended to run concurrently with the CRE cycle so that those States electing to conduct nutrition reviews at the same time as administrative reviews could do so efficiently. While State agencies are not required to conduct nutrition reviews at the same time as administrative reviews, the Department intended to make the two review cycles coincide so that State agencies could avail themselves of this option

efficiently. To achieve this goal, therefore, the Department is proposing to establish an initial cycle for nutrition reviews as seven years, from July 1, 1996 through June 30, 2003. Thereafter, review cycles would be five years in length. This expanded cycle would allow State agencies more flexibility during the implementation phase to complete reviews and provide schools with necessary assistance.

#### *Effects of Miscellaneous Monitoring Provisions*

**Benefits:** The rule contains minor provisions which provide State agencies with greater flexibility in scheduling of nutrition reviews. The rule allows States to conduct the nutrient analysis based on one week in the month prior to the month of review. Current regulations require that the week chosen for analysis be the last completed week prior to review. Allowing the State agency to choose a week in any month prior to the month of review allows the States to coordinate their nutrition review with the CRE administrative reviews.

The rule proposes to alter the nutrition review cycles so that States wishing to conduct their nutrition reviews at the same time as their CRE administrative reviews will be able to do so. The June 13, 1995 final rule established a five-year cycle for reviews of nutrition compliance. The regulation stipulated that the first five-year cycle could begin as early as July 1, 1996 or as late as July 1, 1998. As a result, the first cycle could end as soon as June 30, 2001, or as late as June 30, 2003, depending upon implementation. The current CRE cycle ends on June 30, 1998 and the following cycle will end June 30, 2003. So that the two cycles might coincide, the rule proposes to establish an initial cycle for nutrition reviews of seven years, from July 1, 1996 to June 30, 2003. The expanded cycle would allow State agencies more flexibility during the implementation phase to complete reviews and provide schools with necessary assistance.

**Costs:** When the June 13, 1995 final rule established reviews of nutrition compliance, the Department did not anticipate that the traditional meal pattern would continue to be an option after June 30, 1998, so no provision was made requiring a nutrient analysis for schools using this meal pattern. The proposed rule extends nutrition monitoring provisions pertaining to reviews of the enhanced food-based menu planning option to reviews of schools using the traditional meal pattern. The requirement that a nutritional analysis be conducted on schools using the traditional meal plan does not place any additional burden on State agencies.

The rule requires that State agencies must conduct at least one review of every menu planning option employed by the school food authority. This requirement could result in more schools being reviewed for nutrition compliance than would be required to be reviewed under CRE. For each school it takes one staff person approximately one and a half days to complete a CRE review. This would come at the approximate cost of \$216 for

each additional school.<sup>2</sup> The Department believes this coverage is necessary to ensure that the school food authority is employing all menu planning systems correctly. The only way for the State agency to identify problems and provide technical assistance is to examine the school food authorities experience with all systems. It is impossible to determine how many more schools State agencies will have to review for nutrition compliance than would be required for CRE as the Department has no data on how many school food authorities use multiple menu planning systems.

### Other Effects of the Proposed Regulation

#### *Effects of Rule on NSLP Participation*

The provisions of this rule may have a small effect on participation in the National School Lunch Program. The provisions of this rule may have the effect of making meals more appealing which may increase participation. Implementation of the rule is not expected to increase meal prices or decrease meal acceptability. The rule allows schools to continue to use the current meal pattern. Additionally, school food authorities and States are now able to develop menu plans that they feel would be even more appealing to their student population than the menu plans prescribed by the Department.

#### *Effects of Rule on Program Costs*

The provisions in this proposed rule will provide increased flexibility to State or local program operators but have no budgetary impact.

#### *Effects on Small Entities*

This proposal will not have significant economic impact on a substantial number of small entities. This proposal does not add any new requirements and there are no required additional costs. School food authorities and schools may experience some positive effects from this proposed rule as noted previously.

#### *Summary of the Effects of the Proposed Rule*

The proposed rule provides school food authorities and State agencies with increased choices and flexibility in selecting a menu planning system by permanently reinstating the meal pattern in effect during the 1994–1995 school year and providing guidelines for approval of other reasonable approach alternatives that schools may develop.

The proposed rule contains minor monitoring provisions. It extends monitoring provisions pertaining to

reviews of the enhanced food-based menu planning option to reviews of schools using the traditional meal pattern. It provides State agencies with greater flexibility in selection of the week to be reviewed for nutrient compliance. Further, the proposed rule alters the nutrition review cycle so that it coincides with the CRE administrative review cycle. This will allow State agencies to more easily conduct nutrient reviews at the same time as administrative reviews.

The proposed rule is not expected to have any impact on program participation, nor is the rule expected to have any budgetary impact. The rule will not have a significant economic impact on a substantial number of small entities.

5. Public Comments: This proposal will provide a 180-day comment period.

### List of Subjects

#### *7 CFR Part 210*

Commodity School Program, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

#### *7 CFR Part 220*

Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

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

### PART 210—NATIONAL SCHOOL LUNCH PROGRAM

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

**Authority:** 42 U.S.C. 1751–1760, 1779.

#### **§ 210.2 [Amended]**

2. In § 210.2:

a. the definition of “*Food component*” is amended by removing the words “or one of the four food groups which compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and vegetable/fruit under § 210.10a”;

b. the definition of “*Food item*” is amended by removing the words “or one of the five required foods that compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and two (2) servings of vegetables, fruits, or a combination of both for the purposes of § 210.10a”; and

c. the definition of “*Lunch*” is amended by removing the words “§ 210.10(k)(2) or the school lunch pattern for specified age/grade groups of children as designated in § 210.10a” and adding in their place the words “§ 210.10(k)(1) or § 210.10(k)(2), whichever is applicable”.

#### **§ 210.4 [Amended]**

3. In § 210.4, paragraph (b)(3) introductory text is amended by removing the words “§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable” and adding in their place a reference to “§ 210.10 (o)(1)”.

#### **§ 210.7 [Amended]**

4. In § 210.7:

a. paragraph (c)(1)(v) is amended by removing the words “or § 210.10a(b), whichever is applicable.”; and

b. paragraph (d) is amended by removing the words “§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable” and adding in their place a reference to “§ 210.10(o)(1)”.

#### **§ 210.9 [Amended]**

5. In § 210.9:

a. paragraph (b)(5) is amended by removing the words “or 210.10a, whichever is applicable”;

b. paragraph (c) introductory text is amended by removing the words “§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable” and adding in their place a reference to “§ 210.10(o)(1)”;

c. paragraph (c)(1) is amended by removing the words “or § 210.10a, whichever is applicable”.

6. In § 210.10:

a. paragraph (a)(1) is amended by revising the first sentence and by adding a new sentence at the end of the paragraph;

b. the second sentence of paragraph (a)(3) is amended by removing the word “or” and adding in its place a comma and by adding the words “or those developed under paragraph (l)” after the reference to “paragraph (i)(1)”; the third sentence of paragraph (a)(3) is amended by removing the third occurrence of the word “or” and adding in its place a comma, and adding the words “or those developed under paragraph (l)” after the reference to “paragraph (i)(1)”; and

c. paragraph (b)(1) is amended by making the word “paragraph” plural, by removing the second occurrence of the word “or” and adding in its place a comma and by adding the words “or (l)” after the reference to “(i)(1)”;

d. paragraph (b)(2) is amended by removing the second occurrence of the word “or” and adding in its place a comma, and by adding the words “or (l)” after the reference to “(i)(1)”;

<sup>2</sup> Cost calculated assuming 12 hours to review each school at a wage rate of \$18 an hour.

e. paragraph (b)(3) is revised;  
 f. paragraph (b)(4) introductory text is amended by removing the reference to "1990" and adding in its place a reference to "1995";  
 g. the first sentence of paragraph (b)(5) is revised;  
 h. the table in paragraph (c)(1) is revised;  
 i. the table in paragraph (c)(2) is revised;  
 j. paragraph (d) is revised;  
 k. the heading of paragraph (i)(4) and paragraph (i)(9) are amended by removing the words "National Nutrient Database" and adding in their place the words "Child Nutrition Database";  
 l. paragraphs (i)(4) and (i)(8) are amended by removing the words "National Nutrient Database for the Child Nutrition Programs" wherever they appear and by adding the words "Child Nutrition Database" in their place;  
 m. the heading of paragraph (k) is revised and introductory text is added;  
 n. paragraph (k)(1) is revised;  
 o. the heading of paragraph (k)(2) and the introductory text before the chart are revised;  
 p. the first two sentences of paragraph (k)(4) are redesignated as paragraph (k)(4)(i) and the last sentence of paragraph (k)(4) is redesignated as paragraph (k)(4)(ii) and is revised;  
 q. paragraph (k)(5) is amended by adding a new paragraph (k)(5)(iii);  
 r. paragraph (k)(5)(ii) is amended by adding two new sentences between the second and third sentences;  
 s. paragraphs (l) through (o) are redesignated as paragraphs (m) through

(p), respectively, and a new paragraph (l) is added;  
 t. newly redesignated paragraph (o)(3)(iv) is amended by removing the reference to "(n)(3)" and adding in its place a reference to "(o)(3)"; and  
 u. in newly redesignated paragraph (p), the reference to "1990" is removed and a reference to "1995" is added in its place.  
 The additions and revisions read as follows:  
**§ 210.10 Nutrition standards for lunches and menu planning methods.**  
 (a) *General requirements for school lunches.* (1) In order to qualify for reimbursement, all lunches served to children age 2 and older, as offered by participating schools, shall, at a minimum, meet the nutrition standards provided in paragraph (b) of this section and the appropriate levels of calories and nutrients provided in: paragraph (c) or paragraph (i)(1) of this section for nutrient standard menu planning and assisted nutrient standard menu planning; paragraph (d)(1) of this section for the traditional food-based menu planning alternative; paragraph (d)(2) of this section for the enhanced food-based menu planning alternative; or as developed in accordance with the provisions in paragraph (l) of this section for other menu planning alternatives, whichever is applicable.  
 \* \* \* In addition, those school food authorities that use menu planning approaches as allowed under paragraph (l) of this section shall ensure that sufficient quantities of food are planned and produced to meet the provisions in

paragraph (b) of this section and any minimum standards for food/menu items and quantities.  
 \* \* \* \* \*  
 (b) *Nutrition standards for reimbursable lunches.* \* \* \*  
 (3) The applicable recommendations of the 1995 Dietary Guidelines for Americans which are:  
 (i) Eat a variety of foods;  
 (ii) Limit total fat to 30 percent of calories;  
 (iii) Limit saturated fat to less than 10 percent of calories;  
 (iv) Choose a diet low in cholesterol;  
 (v) Choose a diet with plenty of grain products, vegetables, and fruits;  
 (vi) Choose a diet moderate in salt and sodium; and  
 (vii) Choose a diet moderate in sugars.  
 \* \* \* \* \*  
 (5) School food authorities have several alternatives for menu planning in order to meet the nutrition standards of this paragraph and the applicable nutrient and calorie levels: nutrient standard menu planning as provided for in paragraph (i) of this section; assisted nutrient standard menu planning as provided for in paragraph (j) of this section; traditional food-based menu planning as provided for in paragraph (d)(1) of this section; enhanced food-based menu planning as provided for in paragraph (d)(2) of this section; or other menu planning approaches as provided for in paragraph (l) of this section.  
 \* \* \*  
 (c) *Nutrient levels for school lunches/nutrient analysis.*  
 (1) \* \* \*

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

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

<sup>1</sup> The dietary guidelines recommend that after 2 years of age " \* \* \* children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."  
<sup>2</sup> Not to exceed 30 percent over a school week.  
<sup>3</sup> Less than 10 percent over a school week.

(2) \* \* \*

OPTIONAL NUTRIENT LEVELS FOR SCHOOL LUNCHES—NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Ages 3–6	Ages 7–10	Ages 11–13	Ages 14 and above
Energy allowances (calories) .....	558	667	783	846



OPTIONAL NUTRIENT LEVELS FOR SCHOOL LUNCHES—NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)—Continued

Nutrients and energy allowances	Ages 3–6	Ages 7–10	Ages 11–13	Ages 14 and above
Total fat (as a percentage of actual total food energy) .....	(1,2)	(2)	(2)	(2)
Total saturated fat (as a percentage of actual total food energy) .....	(1,3)	(3)	(3)	(3)
RDA for protein (g) .....	7.3	9.3	15.0	16.7
RDA for calcium (mg) .....	267	267	400	400
RDA for iron (mg) .....	3.3	3.3	4.5	4.5
RDA for Vitamin A (RE) .....	158	233	300	300
Vitamin C (mg) .....	14.6	15.0	16.7	19.2

<sup>1</sup> The dietary guidelines recommend that after 2 years of age “\* \* \* children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.”

<sup>2</sup> Not to exceed 30 percent over a school week.

<sup>3</sup> Less than 10 percent over a school week.

(d) Minimum nutrient levels for school lunches/food-based menu planning alternatives.

(1) *Traditional food-based menu planning alternative.* For the purposes of the traditional food-based menu planning alternative, as provided for in paragraph (k)(1) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school lunches offered over a school week:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL LUNCHES—ENHANCED FOOD-BASED ALTERNATIVE (SCHOOL WEEK AVERAGES)

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

<sup>1</sup> The dietary guidelines recommend that after 2 years of age “\* \* \* children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.”

<sup>2</sup> Not to exceed 30 percent over a school week.

<sup>3</sup> Less than 10 percent over a school year.

\* \* \* \* \*

(k) *Food-based menu planning alternatives.* School food authorities may choose to plan menus using either the traditional or enhanced food-based menu planning alternatives. Under these alternatives, specific food components shall be offered as provided in either paragraphs (k)(1) or (k)(2) of this section, whichever is applicable, and in paragraphs (k)(3) through (k)(5) of this section, as appropriate.

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

TRADITIONAL FOOD-BASED MENU PLANNING ALTERNATIVE

Food components and food items	Minimum quantities				Recommended quantities
	Group 1, ages 1-2 preschool	Group II, ages 3-4 preschool	Group III, ages 5-8 K-3	Group IV, ages 9 and older grades 4-12	Group V, 12 years and older grades 7-12
Milk (as a beverage) .....	6 fl. oz. ....	6 fl. oz. ....	8 fl. Oz. ....	8 fl. oz. ....	8 fl. oz.
Meat or Meat Alternate (quantity of the edible portion as served):					
Lean meat, poultry, or fish .....	1 oz. ....	1½ oz. ....	1½ oz. ....	2 oz. ....	3 oz.
Cheese .....	1 oz. ....	1½ oz. ....	1½ oz. ....	2 oz. ....	3 oz.
Large egg .....	½ .....	¾ .....	¾ .....	1 .....	1½.
Cooked dry beans or peas .....	¼ cup .....	¾ cup .....	¾ cup .....	½ cup .....	¾ cup.
Peanut butter or other nut or seed butters.	2 Tbs .....	3 Tbs .....	3 Tbs .....	4 Tbs .....	6 Tbs.
The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above:					

TRADITIONAL FOOD-BASED MENU PLANNING ALTERNATIVE—Continued

Food components and food items	Minimum quantities				Recommended quantities
	Group 1, ages 1-2 preschool	Group II, ages 3-4 preschool	Group III, ages 5-8 K-3	Group IV, ages 9 and older grades 4-12	Group V, 12 years and older grades 7-12
Peanuts, soybeans, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 oz. of nuts/seeds=1 oz. of cooked lean meat, poultry, or fish).	1/2 oz.=50% .....	3/4oz.=50% .....	3/4oz.=50% .....	1 oz.=50% .....	1 1/2 oz.-50%.
Yogurt, plain or flavored, unsweetened or sweetened.	4 oz. or 1/2 cup .....	6 oz. or 3/4 cup .....	6 oz. or 3/4 cup .....	8 oz. or 1 cup .....	12 oz. or 1 1/2 cup.
Vegetable or Fruit: 2 or more servings of vegetables, fruits or both.	1/2 cup .....	1/2 cup .....	1/2 cup .....	3/4 cup .....	3/4 cup
Grains/Breads: (Servings per week): Must be enriched or whole grain or made from flour which may include bran and/or germ. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or 1/2 cup of cooked rice, macaroni, noodles, other pasta products or cereal grains.	5 per week—minimum of 1/2 day.	8 per week—minimum of 1 per day.	8 per week—minimum of 1 per day.	8 per week—minimum of 1 per day.	10 per week—minimum of 1 per day.

(ii) Schools able to provide the appropriate quantities of food to children of each age/grade group should do so. Schools that cannot serve children of each age or grade level shall provide all school age children Group IV portions as specified in the table presented in this paragraph. Schools serving lunches to children of more than one age or grade level shall plan and produce sufficient quantities of food to provide Groups I-IV no less than the amounts specified for those children in the table presented in this paragraph, and sufficient quantities of food to provide Group V no less than the specified amounts for Group IV. It is recommended that such schools plan and produce sufficient quantities of food to provide Group V children the larger amounts specified in the table. Schools that provide increased portion sizes for Group V may comply with children's requests for smaller portion sizes of the food items; however, schools shall plan and produce sufficient quantities of food to at least provide the serving sizes required for Group IV.

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

food items in the quantities provided in the following chart:

\* \* \* \* \*

(4) *Vegetables and fruits.* \* \* \*

(ii) Under the enhanced food-based menu planning alternative, the requirement for this component is based on minimum daily servings *plus* an additional one-half cup in any combination over a five day period for children in kindergarten through grade six.

(5) *Grains/breads.* \* \* \*

(ii) \* \* \* Schools serving lunch 6 or 7 days per week should increase the weekly quantity by approximately 20 percent (1/5) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (1/5) for each day less than five. \* \* \*

(iii) Under the traditional food-based menu planning alternative, schools shall serve daily at least one-half serving of bread or bread alternate to children in Group I and at least one serving to children in Groups II-V. Schools which serve lunch at least 5 days a week shall serve a total of at least five servings of bread or bread alternate to children in Group I and eight servings per week to children in Groups II-V.

\* \* \* \* \*

(l) *Other menu planning alternatives.*

(1) *Modifications.* School food authorities may adopt any or all of the following menu planning alternatives.

State agencies may require prior approval for adopting the alternatives, may establish guidelines for their adoption, or may permit their adoption without prior approval.

(i) Under the traditional or enhanced food-based menu planning alternatives provided for in paragraph (k) of this section, the meat/meat alternate component may be provided as a weekly total with a one ounce (or its equivalent for certain meat alternates) minimum daily amount, except that this provision does not apply if the minimum serving of meat/meat alternate is less than one ounce; or

(ii) Under the traditional or enhanced food-based menu planning alternatives, if only one age or grade is outside the established levels, schools may use the levels for the majority of children for both portions and the Recommended Dietary Allowances and lunchtime energy allowances.

(2) *Major changes or new alternatives: use and approval.* Subject to the applicable requirements of paragraph (l)(3) of this section, school food authorities or State agencies may modify one of the menu planning alternatives established in paragraphs (i) through (k) of this section or may develop their own menu planning approach. Any such alternate menu planning approaches shall be in writing for review and monitoring purposes, as applicable. No formal plan is required; the written

alternate approach may be in the form of guidance, protocol, or the like. The alternate approach shall address how the provisions in paragraph (J)(3) shall be met.

(i) Any school food authority-developed menu planning approach must have prior State agency review and approval.

(ii) Except as noted in paragraph (J)(2)(iii), any State agency-developed menu planning approach must have prior FNS approval.

(iii) Any State agency-developed menu planning approach is not subject to FNS review if:

(A) Five or more school food authorities within the State use the approach;

(B) The State agency maintains ongoing oversight of the operation and evaluation of the alternative menu planning approach including making adjustments to the approach's policies and procedures, as necessary, to ensure compliance with the applicable provisions in paragraph (J)(3) of this section as needed; and

(C) The State agency issues an announcement notifying the public concerning the alternate menu planning approach prior to the implementation of the approach by any school food authority; such announcement shall be issued in a manner consistent with State procedures for public notification.

(3) Major changes or new alternatives: required elements. The following requirements shall be met by any alternate menu planning approach:

(i) The service of fluid milk, as provided in paragraph (m) of this section;

(ii) Offer versus serve for senior high students. To the extent possible, the offer versus serve procedures for an alternate approach shall follow the procedures in paragraphs (i)(2)(ii) and (k)(6) of this section, as appropriate. Any alternate approach which deviates from the provisions in paragraphs (i)(2)(ii) or (k)(6) of this section shall, at a minimum, indicate what age/grade groups are included in offer versus serve and establish the number and type of items, (and, if applicable, the quantities for the items) that constitute a reimbursable meal under offer versus serve. In addition, the alternate offer versus serve procedures shall include an explanation of how such procedures will reduce plate waste and provide a reasonable level of calories and nutrients for the meal as taken;

(iii) The nutrition standards in paragraphs (b)(1) through (b)(4) of this section. Any alternate approach shall indicate the age/grade groups to be served and how such approach is

designed to meet these requirements for those age/grade groups;

(iv) The requirements for competitive foods in § 210.11 and Appendix B to this part.

(v) For alternate food-based menu planning approaches, the requirements for crediting food items and products provided for in paragraphs (k)(3) through (k)(5) and paragraph (m) of this section, in the appendices to this part, and in instructions and guidance issued by FNS;

(vi) Identification of a reimbursable meal at the point of service. To the extent possible, the procedures provided in paragraph (i)(2)(i) of this section for nutrient standard or assisted nutrient standard menu planning alternatives or for food-based menu planning alternatives provided in paragraph (k) of this section shall be followed. In addition, any instructions or guidance issued by FNS that further defines the elements of a reimbursable meal shall be followed when using the existing regulatory provisions. Any alternate approach that deviates from the provisions in paragraph (i)(2)(i) or paragraph (k) of this section shall indicate what constitutes a reimbursable meal, including the number and type of items (and, if applicable, the quantities for the items) which comprise the meal, and how a reimbursable meal is to be identified at the point of service.

(vii) An explanation of how the alternate approach can be monitored under the applicable provisions of § 210.18 and § 210.19, including a description of the records that will be maintained to document compliance with the program's administrative and nutrition requirements. However, to the extent that the procedures under § 210.19 are inappropriate for monitoring the alternate approach, the alternate approach shall include a description of review procedures which will enable the State agency to assess compliance with the nutrition standards in paragraphs (b)(1) through (b)(4) of this section; and

(viii) the requirements for weighted analysis and for approved software for nutrient standard menu planning as required by paragraphs (i)(4) and (i)(5) of this section unless a State agency-developed approach meets the criteria in paragraph (J)(2)(iii) of this section.

\* \* \* \* \*

**§ 210.10a [Removed]**

7. Section 210.10a is removed.

**§ 210.15 [Amended]**

8. In § 210.15:

a. paragraph (b)(2) is amended by removing the words "menu records as

required under § 210.10a and production and"; and

b. paragraph (b)(3) is amended by removing the words "or § 210.10a(b), whichever is applicable".

**§ 210.16 [Amended]**

9. In § 210.16, paragraph (b)(1) is amended by removing the words "or § 210.10a, whichever is applicable," wherever they appear.

**§ 210.18 [Amended]**

10. In § 210.18:

a. paragraph (b)(2)(ii) is revised;

b. the heading of paragraph (g)(2) introductory text is amended by removing the words "food items/components as required by Program regulations" and adding in their place the words "meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10";

c. Paragraph (g)(2)(i) is amended by removing the words "required food items/components" and adding in their place the words "meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10";

d. Paragraph (g)(2)(ii) is amended by removing the words "the required number of food items/components" and adding in their place the words "the number of meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10";

e. Paragraph (g)(2)(iii) is amended by removing the words "required food items/components" and adding in their place the words "meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10";

f. paragraph (h)(2) is amended by removing the words "food items/components in the quantities required under § 210.10 or § 210.10a, in whichever is applicable" and adding in their place the words "meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10"; and

g. paragraph (i)(3)(ii) is amended by removing the words "required food items/components" and adding in their place the words "meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10".

The revision reads as follows:

**§ 210.18. Administrative reviews.**

\* \* \* \* \*

(b) Definitions. \* \* \*

(2) \* \* \*

(ii) Performance Standard 2—Meal Elements. Lunches claimed for

reimbursement within the school food authority contain meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10.

\* \* \* \* \*

11. In § 210.19:

a. the first sentence of paragraph (a)(1) introductory text is amended by removing the reference to “§ 210.10(o)” and by adding in its place a reference to “§ 210.10(p)”, and by removing the words “or (d),” and adding in their place the words “, (d), or (i)(1) or the procedures developed under § 210.10(l),”;

b. the second sentence of paragraph (a)(1) introductory text is amended by removing the words “At a minimum, these evaluations shall be conducted once every 5 years and” and adding in their place the words “These evaluations”;

c. paragraph (a)(1) introductory text is further amended by adding five sentences at the end;

d. paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv) are redesignated as paragraphs (a)(1)(ii), (a)(1)(iii), (a)(1)(v), and (a)(1)(vi), respectively, and new paragraphs (a)(1)(i) and (a)(1)(iv) are added;

e. the first sentence of newly redesignated paragraph (a)(1)(ii) is revised;

f. newly redesignated paragraph (a)(1)(iii) introductory text is revised;

g. paragraph (a)(3) is amended by removing the words “or § 210.10a, whichever is applicable,”; and

h. paragraph (c)(6)(i) is amended by removing the words “food item required under the meal pattern in § 210.10a or the food-based menu planning alternative in § 210.10(k), whichever is applicable” and adding in their place the words “meal element (food item/component, menu item or other items, as applicable) as required under § 210.10”.

The additions and revisions read as follows:

**§ 210.19 Additional responsibilities.**

(a) *General Program management.*

\* \* \*

(1) *Compliance with nutrition standards.* \* \* \* At a minimum, the State agency shall review at least one school for each type of menu planning alternative used in the school food authority. Review activity may be confined to the National School Lunch Program unless a menu planning alternative is used exclusively in the School Breakfast Program. The review must examine compliance with the nutrition standards in § 210.10(b) and § 210.10(c), (d), (i)(1), or (l), and § 220.10

(a), (c), (e)(1), or (h), as appropriate. State agencies are encouraged to review the School Breakfast Program as well if the school food authority requires technical assistance from the State agency to meet the nutrition standards or if corrective action is needed. Such review shall determine compliance with the appropriate requirements in § 220.8 and may be done at the time of the initial review or as part of a follow-up to assess compliance with the nutrition standards.

(i) At a minimum, State agencies shall conduct evaluations of compliance with the nutrition standards in § 210.10(b) and § 210.10(c), (d), (i)(1), or (l), as appropriate, at least once during each 5-year review cycle provided that each school food authority is evaluated at least once every 6 years, except that the first cycle shall begin July 1, 1996, and shall end on June 30, 2003. The compliance evaluation for the nutrition standards shall be conducted on the menu for any week of the current school year prior to the month in which such evaluation is conducted. The week selected must continue to represent the current menu planning system.

(ii) For school food authorities choosing the nutrient standard or assisted nutrient standard menu planning alternatives provided in § 210.10(i), § 210.10(j), or § 220.8(e), or § 220.8(f), or developed under the procedures in § 210.10(l) or § 220.8(h), the State agency shall assess the nutrient analysis to determine if the school food authority is properly applying the methodology in § 220.8(e), or § 220.8(f), or developed under the procedures in § 210.10(l) or § 220.8(h), as appropriate. \* \* \*

(iii) For school food authorities choosing the food-based menu planning alternatives provided in § 210.10(k) or § 220.8(g) or developed under the procedures in § 210.10(l) or § 220.8(h), the State agency shall determine if the nutrition standards set forth in § 210.10(b) and § 210.10(d) are met. The State agency shall conduct a nutrient analysis in accordance with the procedures in § 210.10(i) or § 220.8(e), as appropriate, except that the State agency may:

\* \* \* \* \*

(iv) For school food authorities following an alternate approach as provided under § 210.10(l) or § 220.8(h) that does not allow for use of the monitoring procedures in paragraphs (a)(1)(ii) or (a)(1)(iii), the State agency shall monitor compliance following the procedures developed in accordance

with § 210.10(l) or § 220.8(h), whichever is appropriate.

\* \* \* \* \*

**Appendix A—Amended**

12. In Appendix A to Part 210—Alternate Foods for Meals:

a. under Enriched Macaroni Products with Fortified Protein, paragraph 1.(a) is amended by removing the words “or § 210.10a, whichever is applicable,”;

b. under Vegetable Protein Products, paragraph 1. introductory text is amended by removing the words “or § 210.10a, whichever is applicable”;

c. under Vegetable Protein Products, paragraph 1.(d) is amended by removing the words “or § 210.10a, whichever is applicable”;

d. under Vegetable Protein Products, paragraph 1.(e) is amended by removing the words “or § 210.10a, whichever is applicable”;

e. under Vegetable Protein Products, paragraph 3. is amended by removing the words “or § 210.10a, whichever is applicable”.

**Appendix C—Amended**

13. In Appendix C to Part 210—Child Nutrition Labeling Program:

a. paragraph 2.(a) is amended by removing the words “or § 210.10a, whichever is applicable”;

b. paragraph 3.(c)(2) is amended by removing the words “or § 210.10a, whichever is applicable” and by removing the words “or § 220.8a, whichever is applicable”;

c. paragraph 6. introductory text is amended by removing the words “or § 210.10a, whichever is applicable” and by removing the words “or § 220.8a, whichever is applicable”.

**PART 220—SCHOOL BREAKFAST PROGRAM**

1. The authority citation continues to read as follows:

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

**§ 220.2 [Amended]**

2. In § 220.2:

a. paragraph (b) is amended by removing the words “or § 220.8a, whichever is applicable,”; and

b. paragraph (t) is amended by removing the words “or § 220.8, whichever is applicable,”.

**§ 220.7 [Amended]**

3. In § 220.7, paragraph (e)(2) is amended by removing the words “or § 220.8a, whichever is applicable,”.

4. In § 220.8:

a. paragraph (a)(1) is amended by removing the second occurrence of the

word "or" and adding in its place a comma and by adding the words ", or (h)" after the reference to "(e)(1)";

b. paragraph (a)(2) is amended by removing the second occurrence of the word "or" and adding in its place the words "or (h)" after the reference to "(e)(1)";

c. paragraph (a)(3) is revised;

d. paragraph (a)(4) is amended by removing the reference to "1990" and adding in its place a reference to "1995";

e. the first sentence of paragraph (a)(5) is revised;

f. the first sentence of paragraph (a)(6) is amended by removing the word "or" and adding in its place a comma and by adding the words "or those developed under paragraph (h)" after the reference to "paragraph (e)(1)" and the second sentence of paragraph (a)(6) is amended by removing the third occurrence of the word "or" and adding in its place a comma and by adding the words "or those developed under paragraph (h)" after the reference to "paragraph (e)(1)";

g. the table in paragraph (b)(1) is revised;

h. the table in paragraph (b)(2) is revised;

i. paragraph (c) is revised;

j. the heading of paragraph (e)(4) and paragraph (e)(9) are amended by

removing the words "National Nutrient Database" and adding in their place the words "Child Nutrition Database";

k. paragraphs (e)(4) and (e)(8) are amended by removing the words "National Nutrient Database for the Child Nutrition Programs" wherever they appear and by adding the words "Child Nutrition Database" in their place;

l. the heading of paragraph (g) is revised and introductory text is added;

m. the introductory text of paragraph (g)(1) is amended by removing the words "in the table in paragraph (g)(2) of this section" and adding in their place the words "either in the table in paragraph (g)(2) or (g)(3) of this section, whichever is applicable";

n. paragraph (g)(2) is revised;

o. paragraphs (h) through (m) are redesignated as paragraphs (i) through (n), respectively, and a new paragraph (h) is added; and

p. in newly redesignated paragraph (n), the reference to "1990" is removed and a reference to "1995" is added in its place.

The additions and revisions are as follows:

**§ 220.8 Nutrition standards for breakfast and menu planning alternatives.**

(a) *Nutrition standards for breakfasts for children age 2 and over.* \* \* \*

(3) The applicable recommendations of the 1995 Dietary Guidelines for Americans which are: eat a variety of foods; limit total fat to 30 percent of calories; limit saturated fat to less than 10 percent of calories; choose a diet low in cholesterol; choose a diet with plenty of grain products, vegetables, and fruits; choose a diet moderate in salt and sodium; and choose a diet moderate in sugars.

\* \* \* \* \*

(5) School food authorities have several alternatives for menu planning in order to meet the requirements of this paragraph including the appropriate nutrient and calorie levels: nutrient standard menu planning as provided for in paragraph (e) of this section; assisted nutrient standard menu planning as provided for in paragraph (f) of this section; traditional food-based menu planning as provided for in paragraph (g)(1) of this section; enhanced food-based menu planning as provided for in paragraph (g)(2) of this section; or other menu planning approaches as provided for in paragraph (h) of this section.

\* \* \*

\* \* \* \* \*

(b) *Nutrient levels/nutrient analysis.*

(1) \* \* \*

**MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL BREAKFASTS—NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)**

Nutrients and energy allowances	Minimum requirements		Optional
	Preschool	Grades K–12	Grades 7–12
Energy allowances (calories) .....	388	554	618
Total fat (as a percentage of actual total food energy) .....	(1)	(2)	(2)
Total saturated fat (as a percentage of actual total food energy) .....	(1)	(3)	(3)
RDA for protein (g) .....	5	10	12
RDA for calcium (mg) .....	200	257	300
RDA for iron (mg) .....	2.5	3.0	3.4
RDA for Vitamin A (RE) .....	113	197	225
RDA for Vitamin C (mg) .....	11	13	14

<sup>1</sup> The dietary guidelines recommend that after 2 years of age " \* \* \* children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."

<sup>2</sup> Not to exceed 30 percent over a school week.

<sup>3</sup> Less than 10 percent over a school week.

(2) \* \* \*

**OPTIONAL NUTRIENT LEVELS FOR SCHOOL BREAKFASTS—NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)**

Nutrients and energy allowances	Ages 3–6	Ages 7–10	Ages 11–13	Ages 14 and above
Energy allowances (calories) .....	419	500	588	625
Total fat (as a percentage of actual total food energy) .....	(1, 2)	(2)	(2)	(2)
Total saturated fat (as a percentage of actual total food energy) .....	(1, 3)	(3)	(3)	(3)
RDA for protein (g) .....	5.50	7.00	11.25	12.50
RDA for calcium (mg) .....	200	200	300	300
RDA for iron (mg) .....	2.5	2.5	3.4	3.4
RDA for Vitamin A (RE) .....	119	175	225	225

OPTIONAL NUTRIENT LEVELS FOR SCHOOL BREAKFASTS—NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)—Continued

Nutrients and energy allowances	Ages 3–6	Ages 7–10	Ages 11–13	Ages 14 and above
Vitamin C (mg) .....	11.00	11.25	12.50	14.40

<sup>1</sup> The dietary guidelines recommend that after 2 years of age “\* \* \* children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.”

<sup>2</sup> Not to exceed 30 percent over a school week.

<sup>3</sup> Less than 10 percent over a school week.

(c) *Minimum nutrient levels for school breakfasts/food-based menu planning alternatives.* (1) *Traditional food-based menu planning alternative.* For the purposes of the traditional food-based menu planning alternative, as provided for in paragraph (g)(2) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school breakfasts offered over a school week:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL BREAKFASTS—TRADITIONAL FOOD-BASED ALTERNATIVE (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Age 2	Ages 3, 4, 5	Grades K–12
Energy allowances (calories) .....	325	388	554
Total fat (as a percentage of actual total food energy) .....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>2</sup> )
Total saturated fat (as a percentage of actual total food energy) .....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>3</sup> )
RDA for protein (g) .....	4	5	10
RDA for calcium (mg) .....	200	200	257
RDA for iron (mg) .....	2.5	2.5	3.0
RDA for Vitamin A (RE) .....	100	113	197
RDA for Vitamin C (mg) .....	10	11	13

<sup>1</sup> The dietary guidelines recommend that after 2 years of age “\* \* \* children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.”

<sup>2</sup> Not to exceed 30 percent over a school week.

<sup>3</sup> Less than 10 percent over a school week.

(2) *Enhanced food-based menu planning alternative.* For the purposes of the enhanced food-based menu planning alternative, as provided for in paragraph (g)(1) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school breakfasts offered over a school week:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL BREAKFAST—ENHANCED FOOD-BASED ALTERNATIVE (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Required for		Option for
	Preschool	Grades K–12	Grades 7–12
Energy allowances (calories) .....	388	554	618
Total fat (as a percentage of actual total food energy) .....	( <sup>1,2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
Total saturated fat (as a percentage of actual total food energy) .....	( <sup>1,3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )
RDA for protein (g) .....	5	10	12
RDA for calcium (mg) .....	200	257	300
RDA for iron (mg) .....	2.5	3.0	3.4
RDA for Vitamin A (RE) .....	113	197	225
Vitamin C (mg) .....	11	13	14

<sup>1</sup> The dietary guidelines recommend that after 2 years of age “\* \* \* children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.”

<sup>2</sup> Not to exceed 30 percent over a school week.

<sup>3</sup> Less than 10 percent over a school week.

\* \* \* \* \*

(g) *Food-based menu planning alternatives.* School food authorities may choose to plan menus using either the traditional or enhanced food-based menu planning alternatives. Under these alternatives, specific food components shall be offered as provided in either paragraphs (g)(1) or (g)(2) of this section, whichever is applicable, and in paragraphs (g)(3) and (g)(4) of this section, as appropriate.

\* \* \* \* \*

(2) *Minimum quantities-food-based menu planning alternatives.* (i) At a minimum, schools using the traditional food-based menu planning alternative shall serve breakfasts in the quantities provided in the following chart:

MINIMUM REQUIREMENTS—TRADITIONAL FOOD-BASED MENU PLANNING ALTERNATIVE

Meal component	Ages 1–2	Ages 3, 4, and 5	Grades K–12
Milk (Fluid) (As a beverage, on cereal or both) .....	4 fl. oz .....	6 fl. oz .....	8 fl. oz.
Juice/Fruit/Vegetable: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice.	¼ cup .....	½ cup .....	½ cup.

MINIMUM REQUIREMENTS—TRADITIONAL FOOD-BASED MENU PLANNING ALTERNATIVE—Continued

Meal component	Ages 1-2	Ages 3, 4, and 5	Grades K-12
Select One Serving From Each of the Following Components or Two From One Component:			
Grains/Breads: one of the following or an equivalent combination:			
Whole-grain or enriched bread .....	1/2 slice .....	1/2 slice .....	1 slice.
Whole-grain or enriched biscuit, roll, muffin, etc .....	1/2 serving .....	1/2 serving .....	1 serving.
Whole-grain, enriched or fortified cereal .....	1/4 cup or 1/3 oz. ....	1/3 cup or 1/2 oz. ....	3/4 cup or 1 oz.
Meat or Meat Alternates:			
Meat/poultry or fish .....	1/2. oz .....	1/2. oz .....	1 oz.
Cheese .....	1/2. oz .....	1/2. oz .....	1 oz.
Egg (large) .....	1/2 .....	1/2 .....	1/2.
Peanut butter or other nut or seed butters .....	1 Tbsp. ....	1 Tbsp. ....	2 Tbsp.
Cooked dry beans and peas .....	2 Tbsp. ....	2 Tbsp. ....	4 Tbsp.
Nuts and/or seeds (as listed in program guidance). <sup>1</sup> ...	1/2. oz .....	1/2. oz .....	1 oz.
Yogurt, plain or flavored, unsweetened or sweetened	2 oz. or 1/4 cup .....	2 oz. or 1/4 cup .....	4 oz. or 1/2 cup.

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

(ii) At a minimum, schools using the enhanced food-based menu planning alternative shall serve breakfasts in the quantities provided in the following chart:

MINIMUM REQUIREMENTS—ENHANCED FOOD-BASED MENU PLANNING ALTERNATIVE

Meal Component	Required for		Operation for	
	Ages 1-2	Preschool	Grades K-12	Grades 7-12
Milk (Fluid) (As a beverage, on cereal or both).	4 fl. oz .....	6 fl. oz .....	8 fl. oz .....	8 fl. oz.
Juice/Fruit/Vegetable: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice.	1/4 cup .....	1/2 cup .....	1/2 cup .....	1/2 cup.
Select One Serving From Each of the Following Components or Two From One Component:				
Grain/Breads: one of the following or an equivalent combination:				
Whole-grain or enriched bread .....	1/2 slice .....	1/2 slice .....	1 slice .....	1 slice.
Whole-grain or enriched biscuit, roll, muffin, etc.	1/2 serving .....	1/2 serving .....	1 serving .....	1 serving.
Whole-grain, enriched or fortified cereal ..	1/4 cup or 1/3 oz .....	1/3 cup or 1/2 oz .....	3/4 cup of 1 oz .....	3/4 cup or 1 oz. Plus an additional serving of one of the Grains/Breads above.
Meat or Meat Alternates:				
Meat/poultry or fish .....	1/2 oz .....	1/2 oz .....	1 oz .....	1 oz.
Chesse .....	1/2 oz .....	1/2 oz .....	1 oz .....	1 oz.
Egg (large) .....	1/2 .....	1/2 .....	1/2 .....	1/2.
Peanut butter or other nut or sed butters .....	1 Tbs .....	1 Tbs .....	2 Tbs .....	2 Tbs.
Cooked dry beans and peas .....	2 Tbs .....	2 Tbs .....	4 Tbs .....	4 Tbs.
Nuts and/or seeds (as listed in program guidance) <sup>1</sup> .	1/2 oz .....	1/2 oz .....	1 oz .....	1 oz.
Yogrut, plain or flavored, unsweetened or sweetened.	2 oz. or 1/4 cup .....	2 oz. or 1/4 cup .....	4 oz. or 1/2 cup .....	4 oz. or 1/2 cup.

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

\* \* \* \* \*

(h) Other menu planning alternatives.

(1) *Modification.* Under the traditional or enhanced food-based menu planning alternatives, school food authorities may, if only one age or grade is outside the established levels, use the levels for the majority of children for both portions and the Recommended Dietary Allowances and breakfast energy allowances. State agencies may require prior approval for adopting this

alternative, may establish guidelines for its adoption, or may permit its adoption without prior approval.

(2) *Major changes or new alternatives: use and approval.* Subject to the requirements of paragraphs (h)(3) of this section, school food authorities or State agencies may modify one of the menu planning alternatives established in paragraphs (e) through (g) of this section or may develop their own menu planning approach. Any such alternate

menu planning approaches shall be in writing for review and monitoring purposes, as applicable. No formal plan is required; the written alternate approach may be in the form of guidance, protocol, or the like. The alternate approach shall address how the provisions in paragraph (h)(3) shall be met.

(i) Any school food authority developed menu planning approach

shall have prior State agency review and approval.

(ii) Except as noted in paragraph (h)(2)(iii), any State agency-developed menu planning alternative shall have prior FNS approval.

(iii) Any State agency developed alternative is not subject to FNS review if:

(A) Five or more school food authorities within the State use the approach;

(B) The State agency maintains ongoing oversight of the operation and evaluation of the alternative menu planning approach including making adjustments to the approach's policies and procedures, as necessary, to ensure compliance with the applicable provisions in paragraph (h)(3) of this section as needed; and

(C) The State agency issues an announcement notifying the public concerning the alternate menu planning approach prior to the implementation of the approach by any school food authority; such announcement shall be issued in a manner consistent with State procedures for public notification.

(3) *Major changes or new alternatives: required elements.* The following requirements shall be met by any alternate menu planning approach:

(i) Service of fluid milk, as provided in paragraph (h)(1) of this section;

(ii) The nutrition standards in paragraphs (a)(1) through (a)(4) of this section. Any alternate approach shall indicate the age/grade groups to be served and how such approach is designed to meet these requirements for those age/grade groups.

(iii) The requirements for competitive foods in § 220.12 and appendix B to this part;

(iv) For alternate food-based menu planning approaches, the requirements for crediting food items and products provided for in paragraphs (g)(2) and (i) of this section, in the appendices to this part, in § 210.10(k)(3) through (k)(5), § 210.10 (m) and in the instructions and guidance issued by FNS;

(v) Identification of a reimbursable meal at the point of service. To the extent possible, the procedures provided in paragraph (e)(2)(i) of this

section for nutrient standard or assisted nutrient standard-type menu planning approaches or in paragraph (g) of this section for food-based-type menu planning approaches shall be followed. In addition, any instructions or guidance issued by FNS that further defines the elements of a reimbursable meal shall be followed when using the existing regulatory provisions. Any alternate approach that deviates from the provisions in paragraph (e)(2)(i) or paragraph (g) of this section shall indicate what constitutes a reimbursable meal, including the number and type of items (and, if applicable, the quantities for these items) which comprise the meal, and how a reimbursable meal is to be identified at the point of service. Further, if the alternate approach provides for offer versus serve as allowed under paragraph (e)(2)(ii) of this section for nutrient standard or assisted nutrient standard-type menu planning approaches or in paragraph (g)(3) of this section for food-based-type menu planning approaches, the alternate approach shall follow those provisions to the extent possible. Any alternate approach that deviates from the provisions in paragraph (e)(2)(ii) or (g)(3) of this section shall, at a minimum, indicate what age/grade groups are included in offer versus serve and establish the number and type of items (and, if applicable, the quantities for the items) that constitute a reimbursable meal under offer versus serve. In addition, the alternate offer versus serve procedures shall include an explanation of how such procedures will reduce plate waste and provide a reasonable level of calories and nutrients for the meal *as taken*;

(vi) An explanation of how the alternate approach can be monitored under the applicable provisions of § 210.18 and § 210.19, including a description of the records that will be maintained to document compliance with the program's administrative and nutrition requirements. However, to the extent that the procedures under § 210.19 are inappropriate for monitoring the alternate approach, the alternate approach shall include a description of review procedures which

will enable the State agency to assess compliance with the nutrition standards in paragraphs (a)(1) through (a)(4) of this section; and

(vii) The requirements for weighted analysis and for approved software for nutrient standard menu planning as required by paragraphs (e)(4) and (e)(5) of this section unless a State agency developed approach meets the criteria in paragraph (h)(2)(iii) of this section.

\* \* \* \* \*

#### § 220.8a [Removed]

5. Section 220.8a is removed.

#### § 220.9 [Amended]

6. In § 220.9, paragraph (a) is amended by removing the words "or § 220.8a, whichever is applicable,".

#### § 220.14 [Amended]

7. In § 220.14, paragraph (h) is amended by removing the words "or § 220.8a(a)(1), (b)(2), and (b)(3), whichever is applicable".

#### Appendix A Amended

8. In Appendix A to Part 220—Alternate Foods for Meals, paragraph 1.(a) is amended by removing the words "or 220.8a, whichever is applicable".

#### Appendix C Amended

9. In Appendix C to Part 220—Child Nutrition (CN) Labeling Program:

a. paragraph 2.(a) is amended by removing the words "or 210.10a, whichever is applicable";

b. paragraph 3.(c)(2) is amended by removing the words "or 210.10a, whichever is applicable" and is further amended by removing the words "or 220.8a, whichever is applicable"; and

c. paragraph 6. is amended by removing the words "or 210.10a, whichever is applicable" and is further amended by removing the words "or 220.8a, whichever is applicable".

\* \* \* \* \*

Dated: April 27, 1998.

**Shirley R. Watkins,**

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

[FR Doc. 98-11654 Filed 5-1-98; 8:45 am]

BILLING CODE 3410-30-U