SUBCHAPTER A—CHILD NUTRITION PROGRAMS

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

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AUTHORITY: 42 U.S.C. 1751–1760, 1779.

SOURCE: 53 FR 29147, Aug. 2, 1988, unless otherwise noted.

Subpart A—General

§ 210.1 General purpose and scope.

(a) *Purpose of the program.* Section 2 of the National School Lunch Act (42 U.S.C. 1751), states: ''It is declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of food and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school lunch programs.'' Pursuant to this act, the Department provides States with general and special cash assistance and donations of foods acquired by the Department to be used to assist schools in serving nutritious lunches to children each school day. In furtherance of Program objectives, participating schools shall serve lunches that are nutritionally adequate, as set forth in these regulations, and shall to the extent practicable, ensure that participating children gain a full understanding of the relationship between proper eating and good health.

(b) *Scope of the regulations.* This part sets forth the requirements for participation in the National School Lunch and Commodity School Programs. It specifies Program responsibilities of State and local officials in the areas of program administration, preparation and service of nutritious lunches, payment of funds, use of program funds, program monitoring, and reporting and recordkeeping requirements.

§ 210.2 Definitions.

For the purpose of this part:

Act means the National School Lunch Act, as amended.

Afterschool care program means a program providing organized child care services to enrolled school-age children afterschool hours for the purpose of care and supervision of children. Those programs shall be distinct from any extracurricular programs organized primarily for scholastic, cultural or athletic purposes.

Attendance factor means a percentage developed no less than once each school year which accounts for the difference between enrollment and attendance. The attendance factor may be developed by the school food authority, subject to State agency approval, or may be developed by the State agency. In the absence of a local or State attendance factor, the school food authority shall use an attendance factor developed by FNS. When taking the attendance factor into consideration, school food authorities shall assume that all children eligible for free and reduced price lunches attend school at the same rate as the general school population.

Average Daily Participation means the average number of children, by eligibility category, participating in the Program each operating day. These numbers are obtained by dividing (a) the total number of free lunches claimed during a reporting period by the number of operating days in the same period; (b) the total number of reduced price lunches claimed during a reporting period by the number of operating days in the same period; and (c) the total number of paid lunches claimed during a reporting period by the number of operating days in the same period.

Child means—(a) a student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under as described in paragraphs (a) and (b) of the definition of ''School,'' including students who are mentally or physically disabled as defined by the State and who are participating in a school program established for the mentally or physically disabled; or (b) a person under 21 chronological years of age who is enrolled in an institution or center as described in paragraphs (c) and (d) of the definition of ''School;'' or (c) For purposes of reimbursement for meal supplements served in afterschool care programs, an individual enrolled in an afterschool care program operated by an eligible school who is 12 years of age or under, or in the case of children of migrant workers and children with disabilities, not more than 15 years of age.

CND means the Child Nutrition Division of the Food and Nutrition Service of the Department.

Commodity School Program means the Program under which participating schools operate a nonprofit lunch program in accordance with this part and receive donated food assistance in lieu of general cash assistance. Schools participating in the Commodity School Program shall also receive special cash and donated food assistance in accordance with § 210.4(c).

Days means calendar days unless otherwise specified.

Department means the United States Department of Agriculture.

Distributing agency means a State agency which enters into an agreement with the Department for the distribution to schools of donated foods pursuant to part 250 of this chapter.

Donated foods means food commodities donated by the Department for use in nonprofit lunch programs.

Fiscal year means a period of 12 calendar months beginning October 1 of any year and ending with September 30 of the following year.

FNS means the Food and Nutrition Service, United States Department of Agriculture.

FNSRO means the appropriate Regional Office of the Food and Nutrition Service of the Department.

Food component means one of the four food groups which comprise reimbursable meals planned under a food-based menu planning approach. The four food components are: meat/meat alternate; grains/breads; fruits/vegetables; and milk.

Food item means one of the five foods offered in lunches under a food-based menu planning approach: meat/meat alternate; grains/breads; two servings of fruits/vegetables; and milk.

Food service management company means a commercial enterprise or a nonprofit organization which is or may

be contracted with by the school food authority to manage any aspect of the school food service.

Free lunch means a lunch served under the Program to a child from a household eligible for such benefits under 7 CFR part 245 and for which neither the child nor any member of the household pays or is required to work.

Lunch means a meal service that meets the applicable nutrition standards and portion sizes in §210.10 for lunches.

Menu item means, under Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning, any single food or combination of foods. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards provided in §210.10, except for those foods that are considered as foods of minimal nutritional value as provided for in §210.11(a)(2) which are not offered as part of a menu item in a reimbursable meal. For the purposes of a reimbursable lunch, a minimum of three menu items must be offered, one of which must be an entree (a combination of foods or a single food item that is offered as the main course) and one of which must be fluid milk. Under offer versus serve, a student shall select, at a minimum, an entree and one other menu item. If more than three menu items are offered, the student may decline up to two menu items; however, the entree cannot be declined.

National School Lunch Program means the Program under which participating schools operate a nonprofit lunch program in accordance with this part. General and special cash assistance and donated food assistance are made available to schools in accordance with this part.

Net cash resources means all monies, as determined in accordance with the State agency's established accounting system, that are available to or have accrued to a school food authority's nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

Nonprofit, when applied to schools or institutions eligible for the Program, means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954, as amended; or, in the Commonwealth of Puerto Rico, certified as nonprofit by the Governor.

Nonprofit school food service means all food service operations conducted by the school food authority principally for the benefit of schoolchildren, all of the revenue from which is used solely for the operation or improvement of such food services.

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

OIG means the Office of the Inspector General of the Department.

Point of Service means that point in the food service operation where a determination can accurately be made that a reimbursable free, reduced price or paid lunch has been served to an eligible child.

Program means the National School Lunch Program and the Commodity School Program.

Reduced price lunch means a lunch served under the Program: (a) to a child from a household eligible for such benefits under 7 CFR part 245; (b) for which the price is less than the school food authority designated full price of the lunch and which does not exceed the maximum allowable reduced price specified under 7 CFR part 245; and (c) for which neither the child nor any member of the household is required to work.

Reimbursement means Federal cash assistance including advances paid or payable to participating schools for lunches meeting the requirements of §210.10 and served to eligible children.

Revenue, when applied to nonprofit school food service, means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

School means: (a) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; (b) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; or (c) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term ''residential child care institutions'' includes, but is not limited to: homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more.

School food authority means the governing body which is responsible for the administration of one or more schools; and has the legal authority to operate the Program therein *or* be otherwise approved by FNS to operate the Program.

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

School year means a period of 12 calendar months beginning July 1 of any year and ending June 30 of the following year.

Secretary means the Secretary of Agriculture.

7 CFR part 3015 means the Uniform Federal Assistance Regulations published by the Department to implement OMB Circulars A–21, A–87, A–102, A–110, and A–122; and Executive Order 12372. (For availability of OMB Circulars referenced in this definition, see 5 CFR 1310.3.)

7 CFR part 3017 means the Department's regulation to implement Executive Order 12549, covering governmentwide rules on suspension and debarment as well as The Drug Free Workplace Act of 1988.

7 CFR part 3018 means the Department's Common Rule regarding Governmentwide New Restrictions on Lobbying. Part 3018 implements the requirements established by section 319 of the 1990 Appropriations Act for the Department of Interior and Related Agencies (Pub. L. 101–121).

7 CFR part 3052 means the Department's regulations implementing OMB Circular A–133, ''Audits of State, Local Governments, and Non-Profit Organizations.'' (For availability of OMB Circulars referenced in this definition, see 5 CFR 1310.3.)

State means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and, as applicable, American Samoa and the Commonwealth of the Northern Marianas.

State agency means (a) the State educational agency; (b) any other agency of the State which has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in schools, as specified in §210.3(b); or (c) the FNSRO, where the FNSRO administers the Program as specified in §210.3(c).

State educational agency means, as the State legislature may determine, (a) the chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (b) a board of education controlling the State department of education.

Student with disabilities means any child who has a physical or mental impairment as defined in §15b.3 of the Department's nondiscrimination regulations (7 CFR part 15b).

Subsidized lunch (paid lunch) means a lunch served to children who are either not eligible for or elect not to receive the free or reduced price benefits offered under 7 CFR part 245. The Department subsidizes each paid lunch with both general cash assistance and donated foods. Although a paid lunch student pays for a large portion of his or her lunch, the Department's subsidy accounts for a significant portion of the cost of that lunch.

Yogurt means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Definition and Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, 21 CFR 131.200, 21 CFR 131.203, and 21 CFR 131.206, respectively.

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12580, Mar. 28, 1989; 56 FR 32939, July 17, 1991; 58 FR 42487, Aug. 10, 1993; 60 FR 31207, June 13, 1995; 62 FR 10189, Mar. 6, 1997; 64 FR 50740, Sept. 20, 1999; 65 FR 26912, May 9, 2000]

§210.3 Administration.

(a) *FNS.* FNS will act on behalf of the Department in the administration of the Program. Within FNS, the CND will be responsible for Program administration.

(b) *States.* Within the States, the responsibility for the administration of the Program in schools, as defined in §210.2, shall be in the State educational agency. If the State educational agency is unable to administer the Program in public or private nonprofit residential child care institutions or nonprofit private schools, then Program administration for such schools may be assumed by FNSRO as provided in paragraph (c) of this section, or such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer such schools. Each State agency desiring to administer the Program shall enter into a written agreement with the Department for the administration of the Program in accordance with the applicable requirements of this part; part 235; part 245; parts 15, 15a, 15b, and 3015 of Departmental regulations; and FNS instructions.

(c) *FNSRO.* The FNSRO will administer the Program in nonprofit private schools or public or nonprofit private residential child care institutions if the State agency is prohibited by law from disbursing Federal funds paid to such schools. In addition, the FNSRO will continue to administer the Program in those States in which nonprofit private schools or public or nonprofit private residential child care institutions have been under continuous FNS administration since October 1, 1980, unless the administration of the Program in such schools is assumed by the State. The FNSRO will, in each State in which it administers the Program, assume all responsibilities of a State agency as set forth in this part and part 245 of this chapter as appropriate. References in this part to ''State agency'' include FNSRO, as applicable, when it is the agency administering the Program.

(d) *School food authorities.* The school food authority shall be responsible for the administration of the Program in schools. State agencies shall ensure that school food authorities administer the Program in accordance with the applicable requirements of this part;

part 245; parts 15, 15a, 15b, and 3015 of Departmental regulations; and FNS instructions.

Subpart B—Reimbursement Process for States and School Food Authorities

§ 210.4 Cash and donated food assistance to States.

(a) *General.* To the extent funds are available, FNS will make cash assistance available in accordance with the provisions of this section to each State agency for lunches and meal supplements served to children under the National School Lunch and Commodity School Programs. To the extent donated foods are available, FNS will provide donated food assistance to distributing agencies for each lunch served in accordance with the provisions of this part and part 250 of this chapter.

(b) *Assistance for the National School Lunch Program.* The Secretary will make cash and/or donated food assistance available to each State agency and distributing agency, as appropriate, administering the National School Lunch Program, as follows:

(1) *Cash assistance for lunches:* Cash assistance payments are composed of a *general* cash assistance payment, authorized under section 4 of the Act, and a *special* cash assistance payment, authorized under section 11 of the Act. General cash assistance is provided to each State agency for *all* lunches served to children in accordance with the provisions of the National School Lunch Program. Special cash assistance is provided to each State agency for lunches served under the National School Lunch Program to children determined eligible for free or reduced price lunches in accordance with part 245 of this chapter. The total general cash assistance paid to each State for any fiscal year shall not exceed the lesser of amounts reported to FNS as reimbursed to school food authorities in accordance with § 210.5(d)(3) or the total calculated by multiplying the number of lunches reported in accordance with § 210.5(d)(1) for each month of service during the fiscal year, by the applicable national average payment rate prescribed by FNS. The total special assistance paid to each State for any fiscal year shall not exceed the lesser of amounts reported to FNS as reimbursed to school food authorities in accordance with § 210.5(d)(3) or the total calculated by multiplying the number of free and reduced price lunches reported in accordance with § 210.5(d)(1) for each month of service during the fiscal year by the applicable national average payment rate prescribed by FNS. In accordance with section 11 of the Act, FNS will prescribe annual adjustments to the per meal national average payment rate (general cash assistance) and the special assistance national average payment rates (special cash assistance) which are effective on July 1 of each year. These adjustments, which reflect changes in the food away from home series of the Consumer Price Index for all Urban Consumers, are annually announced by Notice in July of each year in the FEDERAL REGISTER. FNS will also establish maximum per meal rates of reimbursement within which a State may vary reimbursement rates to school food authorities. These maximum rates of reimbursement are established at the same time and announced in the same Notice as the national average payment rates.

(2) *Donated food assistance.* For each school year, FNS will provide distributing agencies with donated foods for lunches served under the National School Lunch Program as provided under part 250 of this chapter. The per lunch value of donated food assistance is adjusted by the Secretary annually to reflect changes as required under section 6 of the Act. These adjustments, which reflect changes in the Price Index for Foods Used in Schools and Institutions, are effective on July 1 of each year and are announced by Notice in the FEDERAL REGISTER in July of each year.

(3) *Cash assistance for meal supplements.* For those eligible schools (as defined in § 210.10(n)(1)) operating after-school care programs and electing to serve meal supplements to enrolled children, funds shall be made available to each State agency, each school year in an amount no less than the sum of the products obtained by multiplying:

(i) The number of meal supplements served in the afterschool care program within the State to children from families that do not satisfy the income standards for free and reduced price school meals by 2.75 cents;

(ii) The number of meal supplements served in the afterschool care program within the State to children from families that satisfy the income standard for free school meals by 30 cents;

(iii) The number of meal supplements served in the afterschool care program within the State to children from families that satisfy the income standard for reduced price school meals by 15 cents.

(4) The rates in paragraph (b)(3) are the base rates established in August 1981 for the CACFP. FNS shall prescribe annual adjustments to these rates in the same Notice as the National Average Payment Rates for lunches. These adjustments shall ensure that the reimbursement rates for meal supplements served under this part are the same as those implemented for meal supplements in the CACFP.

(c) *Assistance for the Commodity School Program.* FNS will make special cash assistance available to each State agency for lunches served in commodity schools in the same manner as special cash assistance is provided in the National School Lunch Program. Payment of such amounts to State agencies is subject to the reporting requirements contained in §210.5(d). FNS will provide donated food assistance in accordance with part 250 of this chapter. Of the total value of donated food assistance to which it is entitled, the school food authority may elect to receive cash payments of up to 5 cents per lunch served in its commodity school(s) for donated foods processing and handling expenses. Such expenses include any expenses incurred by or on behalf of a commodity school for processing or other aspects of the preparation, delivery, and storage of donated foods. The school food authority may have all or part of these cash payments retained by the State agency for use on its behalf for processing and handling expenses by the State agency or it may authorize the State agency to transfer to the distributing agency all or any part of these payments for use on its behalf for these expenses. Payment of such amounts to State agencies is subject to the reporting requirements contained in §210.5(d). The total value of donated food assistance is calculated on a school year basis by adding:

(1) The applicable national average payment rate (general cash assistance) prescribed by the Secretary for the period of July 1 through June 30 multiplied by the total number of lunches served during the school year under the Commodity School Program; and

(2) The national per lunch average value of donated foods prescribed by the Secretary for the period of July 1 through June 30 multiplied by the total number of lunches served during the school year under the Commodity School Program.

[53 FR 29147, Aug. 2, 1988, as amended at 58 FR 42487, Aug. 10, 1993; 60 FR 31207, June 13, 1995; 65 FR 26912, May 9, 2000]

§210.5 Payment process to States.

(a) *Grant award.* FNS will specify the terms and conditions of the State agency's grant in a grant award document and will generally make payments available by means of a Letter of Credit issued in favor of the State agency. The State agency shall obtain funds for reimbursement to participating school food authorities through procedures established by FNS in accordance with 7 CFR part 3015. State agencies shall limit requests for funds to such times and amounts as will permit prompt payment of claims or authorized advances. The State agency shall disburse funds received from such requests without delay for the purpose for which drawn. FNS may, at its option, reimburse a State agency by Treasury Check. FNS will pay by Treasury Check with funds available in settlement of a valid claim if payment for that claim cannot be made within the grant closeout period specified in paragraph (d) of this section.

(b) *Cash-in-lieu of donated foods.* All Federal funds to be paid to any State in place of donated foods will be made available as provided in part 240 of this chapter.

(c) *Recovery of funds.* FNS will recover any Federal funds made available to the State agency under this part

which are in excess of obligations reported at the end of each fiscal year in accordance with the reconciliation procedures specified in paragraph (d) of this section. Such recoveries shall be reflected by a related adjustment in the State agency's Letter of Credit.

(d) *Substantiation and reconciliation process.* Each State agency shall maintain Program records as necessary to support the reimbursement payments made to school food authorities under §210.7 and §210.8 and the reports submitted to FNS under this paragraph. The State agency shall ensure such records are retained for a period of 3 years or as otherwise specified in §210.23(c).

(1) *Monthly report.* Each State agency shall submit a final Report of School Program Operations (FNS–10) to FNS for each month. The final reports shall be limited to claims submitted in accordance with §210.8 of this part. For the month of October, the final report shall include the total number of children approved for free lunches, the total number of children approved for reduced price lunches, and the total number of children enrolled in participating public schools, private schools, and residential child care institutions, respectively, as of the last day of operation in October. The final reports shall be postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not submitted within this time limit unless FNS grants an exception. Upward adjustments to a State's report shall not be made after 90 days from the month covered by the report unless authorized by FNS. Downward adjustments to a State's report shall always be made regardless of when it is determined that such adjustments are necessary. FNS authorization is not required for downward adjustments. Any adjustments to a State's report shall be reported to FNS in accordance with procedures established by FNS.

(2) *Quarterly report.* Each State agency shall also submit to FNS a quarterly Financial Status Report (SF–269) on the use of Program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter.

(3) *End of year report.* Each State agency shall submit a final Financial Status Report (SF–269) for each fiscal year. This final fiscal year grant closeout report shall be postmarked and/or submitted to FNS within 120 days after the end of each fiscal year or part thereof that the State agency administered the Program. Obligations shall be reported only for the fiscal year in which they occur. FNS will not be responsible for reimbursing Program obligations reported later than 120 days after the close of the fiscal year in which they were incurred. Grant closeout procedures are to be carried out in accordance with 7 CFR part 3015.

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12580, Mar. 28, 1989; 56 FR 32939, July 17, 1991]

§ 210.6 Use of Federal funds.

General. State agencies shall use Federal funds made available under the Program to reimburse or make advance payments to school food authorities in connection with lunches and meal supplements served in accordance with the provisions of this part; *except that,* with the approval of FNS, any State agency may reserve an amount up to one percent of the funds earned in any fiscal year under this part for use in carrying out special developmental projects. Advance payments to school food authorities may be made at such times and in such amounts as are necessary to meet the current fiscal obligations. All Federal funds paid to any State in place of donated foods shall be used as provided in part 240 of this chapter.

[53 FR 29147, Aug. 2, 1988, as amended at 58 FR 42487, Aug. 10, 1993]

§ 210.7 Reimbursement for school food authorities.

(a) *General.* Reimbursement payments to finance nonprofit school food service operations shall be made only to school food authorities operating under a written agreement with the State agency. Subject to the provisions of §210.8(c), such payments may be made for lunches and meal supplements served in accordance with provisions of this part and part 245 in the calendar month preceding the calendar

month in which the agreement is executed. These reimbursement payments include general cash assistance for all lunches served to children under the National School Lunch Program and special cash assistance payments for free or reduced price lunches served to children determined eligible for such benefits under the National School Lunch and Commodity School Programs. Reimbursement payments shall also be made for meal supplements served to eligible children in after-school care programs in accordance with the rates established in §210.4(b)(3). Approval shall be in accordance with part 245 of this chapter.

(b) *Assignment of rates.* At the beginning of each school year, State agencies shall establish the per meal rates of reimbursement for school food authorities participating in the Program. These rates of reimbursement may be assigned at levels based on financial need; *except that,* the rates are not to exceed the maximum rates of reimbursement established by the Secretary under §210.4(b) and are to permit reimbursement for the total number of lunches in the State from funds available under §210.4. Within each school food authority, the State agency shall assign the same rate of reimbursement from general cash assistance funds for all lunches served to children under the Program. Assigned rates of reimbursement may be changed at any time by the State agency, *provided that* notice of any change is given to the school food authority. The total general and special cash assistance reimbursement paid to any school food authority for lunches served to children during the school year are not to exceed the sum of the products obtained by multiplying the total reported number of lunches, by type, served to eligible children during the school year by the applicable maximum per lunch reimbursements prescribed for the school year for each type of lunch.

(c) *Reimbursement limitations.* To be entitled to reimbursement under this part, each school food authority shall ensure that Claims for Reimbursement are limited to the number of free, reduced price and paid lunches and meal supplements that are served to children eligible for free, reduced price and paid lunches and meal supplements, respectively, for each day of operation.

(1) *Lunch count system.* To ensure that the Claim for Reimbursement accurately reflects the number of lunches and meal supplements served to eligible children, the school food authority shall, at a minimum:

(i) Correctly approve each child's eligibility for free and reduced price lunches and meal supplements based on the requirements prescribed under 7 CFR part 245;

(ii) Maintain a system to issue benefits and to update the eligibility of children approved for free or reduced price lunches and meal supplements. The system shall:

(A) Accurately reflect eligibility status as well as changes in eligibility made after the initial approval process due to verification findings, transfers, reported changes in income or household size, etc.; and

(B) Make the appropriate changes in eligibility after the initial approval process on a timely basis so that the mechanism the school food authority uses to identify currently eligible children provides a current and accurate representation of eligible children. Changes in eligibility which result in increased benefit levels shall be made as soon as possible but no later than 3 operating days of the date the school food authority makes the final decision on a child's eligibility status. Changes in eligibility which result in decreased benefit levels shall be made as soon as possible but no later than 10 operating days of the date the school food authority makes the final decision on the child's eligibility status.

(iii) Base Claims for Reimbursement on lunch counts, taken daily at the point of service, which correctly identify the number of free, reduced price and paid lunches served to eligible children;

(iv) Correctly record, consolidate and report those lunch and supplement counts on the Claim for Reimbursement; and

(v) Ensure that Claims for Reimbursement do not request payment for any excess lunches produced, as prohibited in §210.10(a)(2), or non-Program lunches (i.e., a la carte or adult

lunches) or for more than one meal supplement per child per day.

(2) *Point of service alternatives.*

(i) State agencies may authorize alternatives to the point of service lunch counts provided that such alternatives result in accurate, reliable counts of the number of free, reduced price and paid lunches served, respectively, for each serving day. State agencies are encouraged to issue guidance which clearly identifies acceptable point of service alternatives and instructions for proper implementation. School food authorities may select one of the State agency approved alternatives without prior approval.

(ii) In addition, on a case-by-case basis, State agencies may authorize school food authorities to use other alternatives to the point of service lunch count; provided that such alternatives result in an accurate and reliable lunch count system. Any request to use an alternative lunch counting method which has not been previously authorized under paragraph (2)(i) is to be submitted in writing to the State agency for approval. Such request shall provide detail sufficient for the State agency to assess whether the proposed alternative would provide an accurate and reliable count of the number of lunches, by type, served each day to eligible children. The details of each approved alternative shall be maintained on file at the State agency for review by FNS.

(d) The State agency shall reimburse the school food authority for meal supplements served in eligible schools (as defined in § 210.10(n)(1)) operating after-school care programs under the NSLP in accordance with the rates established in § 210.4(b).

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12581, Mar. 28, 1989; 56 FR 32939, July 17, 1991; 58 FR 42487, Aug. 10, 1993; 60 FR 31207, June 13, 1995; 65 FR 26912, May 9, 2000]

§ 210.8 Claims for reimbursement.

(a) *Internal controls.* The school food authority shall establish internal controls which ensure the accuracy of lunch counts prior to the submission of the monthly Claim for Reimbursement. At a minimum, these internal controls shall include: an on-site review of the lunch counting and claiming system employed by each school within the jurisdiction of the school food authority; comparisons of daily free, reduced price and paid lunch counts against data which will assist in the identification of lunch counts in excess of the number of free, reduced price and paid lunches served each day to children eligible for such lunches; and a system for following up on those lunch counts which suggest the likelihood of lunch counting problems.

(1) *On-site reviews.* Every school year, each school food authority with more than one school shall perform no less than one on-site review of the lunch counting and claiming system employed by each school under its jurisdiction. The on-site review shall take place prior to February 1 of each school year. Further, if the review discloses problems with a school's meal counting or claiming procedures, the school food authority shall: ensure that the school implements corrective action; and, within 45 days of the review, conducts a follow-up on-site review to determine that the corrective action resolved the problems. Each on-site review shall ensure that the school's claim is based on the counting system authorized by the State agency under § 210.7(c) of this part and that the counting system, as implemented, yields the actual number of reimbursable free, reduced price and paid lunches, respectively, served for each day of operation.

(2) *School food authority claims review process.* Prior to the submission of a monthly Claim for Reimbursement, each school food authority shall review the lunch count data for each school under its jurisdiction to ensure the accuracy of the monthly Claim for Reimbursement. The objective of this review is to ensure that monthly claims include only the number of free, reduced price and paid lunches served on any day of operation to children currently eligible for such lunches.

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

(A) Develop internal control procedures that ensure accurate meal counts. The school food authority shall submit any internal controls developed

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

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

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

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

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

(4) *Follow-up activity*. The school food authority shall promptly follow-up through phone contact, on-site visits or other means when the internal controls used by schools in accordance with paragraph (a)(2)(i) of this section or the claims review process used by schools in accordance with paragraphs (a)(2)(ii) and (a)(3) of this section suggest the likelihood of lunch count problems. When problems or errors are identified, the lunch counts shall be corrected prior to submission of the monthly Claim for Reimbursement. Improvements to the lunch count system shall also be made to ensure that the lunch counting system consistently results in lunch counts of the actual number of reimbursable free, reduced price and paid lunches served for each day of operation.

(5) *Recordkeeping.* School food authorities shall maintain on file, each month's Claim for Reimbursement and all data used in the claims review process, by school. Records shall be retained as specified in §210.23(c) of this part. School food authorities shall make this information available to the Department and the State agency upon request.

(b) *Monthly claims.* To be entitled to reimbursement under this part, each school food authority shall submit to the State agency, a monthly Claim for Reimbursement, as described in paragraph (c) of this section.

(1) *Submission timeframes.* A final Claim for Reimbursement shall be postmarked or submitted to the State agency not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless otherwise authorized by FNS.

(2) *State agency claims review process.* The State agency shall review each school food authority's Claim for Reimbursement, on a monthly basis, in an effort to ensure that monthly claims are limited to the number of free and reduced price lunches served, by type, to eligible children.

(i) The State agency shall, at a minimum, compare the number of free and reduced price lunches claimed to the number of children approved for free and reduced price lunches enrolled in the school food authority for the month of October times the days of operation times the attendance factor employed by the school food authority in accordance with paragraph (a)(3) of this section or the internal controls

used by schools in accordance with paragraph (a)(2)(i) of this section. At its discretion, the State agency may conduct this comparison against data which reflects the number of children approved for free and reduced price lunches for a more current month(s) as collected pursuant to paragraph (c)(2) of this section.

(ii) In lieu of conducting the claims review specified in paragraph (b)(2)(i) of this section, the State agency may conduct alternative analyses for those Claims for Reimbursement submitted by residential child care institutions. Such alternatives analyses shall meet the objective of ensuring that the monthly Claims for Reimbursement are limited to the numbers of free and reduced price lunches served, by type, to eligible children.

(3) *Follow-up activity.* The State agency shall promptly follow-up through phone contact, on-site visits, or other means when the claims review process suggests the likelihood of lunch count problems.

(4) *Corrective action.* The State agency shall promptly take corrective action with respect to any Claim for Reimbursement which includes more than the number of lunches served, by type, to eligible children. In taking corrective action, State agencies may make adjustments on claims filed within the 60-day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of School Program Operations (FNS–10) for the claim month required under § 210.5(d) of this part. Upward adjustments in Program funds claimed which are not reflected in the final FNS–10 for the claim month shall not be made unless authorized by FNS. Except that, upward adjustments for the current and prior fiscal years resulting from any review or audit may be made, at the discretion of the State agency. Downward adjustments in amounts claimed shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary.

(c) *Content of claim.* The Claim for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Report of School Program Operations required under § 210.5(d) of this part. Such data shall include, at a minimum, the number of free, reduced price and paid lunches and meal supplements served to eligible children. The claim shall be signed by a school food authority official.

(1) *Consolidated claim.* The State agency may authorize a school food authority to submit a consolidated Claim for Reimbursement for all schools under its jurisdiction, *provided that,* the data on each school's operations required in this section are maintained on file at the local office of the school food authority and the claim separates consolidated data for commodity schools from data for other schools. Unless otherwise approved by FNS, the Claim for Reimbursement for any month shall include only lunches and meal supplements served in that month except if the first or last month of Program operations for any school year contains 10 operating days or less, such month may be combined with the Claim for Reimbursement for the appropriate adjacent month. However, Claims for Reimbursement may not combine operations occurring in two fiscal years. If a single State agency administers any combination of the Child Nutrition Programs, a school food authority shall be able to use a common claim form with respect to claims for reimbursement for meals served under those programs.

(2) *October data.* For the month of October, the State agency shall also obtain, either through the Claim for Reimbursement or other means, the total number of children approved for free lunches and meal supplements, the total number of children approved for reduced price lunches and meal supplements, and the total number of children enrolled in the school food authority as of the last day of operation in October. The school food authority shall submit this data to the State agency no later than December 31 of each year. State agencies may establish shorter deadlines at their discretion. In addition, the State agency may require school food authorities to provide this data for a more current month if for use in the State agency

claims review process under paragraph (c)(2) of this section.

(d) *Advance funds.* The State agency may advance funds available for the Program to a school food authority in an amount equal to the amount of reimbursement estimated to be needed for one month's operation. Following the receipt of claims, the State agency shall make adjustments, as necessary, to ensure that the total amount of payments received by the school food authority for the fiscal year does not exceed an amount equal to the number of lunches and meal supplements by reimbursement type served to children times the respective payment rates assigned by the State in accordance with §210.7(b). The State agency shall recover advances of funds to any school food authority failing to comply with the 60-day claim submission requirements in paragraph (b) of this section.

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12581, Mar. 28, 1989; 56 FR 32940, July 17, 1991; 58 FR 42487, Aug. 10, 1993; 60 FR 31207, June 13, 1995; 64 FR 50740, Sept. 20, 1999]

Subpart C—Requirements for School Food Authority Participation

§210.9 Agreement with State agency.

(a) *Application.* An official of a school food authority shall make written application to the State agency for any school in which it desires to operate the Program. Applications shall provide the State agency with sufficient information to determine eligibility. The school food authority shall also submit for approval a Free and Reduced Price Policy Statement in accordance with part 245 of this chapter.

(b) *Agreement.* Each school food authority approved to participate in the program shall enter into a written agreement with the State agency that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State agency to suspend or terminate the agreement in accordance with §210.25. If a single State agency administers any combination of the Child Nutrition Programs, that State agency shall provide each school food authority with a single agreement with respect to the operation of those programs. The agreement shall contain a statement to the effect that the ''School Food Authority and participating schools under its jurisdiction, shall comply with all provisions of 7 CFR parts 210 and 245.'' This agreement shall provide that each school food authority shall, with respect to participating schools under its jurisdiction:

(1) Maintain a nonprofit school food service and observe the limitations on the use of nonprofit school food service revenues set forth in §210.14(a) and the limitations on any competitive school food service as set forth in §210.11(b);

(2) Limit its net cash resources to an amount that does not exceed 3 months average expenditures for its nonprofit school food service or such other amount as may be approved in accordance with §210.19(a);

(3) Maintain a financial management system as prescribed under §210.14(c);

(4) Comply with the requirements of the Department's regulations regarding financial management (7 CFR part 3015);

(5) Serve lunches, during the lunch period, which meet the minimum requirements prescribed in §210.10;

(6) Price the lunch as a unit;

(7) Serve lunches free or at a reduced price to all children who are determined by the school food authority to be eligible for such meals under 7 CFR part 245;

(8) Claim reimbursement at the assigned rates only for reimbursable free, reduced price and paid lunches served to eligible children in accordance with 7 CFR part 210. Agree that the school food authority official signing the claim shall be responsible for reviewing and analyzing meal counts to ensure accuracy as specified in §210.8 governing claims for reimbursement. Acknowledge that failure to submit accurate claims will result in the recovery of an overclaim and may result in the withholding of payments, suspension or termination of the program as specified in §210.25. Acknowledge that if failure to submit accurate claims reflects embezzlement, willful misapplication of funds, theft, or fraudulent activity, the penalties specified in §210.26 shall apply;

(9) Count the number of free, reduced price and paid reimbursable meals

served to eligible children at the point of service, or through another counting system if approved by the State agency;

(10) Submit Claims for Reimbursement in accordance with § 210.8;

(11) Comply with the requirements of the Department's regulations regarding nondiscrimination (7 CFR parts 15, 15a, 15b);

(12) Make no discrimination against any child because of his or her eligibility for free or reduced price meals in accordance with the approved Free and Reduced Price Policy Statement;

(13) Enter into an agreement to receive donated foods as required by 7 CFR part 250;

(14) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations;

(15) Accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by the Department;

(16) Maintain necessary facilities for storing, preparing and serving food;

(17) Upon request, make all accounts and records pertaining to its school food service available to the State agency and to FNS, for audit or review, at a reasonable time and place. Such records shall be retained for a period of 3 years after the date of the final Claim for Reimbursement for the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the 3 year period as long as required for resolution of the issues raised by the audit;

(18) Maintain files of currently approved and denied free and reduced price applications, respectively, and the names of children approved for free lunches based on documentation certifying that the child is included in a household approved to receive benefits under the Food Stamp Program, Food Distribution Program for Households on Indian Reservations (FDPIR) or Temporary Assistance for Needy Families (TANF).If the applications and/or documentation are maintained at the school food authority level, they shall be readily retrievable by school;

(19) Retain the individual applications for free and reduced price lunches and meal supplements submitted by families for a period of 3 years after the end of the fiscal year to which they pertain or as otherwise specified under paragraph (b)(17) of this section.

(20) No later than March 1, 1997, and no later than December 31 of each year thereafter, provide the State agency with a list of all elementary schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day the preceding October. The State agency may designate a month other than October for the collection of this information, in which case the list must be provided to the State agency within 60 calendar days following the end of the month designated by the State agency. In addition, each school food authority shall provide, when available for the schools under its jurisdiction, and upon the request of a sponsoring organization of day care homes of the Child and Adult Care Food Program, information on the boundaries of the attendance areas for the elementary schools identified as having 50 percent or more of enrolled children certified eligible for free or reduced price meals.

(c) *Afterschool care requirements.* Those school food authorities with eligible schools (as defined in § 210.10(n)(1)) that elect to serve meal supplements during afterschool care programs, shall agree to:

(1) Serve meal supplements which meet the minimum requirements prescribed in § 210.10;

(2) Price the meal supplement as a unit;

(3) Serve meal supplements free or at a reduced price to all children who are determined by the school food authority to be eligible for free or reduced price school meals under 7 CFR part 245;

(4) If charging for meals, the charge for a reduced price meal supplement shall not exceed 15 cents;

(5) Claim reimbursement at the assigned rates only for meal supplements served in accordance with the agreement;

(6) Claim reimbursement for no more than one meal supplement per child per day;

(7) Review each afterschool care program two times a year; the first review shall be made during the first four weeks that the school is in operation each school year, except that an afterschool care program operating year round shall be reviewed during the first four weeks of its initial year of operation, once more during its first year of operation, and twice each school year thereafter; and

(8) Comply with all requirements of this part, except that, claims for reimbursement need not be based on ''point of service'' meal supplement counts (as required by § 210.9(b)(9)).

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12581, Mar. 28, 1989; 56 FR 32941, July 17, 1991; 58 FR 42488, Aug. 10, 1993; 60 FR 31208, June 13, 1995; 62 FR 901, Jan. 7, 1997; 63 FR 9104, Feb. 24, 1998; 64 FR 50740, Sept. 20, 1999; 64 FR 72471, Dec. 28, 1999; 65 FR 26912, May 9, 2000]

§ 210.10 What are the nutrition standards and menu planning approaches for lunches and the requirements for afterschool snacks?

(a) *What are the general requirements*?

(1) *General nutrition requirements.* Schools must provide nutritious and well-balanced meals to all the children they serve.

(i) *Requirements for lunch.* For children age 2 or older, schools must offer lunches that meet, at a minimum, the nutrition standards in paragraph (b) of this section. Compliance with the nutrition standards and the appropriate nutrient and calorie levels is determined by averaging lunches planned to be offered over a school week. Under any menu planning approach, schools must plan and produce at least enough food to meet the appropriate calorie and nutrient levels for the ages/grades of the children in the school (see paragraphs (c), (d), (i)(1) or (l) of this section, depending on the menu planning approach used). Also, if schools use one of the food-based menu planning approaches, they must plan and produce at least enough food to offer each child the minimum quantities under the meal pattern (see paragraph (k) of this section). Schools offering lunches to infants must meet the meal pattern requirements in paragraph (o) of this section.

(ii) *Requirements for afterschool snacks.* Schools offering afterschool snacks in afterschool care programs must meet the meal pattern requirements in paragraph (n) of this section. Schools must plan and produce enough food to offer each child the minimum quantities under the meal pattern in paragraph (n) of this section. The component requirements for meal supplements served under the Child and Adult Care Food Program authorized under part 226 of this chapter also apply to afterschool snacks served in accordance with paragraph (n) of this section.

(2) *Unit pricing.* Schools must price each meal as a unit. Schools need to consider participation trends in an effort to provide one reimbursable lunch and, if applicable, one reimbursable afterschool snack for each child every day. If there are leftover meals, schools may offer them to the students but cannot get reimbursement for them.

(3) *Production and menu records.* Schools must keep production and menu records for the meals they produce. These records must show how the meals contribute to the required food components, food items or menu items every day. In addition, for lunches, these records must show how the lunches contribute to the nutrition standards in paragraph (b) of this section and the appropriate calorie and nutrient levels for the ages/grades of the children in the school (see paragraphs (c), (d), or (i)(1) or (l) of this section, depending on the menu planning approach used) over the school week. If applicable, schools or school food authorities must maintain nutritional analysis records to demonstrate that lunches meet, when averaged over each school week:

(i) The nutrition standards provided in paragraph (b) of this section; and

(ii) The nutrient and calorie levels for children for each age or grade group in accordance with paragraphs (c) or (i)(1) of this section or developed under paragraph (l) of this section.

(b) *What are the specific nutrition standards for lunches?* Children age 2 and above must be offered lunches that meet the following nutrition standards for their age/grade group:

(1) Provision of one-third of the Recommended Dietary Allowances (RDAs) for protein, calcium, iron, vitamin A and vitamin C in the appropriate levels for the ages/grades (see paragraphs (c), (d), (i)(1) or (l) of this section, depending on the menu planning approach used);

(2) Provision of the lunchtime energy allowances (calories) in the appropriate levels (see paragraphs (c), (d),(i)(1) or (l) of this section, depending on the menu planning approach used);

(3) These applicable recommendations from the 1995 Dietary Guidelines for Americans:

(i) Eat a variety of foods;

(ii) Limit total fat to 30 percent of total calories;

(iii) Limit saturated fat to less than 10 percent of total calories;

(iv) Choose a diet low in cholesterol;

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

(vi) Choose a diet moderate in salt and sodium.

(4) These measures of compliance with the applicable recommendations of the 1995 Dietary Guidelines for Americans:

(i) Limit the percent of calories from total fat to 30 percent of the actual number of calories offered;

(ii) Limit the percent of calories from saturated fat to less than 10 percent of the actual number of calories offered;

(iii) Reduce sodium and cholesterol levels; and

(iv) Increase the level of dietary fiber.

(5) School food authorities have several ways to plan menus. The minimum levels of nutrients and calories that lunches must offer depends on the menu planning approach used and the ages/grades served. The menu planning approaches are:

(i) Nutrient standard menu planning (see paragraphs (c) and (i) of this section);

(ii) Assisted nutrient standard menu planning (see paragraphs (c) and (j) of this section);

(iii) Traditional food-based menu planning (see paragraphs (d)(1) and (k) of this section);

(iv) Enhanced food-based menu planning (see paragraphs (d)(2) and (k) of this section); or

(v) Alternate menu planning (see paragraph (l) of this section).

(c) *What are the levels for nutrients and calories for lunches planned under the nutrient standard or assisted nutrient standard menu planning approaches*?

(1) *Required levels.* The required levels are:

MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL LUNCHES
NUTRIENT STANDARD MENU PLANNING APPROACHES (SCHOOL WEEK AVERAGES)

	MINIMUM REQUIREMENTS			OPTIONAL
NUTRIENTS AND ENERGY ALLOWANCES	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]	[1, 2]	[2]	[1, 2]
Saturated fat (as a percentage of actual total food energy)	[1]	[1, 3]	[3]	[1, 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

[1] 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."

[2] Not to exceed 30 percent over a school week

[3] Less than 10 percent over a school week

(2) *Optional levels.* Optional levels are:

OPTIONAL MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL LUNCHES NUTRIENT STANDARD MENU PLANNING APPROACHES (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
Total fat (as a percentage of actual total food energy)	[1,2]	[2]	[2]	[2]
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
RDA for Vitamin C (mg)	14.6	15	16.7	19.2

[1] 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."

[2] Not to exceed 30 percent over a school week

[3] Less than 10 percent over a school week

(3) *Customized levels.* Schools may also develop a set of nutrient and calorie levels for a school week. These levels are customized for the age groups of the children in the particular school or school food authority.

(d) *What are the nutrient and calorie levels for lunches planned under the food-based menu planning approaches?*

(1) *Traditional approach.* For the traditional food-based menu planning approach, the required levels are:

MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL LUNCHES TRADITIONAL FOOD-BASED MENU PLANNING APPROACH (SCHOOL WEEK AVERAGES)				
	MINIMUM REQUIREMENTS			RECOMMENDED
NUTRIENTS AND ENERGY ALLOWANCES	GROUP II PRESCHOOL AGES 3-4	GROUP III GRADES K-3 AGES 5-8	GROUP IV GRADES 4-12 AGES 9 AND OLDER	GROUP V GRADES 7-12 AGES 12 AND OLDER
Energy allowances (calories)	517	633	785	825
Total fat (as a percentage of actual total food energy)	[1]	[1, 2]	[2]	[2]
Saturated fat (as a percentage of actual total food energy)	[1]	[1, 3]	[3]	[3]
RDA for protein (g)	7	9	15	16
RDA for calcium (mg)	267	267	370	400
RDA for iron (mg)	3.3	3.3	4.2	4.5
RDA for Vitamin A (RE)	150	200	285	300
RDA for Vitamin C (mg)	14	15	17	18

[1] 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."

[2] Not to exceed 30 percent over a school week

[3] Less than 10 percent over a school week

(2) *Enhanced approach.* For the enhanced food-based menu planning approach, the required levels are:

MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL LUNCHES ENHANCED FOOD-BASED MENU PLANNING APPROACH (SCHOOL WEEK AVERAGES)				
	MINIMUM REQUIREMENTS			OPTIONAL
NUTRIENTS AND ENERGY ALLOWANCES	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]	[1, 2]	[2]	[1,2]
Saturated fat (as a percentage of actual total food energy)	[1]	[1, 3]	[3]	[1,3]
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

[1] 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."

[2] Not to exceed 30 percent over a school week

[3] Less than 10 percent over a school week

(e) *Must schools offer choices at lunch?* FNS encourages schools to offer children a selection of foods and menu items at lunch. Choices provide variety and encourage consumption. Schools may offer choices of reimbursable lunches or foods within a reimbursable lunch. Children who are eligible for free or reduced price lunches must be allowed to take any reimbursable lunch or any choices offered as part of a reimbursable lunch. Schools may establish different unit prices for each lunch offered provided that the benefits made available to children eligible for free or reduced price lunches are not affected.

(f) *What are the requirements for lunch periods?*

(1) *Timing.* Schools must offer lunches meeting the requirements of this section during the period the school has designated as the lunch period. Schools must offer lunches between 10:00 a.m. and 2:00 p.m. Schools may request an exemption from these times only from FNS.

(2) *Lunch periods for young children.* With State agency approval, schools are encouraged to serve children ages one through five over two service periods. Schools may divide the quantities and/or the menu items, foods, or food items offered each time any way they wish.

(3) *Adequate lunch periods.* FNS encourages schools to provide sufficient lunch periods that are long enough to give all students enough time to be served and to eat their lunches.

(g) *What exceptions and variations are allowed in meals?*

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

(2) *Variations for ethnic, religious, or economic reasons.* Schools should consider ethnic and religious preferences when planning and preparing meals. Variations on an experimental or continuing basis in the food components for the food-based menu planning approaches in paragraphs (k) or (n) of this section may be allowed by FNS. Any variations must be nutritionally

sound and needed to meet ethnic, religious, or economic needs.

(3) *Exceptions for natural disasters.* If there is a natural disaster or other catastrophe, FNS may temporarily allow schools to serve meals for reimbursement that do not meet the requirements in this section.

(h) *What must schools do about nutrition disclosure?* To the extent that school food authorities identify foods in a menu, or on the serving line or through other available means of communicating with program participants, school food authorities must identify products or dishes containing more than 30 parts fully hydrated alternate protein products (as specified in appendix A of this part) to less than 70 parts beef, pork, poultry or seafood on an uncooked basis, in a manner which does not characterize the product or dish solely as beef, pork, poultry or seafood. Additionally, FNS encourages schools to inform the students, parents, and the public about efforts they are making to meet the nutrition standards (see paragraph (b) of this section) for school lunches.

(i) *What are the requirements for lunches under the nutrient standard menu planning approach?*

(1) *Nutrient levels.*

(i) *Adjusting nutrient levels for young children.* Schools with children who are age 2 must at least meet the nutrition standards in paragraph (b) of this section and the preschool nutrient and calorie levels in paragraph (c)(1) of this section over a school week. Schools may also use the preschool nutrient and calorie levels in paragraph (c)(2) of this section or may calculate nutrient and calorie levels for two year olds. FNS has a method for calculating these levels in guidance materials for menu planning.

(ii) *Minimum levels for nutrients.* Lunches must at least offer the nutrient and calorie levels for the required grade groups in the table in paragraph (c)(1) of this section. Schools may also offer lunches meeting the nutrient and calorie levels for the age groups in paragraph (c)(2) of this section. If only one grade or age group is outside either of these established levels, schools may follow the levels for the majority of the children. Schools may also customize the nutrient and calorie levels for the children they serve. FNS has a method for calculating these levels in guidance materials for menu planning.

(2) *Reimbursable lunches.*

(i) *Contents of a reimbursable lunch.* A reimbursable lunch must include at least three menu items. One of those menu items must be an entree, and one must be fluid milk as a beverage. An entree is a combination of foods or is a single food item offered as the main course. All menu items or foods offered in a reimbursable lunch contribute to the nutrition standards in paragraph (b) of this section and to the levels of nutrients and calories that must be met in paragraphs (c) or (i)(1) of this section. Unless offered as part of a menu item in a reimbursable lunch, foods of minimal nutritional value (see appendix B to part 210) are not included in the nutrient analysis. Reimbursable lunches planned under the nutrient standard menu planning approach must meet the nutrition standards in paragraph (b) of this section and the appropriate nutrient and calorie levels in either paragraph (c) or paragraph (i)(1) of this section.

(ii) *Offer versus serve.* Schools must offer at least three menu items for lunches. Senior high (as defined by the State educational agency) school students must select at least two menu items and are allowed to decline a maximum of two menu items. The student must always take the entree. The price of a reimbursable lunch does not change if the student does not take a menu item or requests smaller portions. At the discretion of the school food authority, students below the senior high level may also participate in offer versus serve.

(3) *Doing the analysis.* Schools using nutrient standard menu planning must conduct the analysis on all menu items and foods offered in a reimbursable lunch. The analysis is conducted over a school week. Unless offered as part of a menu item in a reimbursable lunch, foods of minimal nutritional value (see appendix B to part 210) are not included in the nutrient analysis.

(4) *Software elements.*

(i) *The Child Nutrition Database.* The nutrient analysis is based on the Child Nutrition Database. This database is

part of the software used to do a nutrient analysis. Software companies or others developing systems for schools may contact FNS for more information about the database.

(ii) *Software evaluation.* FNS or an FNS designee evaluates any nutrient analysis software before it may be used in schools. FNS or its designee determines if the software, as submitted, meets the minimum requirements. The approval of software does not mean that FNS or USDA endorses it. The software must be able to do all functions after the basic data is entered. The required functions include weighted averages and the optional combined analysis of the lunch and breakfast programs.

(5) *Nutrient analysis procedures.*

(i) *Weighted averages.* Schools must include all menu items and foods offered in reimbursable lunches in the nutrient analysis. Menu items and foods are included based on the portion sizes and projected serving amounts. They are also weighted based on their proportionate contribution to the lunches offered. This means that menu items or foods more frequently offered are weighted more heavily than those not offered as frequently. Schools calculate weighting as indicated by FNS guidance and by the guidance provided by the software. Through September 30, 2003, schools are not required to conduct a weighted analysis.

(ii) *Analyzed nutrients.* The analysis includes all menu items and foods offered over a school week. The analysis must determine the levels of: Calories, protein, vitamin A, vitamin C, iron, calcium, total fat, saturated fat, sodium, cholesterol and dietary fiber.

(iii) *Combining the analysis of the lunch and breakfast programs.* At their option, schools may combine the analysis of lunches offered under this part and breakfasts offered under part 220 of this Chapter. The analysis is done proportionately to the levels of participation in each program based on FNS guidance.

(6) *Comparing the results of the nutrient analysis.* Once the procedures in paragraph (i)(5) of this section are completed, schools must compare the results of the analysis to the appropriate nutrient and calorie levels, by age/grade groups, in paragraph (c) of this section or those developed under paragraph (i)(1) of this section. This comparison determines the school week's average. Schools must also make comparisons to the nutrition standards in paragraph (b) of this section to determine how well they are meeting the nutrition standards over the school week.

(7) *Adjustments to the menus.* Once schools know the results of the nutrient analysis based on the procedures in paragraphs (i)(5) and (i)(6) of this section, they must adjust future menu cycles to reflect production and how often the menu items and foods are offered. Schools may need to reanalyze menus when the students' selections change and, consequently, production levels change. Schools may need to change the menu items and foods offered given the students' selections and may need to modify the recipes and other specifications to make sure that the nutrition standards in paragraph (b) and either paragraphs (c) or (i)(1) of this section are met.

(8) *Standardized recipes.* If a school follows the nutrient standard menu planning approach, it must develop and follow standardized recipes. A standardized recipe is a recipe that was tested to provide an established yield and quantity using the same ingredients for both measurement and preparation methods. Any standardized recipes developed by USDA/FNS are in the Child Nutrition Database. If a school has its own recipes, they must be standardized and analyzed to determine the levels of calories, nutrients, and dietary components listed in paragraph (i)(5)(ii) of this section. Schools must add any local recipes to their local database as outlined in FNS guidance.

(9) *Processed foods.* The Child Nutrition Database includes a number of processed foods. Schools may use purchased processed foods and menu items that are not in the Child Nutrition Database. Schools or the State agency must add any locally purchased processed foods and menu items to their local database as outlined in FNS guidance. Schools or the State agency must obtain the levels of calories, nutrients, and dietary components listed in paragraph (i)(5)(ii) of this section.

(10) *Menu substitutions.* Schools may need to substitute foods or menu items in a menu that was already analyzed. If the substitution(s) occurs more than two weeks before the planned menu is served, the school must reanalyze the revised menu. If the substitution(s) occurs two weeks or less before the planned menu is served, the school does not need to do a reanalysis. However, schools should always try to substitute similar foods.

(11) *Meeting the nutrition standards.* The school's analysis shows whether their menus are meeting the nutrition standards in paragraph (b) of this section and the appropriate levels of nutrients and calories in paragraph (c) of this section or customized levels developed under paragraph (i)(1) of this section. If the analysis shows that the menu(s) are not meeting these standards, the school needs to take action to make sure that the lunches meet the nutrition standards and the calorie, nutrient, and dietary component levels. Actions may include technical assistance and training and may be taken by the State agency, the school food authority or by the school as needed.

(12) *Other Child Nutrition Programs and nutrient standard menu planning.* School food authorities that operate the Summer Food Service Program (part 225 of this chapter) and/or the Child and Adult Care Food Program (part 226 of this chapter) may, with State agency approval, prepare lunches for these programs using the nutrient standard menu planning approach for children age two and over. FNS has guidance on the levels of nutrients and calories for adult lunches under the Child and Adult Care Food Program. However, afterschool snacks continue to use the appropriate program's meal pattern.

(j) *What are the requirements for lunches under the assisted nutrient standard menu planning approach?* (1) *Definition of assisted nutrient standard menu planning.* Some school food authorities may not be able to do all of the procedures necessary for nutrient standard menu planning. The assisted nutrient standard menu planning approach provides schools with menu cycles developed and analyzed by other sources. These sources include the State agency, other school food authorities, consultants, or food service management companies.

(2) *Elements of assisted nutrient standard menu planning.* School food authorities using menu cycles developed under assisted nutrient standard menu planning must follow the procedures in paragraphs (i)(1) through (i)(10) of this section. The menu cycles must also incorporate local food preferences and accommodate local food service operations. The menus cycles must meet the nutrition standards in paragraph (b) of this section and meet the nutrient and calorie levels for nutrient standard menu planning in paragraph (c) or paragraph (i)(1) of this section. The supplier of the assisted nutrient standard menu planning approach must also develop and provide recipes, food product specifications, and preparation techniques. All of these components support the nutrient analysis results of the menus cycles used by the receiving school food authorities.

(3) *State agency approval.* Prior to its use, the State agency must approve the initial menu cycle, recipes and other specifications of the assisted nutrient standard menu planning approach. The State agency needs to ensure that all the steps required for nutrient analysis were followed. School food authorities may also ask the State agency for assistance with implementation of their assisted nutrient standard menu planning approach.

(4) *Required adjustments.* After the initial service of the menu cycle developed under the assisted nutrient standard menu planning approach, the nutrient analysis must be reassessed and appropriate adjustments made as discussed in paragraph (i)(7) of this section.

(5) *Final responsibility for meeting the nutrition standards.* The school food authority using the assisted nutrient standard menu planning approach retains responsibility for meeting the nutrition standards in paragraph (b) of this section and the calorie and nutrient levels in paragraph (c) or paragraph (i)(1) of this section.

(6) *Adjustments to the menus.* If the nutrient analysis shows that the lunches offered are not meeting the nutrition

standards in paragraph (b) of this section and the calorie and nutrient levels in paragraph (c) or paragraph (i)(1) of this section, the State agency, school food authority or school must take action to make sure the lunches offered meet these requirements. Actions needed include technical assistance and training.

(7) *Other Child Nutrition Programs and assisted nutrient standard menu planning.* School food authorities that operate the Summer Food Service Program (part 225 of this chapter) and/or the Child and Adult Care Food Program (part 226 of this chapter) may, with State agency approval, prepare lunches for these programs using the assisted nutrient standard menu planning approach for children age two and over. FNS has guidance on the levels of nutrients and calories for adult lunches under the Child and Adult Care Food Program. However, afterschool snacks continue to use the appropriate program's meal pattern.

(k) *What are the requirements for lunches under the food-based menu planning approaches?* There are two menu planning approaches based on meal patterns, not nutrient analysis. These approaches are the traditional food-based menu planning approach and the enhanced food-based menu planning approach. Schools using one of these approaches offer food components in at least the minimum quantities required for the various grade groups.

(1) *Quantities for the traditional food-based menu planning approach*—(i) *Minimum quantities.* At a minimum, schools must offer five food items in the quantities in the following table:

TRADITIONAL FOOD-BASED MENU PLANNING APPROACH–MEAL PATTERN FOR LUNCHES					
	MINIMUM QUANTITIES				RECOMMENDED QUANTITIES
FOOD COMPONENTS AND FOOD ITEMS	GROUP I AGES 1-2 PRESCHOOL	GROUP II AGES 3-4 PRESCHOOL	GROUP III, AGES 5-8 GRADES K-3	GROUP IV AGES 9 AND OLDER GRADES 4-12	GROUP V AGES 12 AND OLDER GRADES 7-12
Milk (as a beverage)	6 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces
Meat or Meat Alternate (quantity of the edible portion as served):					
Lean meat, poultry, or fish	1 ounce	1 ½ ounces	1 ½ ounces	2 ounces	3 ounces
Alternate Protein Products[1]	1 ounce	1 ½ ounces	1 ½ ounces	2 ounces	3 ounces
Cheese	1 ounce	1 ½ ounces	1 ½ ounces	2 ounces	3 ounces
Large egg	½	¾	¾	1	1 ½
Cooked dry beans or peas	¼ cup	3/8 cup	3/8 cup	½ cup	¾ cup
Peanut butter or other nut or seed butters	2 tablespoons	3 tablespoons	3 tablespoons	4 tablespoons	6 tablespoons
Yogurt, plain or flavored, unsweetened or sweetened	4 ounces or ½ cup	6 ounces or ¾ cup	6 ounces or ¾ cup	8 ounces or 1 cup	12 ounces or 1 ½ cups
The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above:					
Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 ounce of nuts/seeds = 1 ounce of cooked lean meat, poultry, or fish)	½ ounce = 50%	¾ ounce = 50%	¾ ounce = 50%	1 ounce = 50%	1 ½ ounces = 50%
Vegetable or Fruit: 2 or more servings of vegetables, fruits or both	½ cup	½ cup	½ cup	¾ cup	¾ cup
Grains/Breads: (servings per week): Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains	5 servings per week[2] -- minimum of ½ serving per day	8 servings per week[2] -- minimum of 1 serving per day	8 servings per week[2] -- minimum of 1 serving per day	8 servings per week[2] -- minimum of 1 serving per day	10 servings per week[2] -- minimum of 1 serving per day

[1] Must meet the requirements in appendix A of this part.
[2] For the purposes of this table, a week equals five days.

(ii) *Use of Group IV quantities.* Schools that are able to provide quantities of food to children solely on the basis of their ages or grade level should do so.

Schools that cannot serve children on the basis of age or grade level must provide all school age children Group IV portions as specified in the table in paragraph (k)(1)(i) of this section. Schools serving children on the basis of age or grade level must plan and produce sufficient quantities of food to provide Groups I-IV no less than the amounts specified for those children in the table in paragraph (k)(1)(i) of this section, and sufficient quantities of food to provide Group V no less than the specified amounts for Group IV. FNS recommends that schools plan and produce sufficient quantities of food to provide Group V children the larger amounts specified in the table in paragraph (k)(1)(i) of this section. 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 must plan and produce sufficient quantities of food to at least provide the serving sizes required for Group IV. Schools must ensure that lunches are served with the objective of providing the per lunch minimums for each age and grade level as specified in the table in paragraph (k)(1)(i) of this section.

(2) *Quantities for the enhanced food-based menu planning approach.* Schools must at least offer five food items in the quantities in the following table:

ENHANCED FOOD-BASED MENU PLANNING APPROACH-MEAL PATTERN FOR LUNCHES					
	MINIMUM REQUIREMENTS				OPTION FOR
FOOD COMPONENTS AND FOOD ITEMS	AGES 1-2	PRESCHOOL	GRADES K-6	GRADES 7-12	GRADES K-3
Milk (as a beverage)	6 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces
Meat or Meat Alternate (quantity of the edible portion as served):					
Lean meat, poultry, or fish	1 ounce	1 ½ ounces	2 ounces	2 ounces	1 ½ ounces
Alternate protein products[1]	1 ounce	1 ½ ounces	2 ounces	2 ounces	1 ½ ounces
Cheese	1 ounce	1 ½ ounces	2 ounces	2 ounces	1 ½ ounces
Large egg	½	¾	1	1	¾
Cooked dry beans or peas	¼ cup	3/8 cup	½ cup	½ cup	3/8 cup
Peanut butter or other nut or seed butters	2 tablespoons	3 tablespoons	4 tablespoons	4 tablespoons	3 tablespoons
Yogurt, plain or flavored, unsweetened or sweetened	4 ounces or ½ cup	6 ounces or ¾ cup	8 ounces or 1 cup	8 ounces or 1 cup	6 ounces or ¾ cup
The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above:					
Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 ounce of nuts/seeds equals 1 ounce of cooked lean meat, poultry or fish).	½ ounce =50%	¾ ounce =50%	1 ounce =50%	1 ounce =50%	¾ ounce =50%
Vegetable or Fruit: 2 or more servings of vegetables, fruits or both	½ cup	½ cup	¾ cup plus an extra ½ cup over a week[2]	1 cup	¾ cup
Grains/Breads (servings per week): Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains	5 servings per week[2] – minimum of ½ serving per day	8 servings per week[2] – minimum of 1 serving per day	12 servings per week[2] – minimum of 1 serving per day[3]	15 servings per week[2]– minimum of 1 serving per day[3]	10 servings per week[2] –minimum of 1 serving per day[3]

[1] Must meet the requirements in appendix A of this part.
[2] For the purposes of this table, a week equals five days.
[3] Up to one grains/breads serving per day may be a dessert.

(3) *Requirements for the meat/meat alternate component.* The quantity of the meat/meat alternate component must be the edible portion as served. If the portion size of a food item for this component is excessive, the school must reduce that portion and supplement it with another meat/meat alternate to meet the full requirement. This component must be served in a main dish or in a main dish and only one other food item. Schools without daily choices in

this component should not serve any one meat alternate or form of meat (for example, ground, diced, pieces) more than three times in the same week.

(i) *Enriched macaroni.* Enriched macaroni with fortified protein as defined in appendix A to this part may be used to meet part of the meat/meat alternate requirement when used as specified in appendix A to this part. An enriched macaroni product with fortified protein as defined in appendix A to this part may be used to meet part of the meat/meat alternate component or the grains/breads component but not as both food components in the same lunch.

(ii) *Nuts and seeds.* Nuts and seeds and their butters are allowed as meat alternates in accordance with program guidance. Acorns, chestnuts, and coconuts must not be used because of their low protein and iron content. Nut and seed meals or flours may be used only as allowed under appendix A to this part. Nuts or seeds may be used to meet no more than one-half of the meat/meat alternate component with another meat/meat alternate to meet the full requirement.

(iii) *Yogurt.* Yogurt may be used to meet all or part of the meat/meat alternate requirement. Yogurt may be either plain or flavored, unsweetened or sweetened. Noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products are not creditable. Four ounces (weight) or ½ cup (volume) of yogurt equals one ounce of the meat/meat alternate requirement.

(4) *Requirements for the vegetable/fruit component.*

(i) *General.* Full strength vegetable or fruit juice may be used to meet no more than one-half of the vegetable/fruit requirement. Cooked dry beans or peas may be counted as either a vegetable or as a meat alternate but not as both in the same meal.

(ii) *Minimum quantities for the enhanced food-based menu planning.* Under the enhanced food-based menu planning approach, children in kindergarten through grade six are offered vegetables/fruits in minimum daily servings plus an additional one-half cup in any combination over a five day period.

(5) *Requirements for the grains/breads component.*

(i) *Enriched or whole grains.* All grains/breads must be enriched or whole grain or made with enriched or whole grain meal or flour.

(ii) *Daily and weekly servings.* The requirement for the grain/bread component is based on minimum daily servings plus total servings over a five day period. Schools serving lunch 6 or 7 days per week should increase the weekly quantity by approximately 20 percent (⅕th) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (⅕th) for each day less than five. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in the Food Buying Guide for Child Nutrition Programs (PA 1331), an FNS publication.

(iii) *Minimums under the traditional food-based menu planning approach.* Schools must offer at least one-half serving of the grain/bread component to children in Group I and at least one serving to children in Groups II-V daily. Schools which serve lunch at least 5 days a week shall serve a total of at least five servings of grains/breads to children in Group I and eight servings per week to children in Groups II-V.

(iv) *Desserts under the enhanced food-based menu planning approach.* Under the enhanced food-based menu planning approach, schools may count up to one grain-based dessert per day for children in grades K-12 towards meeting the grains/breads component.

(6) *Offer versus serve.* Schools must offer all five required food items. Senior high (as defined by the State educational agency) school students may decline up to two of the five food items. At the school food authority's option, students below senior high may decline one or two of the five food items. The price of a reimbursable lunch does not change if the student does not take a menu item or requests smaller portions.

(7) *Meal pattern exceptions for outlying areas.* Schools in American Samoa, Puerto Rico and the Virgin Islands

may serve a starchy vegetable such as yams, plantains, or sweet potatoes to meet the grain/bread requirement.

(l) *What are the requirements for lunches planned using an alternate menu planning approach?*

(1) *Definition.* Alternate menu planning approaches are those adopted or developed by school food authorities or State agencies that differ from the standard approaches established in paragraphs (i) through (k) of this section. There are two types of alternate approaches. First, there are specific modifications provided in paragraph (l)(2) of this section. Second, there are major changes to the standard menu planning approaches or new menu planning approaches developed by school food authorities or State agencies (see paragraph (l)(3) of this section).

(2) *Use of modifications.* There are three modifications available to schools using one of the food-based menu planning approaches for lunches. State agencies may or may not require prior approval or may establish guidelines for using these modifications.

(i) *Modification to the meat/meat alternate component.* The required minimum quantities of the meat/meat alternate component in the food-based menu planning approaches may be offered as a weekly total with a one ounce (or its equivalent for certain meat alternates) minimum daily serving size. This modification does not apply if the minimum serving of meat/meat alternate is less than one ounce.

(ii) *Modification to age/grade groups under the traditional food-based menu planning approach.* Schools using the traditional food-based menu planning approach may:

(A) For children in grades K–6, use the portion sizes in Group IV in the table in paragraph (k)(1) of this section and follow the nutrient levels for children in grades K–6 in paragraphs (c)(1) and (d)(2) of this section; and/or

(B) For children in grades 7–12, use the portion sizes in Group IV in the table in paragraph (k)(1) of this section and follow the nutrient levels for children in grades 7–12 in paragraphs (c)(1) and (d)(2) of this section.

(iii) *Modification for the majority of children.* Under the traditional or enhanced food-based menu planning approaches, if only one age or grade is outside the established levels, schools may follow the levels for the majority of children for both quantities (see paragraph (k)) and the nutrition standards in paragraphs (b) and (d) of this section.

(3) *Use and approval of major changes or new alternate approaches.* Within the guidelines established for developing alternate menu planning approaches, school food authorities or State agencies may modify one of the established menu planning approaches in paragraphs (i) through (k) of this section or may develop their own menu planning approach. The alternate menu planning approach must be available in writing for review and monitoring purposes. No formal plan is required; guidance material, a handbook or protocol is sufficient. As appropriate, the material must address how the guidelines in paragraph (l)(4) of this section are met. A State agency that develops an alternate approach that is exempt from FNS approval under paragraph (l)(3)(iii) of this section must notify FNS in writing when implementing the alternate approach.

(i) *Approval of local level approaches.* Any school food authority-developed menu planning approach must have prior State agency review and approval.

(ii) *Approval of State agency approaches.* Unless exempt under paragraph (l)(3)(iii) of this section, any State agency-developed menu planning approach must have prior FNS approval.

(iii) *State agency approaches not subject to approval.* A State agency-developed menu planning approach does not need FNS approval if:

(A) Five or more school food authorities in the State use it; and

(B) The State agency maintains ongoing oversight of the operation and evaluation of the approach and makes any needed adjustments to its policies and procedures to ensure that the appropriate guidelines of paragraph (l)(4) of this section are met.

(4) *Elements for major changes or new approaches.* Any alternate menu planning approach must:

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

(ii) Include offer versus serve for senior high students. Alternate menu planning approaches should follow the offer versus serve procedures in paragraphs (i)(2)(ii) and (k)(6) of this section, as appropriate. If these requirements are not followed, the plan must indicate:

(A) The affected age/grade groups;

(B) The number and type of items (and, if applicable, the quantities for the items) that constitute a reimbursable lunch under offer versus serve;

(C) How such procedures will reduce plate waste; and

(D) How a reasonable level of calories and nutrients for the lunch as taken is provided;

(iii) Meet the Recommended Dietary Allowances and lunchtime energy allowances (nutrient levels) and indicate the age/grade groups served and how the nutrient levels are met for those age/grade groups;

(iv) Follow the requirements for competitive foods in § 210.11 and appendix B to this part;

(v) Follow the requirements for counting food items and products towards the meal patterns. These requirements are found in paragraphs (k)(3) through (k)(5) and paragraph (m) of this section, in appendices A through C to this part, and in instructions and guidance issued by FNS. This only applies if the alternate approach is a food-based menu planning approach;

(vi) Identify a reimbursable lunch at the point of service;

(A) To the extent possible, the procedures provided in paragraph (i)(2)(i) of this section for the nutrient standard or assisted nutrient standard menu planning approaches or for food-based menu planning approaches provided in paragraph (k) of this section must be followed. Any instructions or guidance issued by FNS that further defines the elements of a reimbursable lunch must be followed when using the existing regulatory provisions.

(B) Any alternate approach that deviates from the provisions in paragraph (i)(2)(i) or paragraph (k) of this section must indicate what constitutes a reimbursable lunch, including the number and type of items (and, if applicable, the quantities for the items) which comprise the lunch, and how a reimbursable lunch is to be identified at the point of service;

(vii) Explain how the alternate menu planning 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, if the procedures under § 210.19 cannot be used to monitor the alternate approach, a description of procedures which will enable the State agency to assess compliance with the nutrition standards in paragraphs (b)(1) through (b)(4) of this section must be included; and

(viii) Follow the requirements for weighted analysis and for approved software for nutrient standard menu planning approaches as required by paragraphs (i)(4) and (i)(5) of this section unless a State agency-developed approach meets the criteria in paragraph (l)(3)(iii) of this section. Through September 30, 2003, schools are not required to conduct a weighted analysis.

(m) *What are the requirements for offering milk?*

(1) *Types of milk.* (i) Under all menu planning approaches for lunches, schools must offer students fluid milk. The types of milk offered must be consistent with the types of milk consumed in the previous year. However, if a particular type of milk constituted less than one percent (1%) of the total amount of milk consumed in the previous year, a school does not need to offer this type of milk. This does not preclude schools from offering additional types of milk.

(ii) All milk served in the Program must be pasteurized fluid milk which meets State and local standards for such milk. However, infants under 1 year of age must be served breast milk or iron-fortified infant formula. All milk must have vitamins A and D at levels specified by the Food and Drug Administration and must be consistent with State and local standards for such milk.

(2) *Inadequate milk supply.* If a school cannot get a supply of milk, it can still participate in the Program under the following conditions:

(i) If emergency conditions temporarily prevent a school that normally has a supply of fluid milk from obtaining delivery of such milk, the State agency may allow the school to serve meals during the emergency period with an alternate form of milk or without milk.

(ii) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may approve the service of meals without fluid milk if the school uses an equivalent amount of canned milk or dry milk in the preparation of the meals. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, and the Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, ''milk'' includes reconstituted or recombined milk, or as otherwise allowed by FNS through a written exception.

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

(1) Eligible schools mean schools that:

(i) Operate school lunch programs under the National School Lunch Act;

(ii) Sponsor afterschool care programs as defined in §210.2; and

(iii) Were participating in the Child and Adult Care Food Program as of May 15, 1989.

(2) Meal supplements shall contain two different components from the following four:

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

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

(iii) A serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods. Juice may not be served when milk is served as the only other component;

(iv) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods.

(3) Snacks served to infants ages birth through 11 months must meet the requirements described in paragraph (n)(3)(iv) of this section. Foods included in the snack must be of a texture and a consistency that are appropriate for the age of the infant being served. The foods must be served during a span of time consistent with the infant's eating habits. For those infants whose dietary needs are more individualized, exceptions to the meal pattern must be made in accordance with the requirements found in paragraph (g)(1) of this section.

(i) *Breastmilk and iron-fortified formula.* Either breastmilk or iron-fortified infant formula, or portions of both, must be served for the entire first year. Snacks containing breastmilk and snacks containing iron-fortified infant formula supplied by the school are eligible for reimbursement. However, infant formula provided by a parent (or guardian) and breastmilk fed directly by the infant's mother, during a visit to the school, contribute to a reimbursable snack only when the school supplies at least one component of the infant's snack.

(ii) *Fruit juice.* Juice should not be offered to infants until they are 6 months of age and ready to drink from a cup. Feeding fruit juice only from a cup will help develop behaviors that may prevent early childhood caries. Fruit juice served as part of the meal pattern for infants 8 through 11 months must be full-strength.

(iii) *Solid foods.* Solid foods of an appropriate texture and consistency are required only when the infant is developmentally ready to accept them. The school should consult with the infant's parent (or guardian) in making the decision to introduce solid foods. Solid foods should be introduced one at a

time, on a gradual basis, with the intent of ensuring the infant's health and nutritional well-being.

(iv) *Infant meal pattern.* Infant snacks must have, at a minimum, breastmilk or iron-fortified infant formula, or portions of both, in the appropriate amount indicated for the infant's age. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered. In these situations, additional breastmilk must be offered if the infant is still hungry. Some infants may be developmentally ready to accept an additional food component. Snacks are reimbursable when schools provide all of the components in the meal pattern that the infant is developmentally ready to accept.

(A) *Birth through 3 months.* 4 to 6 fluid ounces of breastmilk or iron-fortified infant formula—only breastmilk or iron-fortified formula is required to meet the infant's nutritional needs.

(B) *4 through 7 months.* 4 to 6 fluid ounces of breastmilk or iron-fortified infant formula—only breastmilk or iron-fortified formula is required to meet the infant's nutritional needs.

(C) *8 through 11 months.* 2 to 4 fluid ounces of breastmilk, iron-fortified infant formula, or full strength fruit juice; and 0 to ½ slice of crusty bread (if developmentally ready) or 0 to 2 cracker type products (if developmentally ready), which are made from whole-grain or enriched meal or flour, and suitable as a finger food for an infant.

(4) The minimum amounts of food components to be served as meal supplements as set forth in paragraphs (n)(2) and (n)(3) of this section are as follows. Select two different components from the four listed. (Juice may not be served when milk is served as the only other component.)

SNACK PATTERN FOR INFANTS

Birth through 3 months	4 through through 7 months	8 through 11 months
4–6 fluid ounces of formula [1] or breastmilk [2] [3].	4–6 fluid ounces of formula [1] or breastmilk [2] [3].	2–4 fluid ounces of formula [1], breastmilk [2] [3], or fruit juice [4]; and 0–½ slice of bread [5] or 0–2 crackers [5].

[1] Infant formula must be iron-fortified.

[2] Breastmilk or iron-fortified formula, or portions of both, may be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months.

[3] For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered if the infant is still hungry.

[4] Fruit juice must be full-strength.

[5] A serving of this component must be made from whole-grain or enriched meal or flour. It is required only when the infant is developmentally ready to accept it.

SUPPLEMENTS FOR INFANTS

	Birth through 3 months	4 through 7 months	8 through 11 months
Supplement (snack)	4–6 fl. oz. breast milk [2, 3] or formula [1]	4–6 fl. oz. breast milk [2, 3] or formula [1]	2–4 fl. oz breast milk [2, 3], formula [1], or fruit juice [4]; 0–½ bread [5] or 0–2 crackers [5].

[1] Infant formula shall be iron-fortified.
[2] It is recommended that breast milk be served in place of formula from birth through 11 months.
[3] For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered with additional breast milk offered if the infant is still hungry.
[4] Fruit juice shall be full-strength.
[5] Bread and bread alternates shall be made from whole-grain or enriched meal or flour. A serving of this component shall be optional.

(o) *What are the requirements for the infant lunch pattern?*

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

(ii) Infant formula means any iron-fortified formula intended for dietary use solely as a food for normal, healthy infants. Formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems are not included in this definition. Infant formula, when served, must be in liquid state at recommended dilution.

(2) *Feeding lunches to infants.* Lunches served to infants ages birth through 11 months must meet the requirements described in paragraph (o)(5) of this section. Foods included in the lunch must be of a texture and a consistency that are appropriate for the age of the infant being served. The foods must be served during a span of time consistent with the infant's eating habits. For those infants whose dietary needs are more individualized, exceptions to the meal pattern must be made in accordance with the requirements found in paragraph (g)(1) of this section.

(3) *Breastmilk and iron-fortified formula.* Either breastmilk or iron-fortified infant formula, or portions of both, must be served for the entire first year. Meals containing breastmilk and meals containing iron-fortified infant formula supplied by the school are eligible for reimbursement. However, infant formula provided by a parent (or guardian) and breastmilk fed directly by the infant's mother, during a visit to the school, contribute to a reimbursable lunch only when the school supplies at least one component of the infant's meal.

(4) *Solid foods.* For infants ages 4 through 7 months, solid foods of an appropriate texture and consistency are required only when the infant is developmentally ready to accept them. The school should consult with the infant's parent (or guardian) in making the decision to introduce solid foods. Solid foods should be introduced one at a time, on a gradual basis, with the intent of ensuring the infant's health and nutritional well-being.

(5) *Infant meal pattern.* Infant lunches must have, at a minimum, each of the food components indicated, in the amount that is appropriate for the infant's age. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered. In these situations, additional breastmilk must be offered if the infant is still hungry. Lunches may include portions of breastmilk and iron-fortified infant formula as long as the total number of ounces meets, or exceeds, the minimum amount required of this food component. Similarly, to meet the component requirements for vegetables and fruit, portions of both may be served.

(i) *Birth through 3 months.* 4 to 6 fluid ounces of breastmilk or iron-fortified infant formula—only breastmilk or iron-fortified formula is required to meet the infant's nutritional needs.

(ii) *4 through 7 months.* Breastmilk or iron-fortified formula is required. Some infants may be developmentally ready for solid foods of an appropriate texture and consistency. Lunches are reimbursable when schools provide all of the components in the meal pattern that the infant is developmentally ready to accept.

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

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

(C) 0 to 3 tablespoons of fruit or vegetable.

(iii) *8 through 11 months.* Breastmilk or iron-fortified formula and solid foods of an appropriate texture and consistency are required.

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

(B) 2 to 4 tablespoons of iron-fortified dry infant cereal; and/or 1 to 4 tablespoons of meat, fish, poultry, egg yolk, or cooked dry beans or peas; or ½ to 2 ounces (weight) of cheese; or 1 to 4 ounces (volume) of cottage cheese; or 1 to 4 ounces (weight) of cheese food or cheese spread; and

(C) 1 to 4 tablespoons of fruit or vegetable.

(6) *Infant meal pattern table.* The minimum amounts of food components to serve to infants, as described in paragraph (o)(5) of this section, are:

LUNCH PATTERN FOR INFANTS

Birth through 3 months	4 through 7 months	8 through 11 months
4–6 fluid ounces of formula[1] or breastmilk[2 3].	4–8 fluid ounces of formula[1] or breastmilk[2 3]; and 0–3 tablespoons of infant cereal[1 4]; and 0–3 tablespoons of fruit or vegetable or both[4].	6–8 fluid ounces of formula[1] or breastmilk[2 3]; and 2–4 tablespoons of infant cereal[1]; and/or 1–4 tablespoons of meat, fish, poultry, egg yolk, cooked dry beans or peas; or ½–2 ounces of cheese; or 1–4 ounces (volume) of cottage cheese; or 1–4 ounces (weight) of cheese food or cheese spread; and 1–4 tablespoons of fruit or vegetable or both.

[1] Infant formula and dry infant cereal must be iron-fortified.
[2] Breastmilk or formula, or portions of both, may be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months.
[3] For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered if the infant is still hungry.
[4] A serving of this component is required only when the infant is developmentally ready to accept it.

[60 FR 31208, June 13, 1995, 60 FR 57146, Nov. 14, 1995, as amended at; 62 FR 10189, Mar. 6, 1997; 64 FR 61773, Nov. 15, 1999; 65 FR 26913, May 9, 2000; 65 FR 31371, May 17, 2000; 65 FR 36317, June 8, 2000; 67 FR 36783, May 28, 2002]

EFFECTIVE DATE NOTES: 1. At 69 FR 70872, Dec. 8, 2004, § 210.10 was amended by revising paragraph (m)(1)(i), effective July 1, 2005. For the convenience of the user, the revised text is set forth as follows:

§ 210.10 What are the nutrition standards and menu planning approaches for lunches and the requirements for after-school snacks?

* * * * *

(m) * * *

(1) * * *

(i) Under all menu planning approaches for students, schools must offer students fluid milk in a variety of fat contents. Schools may offer flavored or unflavored milk and lactose-free fluid milk.

* * * * *

2. At 69 FR 70874, Dec. 8, 2004, § 210.10 was amended by removing the year ''2003'' and adding in its place the year ''2009'' in the last sentence in paragraph (i)(5)(i), and by removing the year ''2003'' and adding in its place the year ''2009'' in the last sentence of paragraph (l)(4)(viii), effective January 7, 2005.

§ 210.11 Competitive food services.

(a) *Definitions.* For the purpose of this section:

(1) *Competitive foods* means any foods sold in competition with the Program to children in food service areas during the lunch periods.

(2) *Food of minimal nutritional value* means: (i) In the case of artificially sweetened foods, a food which provides less than five percent of the Reference Daily Intakes (RDI) for each of eight specified nutrients per serving; and (ii) in the case of all other foods, a food which provides less than five percent of the RDI for each of eight specified nutrients per 100 calories and less than five percent of the RDI for each of eight specified nutrients per serving. The eight nutrients to be assessed for this purpose are—protein, vitamin A, vitamin C, niacin, riboflavin, thiamine, calcium, and iron. All categories of food of minimal nutritional value and petitioning requirements for changing the categories are listed in appendix B of this part.

(b) *General.* State agencies and school food authorities shall establish such rules or regulations as are necessary to control the sale of foods in competition with lunches served under the Program. Such rules or regulations shall prohibit the sale of foods of minimal nutritional value, as listed in appendix B of this part, in the food service areas during the lunch periods. The sale of other competitive foods may, at the discretion of the State agency and school food authority, be allowed in

the food service area during the lunch period only if all income from the sale of such foods accrues to the benefit of the nonprofit school food service or the school or student organizations approved by the school. State agencies and school food authorities may impose additional restrictions on the sale of and income from all foods sold at any time throughout schools participating in the Program.

[53 FR 29147, Aug. 2, 1988, as amended at 59 FR 23614, May 6, 1994]

§ 210.12 Student, parent and community involvement.

(a) *General.* School food authorities shall promote activities to involve students and parents in the Program. Such activities may include menu planning, enhancement of the eating environment, Program promotion, and related student-community support activities. School food authorities are encouraged to use the school food service program to teach students about good nutrition practices and to involve the school faculty and the general community in activities to enhance the Program.

(b) *Food service management companies.* School food authorities contracting with a food service management company shall comply with the provisions of § 210.16(a) regarding the establishment of an advisory board of parents, teachers and students.

(c) *Residential child care institutions.* Residential child care institutions shall comply with the provisions of this section, to the extent possible.

§ 210.13 Facilities management.

(a) *Health standards.* The school food authority shall ensure that food storage, preparation and service is in accordance with the sanitation and health standards established under State and local law and regulations.

(b) *Food safety inspections.*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, schools shall, at least once during each school year, obtain a food safety inspection conducted by a State or local governmental agency responsible for food safety inspections.

(2) *Exception.* Paragraph (b)(1) of this section shall not apply to a school if a food safety inspection of the school is required by a State or local governmental agency responsible for food safety inspections.

(c) *Storage.* The school food authority shall ensure that the necessary facilities for storage, preparation and service of food are maintained. Facilities for the handling, storage, and distribution of purchased and donated foods shall be such as to properly safeguard against theft, spoilage and other loss.

[54 FR 29147, Aug. 2, 1988, as amended at 64 FR 50740, Sept. 20, 1999]

§ 210.14 Resource management.

(a) *Nonprofit school food service.* School food authorities shall maintain a nonprofit school food service. Revenues received by the nonprofit school food service are to be used only for the operation or improvement of such food service, *except that,* such revenues shall not be used to purchase land or buildings, unless otherwise approved by FNS, or to construct buildings. Expenditures of nonprofit school food service revenues shall be in accordance with the financial management system established by the State agency under § 210.19(a) of this part. School food authorities may use facilities, equipment, and personnel supported with nonprofit school food revenues to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

(b) *Net cash resources.* The school food authority shall limit its net cash resources to an amount that does not exceed 3 months average expenditures for its nonprofit school food service or such other amount as may be approved by the State agency in accordance with § 210.19(a).

(c) *Financial assurances.* The school food authority shall meet the requirements of the State agency for compliance with § 210.19(a) including any separation of records of nonprofit school food service from records of any other food service which may be operated by the school food authority as provided in paragraph (a) of this section.

(d) *Use of donated foods.* The school food authority shall enter into an agreement with the distributing agency to receive donated foods as required

by part 250 of this chapter. In addition, the school food authority shall accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by the Department.

[53 FR 29147, Aug. 2, 1988, as amended at 60 FR 31215, June 13, 1995]

§210.15 Reporting and recordkeeping.

(a) *Reporting summary.* Participating school food authorities are required to submit forms and reports to the State agency or the distributing agency, as appropriate, to demonstrate compliance with Program requirements. These reports include, but are not limited to:

(1) A Claim for Reimbursement and, for the month of October and as otherwise specified by the State agency, supporting data as specified in accordance with §210.8 of this part;

(2) An application and agreement for Program operations between the school food authority and the State agency, and a Free and Reduced Price Policy Statement as required under §210.9;

(3) A written response to reviews pertaining to corrective action taken for Program deficiencies;

(4) A commodity school's preference whether to receive part of its donated food allocation in cash for processing and handling of donated foods as required under §210.19(b);

(5) A written response to audit findings pertaining to the school food authority's operation as required under §210.22; and

(6) Information on civil rights complaints, if any, and their resolution as required under §210.23.

(b) *Recordkeeping summary.* In order to participate in the Program, a school food authority shall maintain records to demonstrate compliance with Program requirements. These records include but are not limited to:

(1) Documentation of participation data by school in support of the Claim for Reimbursement and data used in the claims review process, as required under §210.8(a), (b), and (c) of this part;

(2) Production and menu records and, if appropriate, nutrition analysis records as required under §210.10, whichever is applicable.

(3) Participation records to demonstrate positive action toward providing one lunch per child per day as required under §210.10(a)(2), whichever is applicable;

(4) Currently approved and denied applications for free and reduced price lunches and a description of the verification activities, including verified applications, and any accompanying source documentation in accordance with 7 CFR 245.6a of this Title.

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12582, Mar. 28, 1989; 56 FR 32941, July 17, 1991; 60 FR 31215, June 13, 1995; 65 FR 26912, 26922, May 9, 2000]

§210.16 Food service management companies.

(a) *General.* Any school food authority (including a State agency acting in the capacity of a school food authority) may contract with a food service management company to manage its food service operation in one or more of its schools. However, no school or school food authority may contract with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and paid reimbursable lunches to all eligible children. Any school food authority that employs a food service management company in the operation of its nonprofit school food service shall:

(1) Adhere to the procurement standards specified in §210.21 when contracting with the food service management company;

(2) Ensure that the food service operation is in conformance with the school food authority's agreement under the Program;

(3) Monitor the food service operation through periodic on-site visits;

(4) Retain control of the quality, extent, and general nature of its food service, and the prices to be charged the children for meals;

(5) Retain signature authority on the State agency-school food authority agreement, free and reduced price policy statement and claims;

(6) Ensure that all federally donated foods received by the school food authority and made available to the food service management company accrue

only to the benefit of the school food authority's nonprofit school food service and are fully utilized therein;

(7) Maintain applicable health certification and assure that all State and local regulations are being met by a food service management company preparing or serving meals at a school food authority facility; and

(8) Establish an advisory board composed of parents, teachers, and students to assist in menu planning.

(b) *Invitation to bid.* In addition to adhering to the procurement standards under § 210.21, school food authorities contracting with food service management companies shall ensure that:

(1) The invitation to bid or request for proposal contains a 21-day cycle menu developed in accordance with the provisions of § 210.10, to be used as a standard for the purpose of basing bids or estimating average cost per meal. If a school food authority has no capability to prepare a cycle menu, it may, with State agency approval, request that a 21-day cycle menu developed in accordance with the provisions of § 210.10, be developed and submitted by each food service management company which intends to submit a bid or proposal to the school food authority. The food service management company must adhere to the cycle for the first 21 days of meal service. Changes thereafter may be made with the approval of the school food authority.

(2) Any invitation to bid or request for proposal indicate that nonperformance subjects the food service management company to specified sanctions in instances where the food service management company violates or breaches contract terms. The school food authority shall indicate these sanctions in accordance with the procurement provisions stated in § 210.21.

(c) *Contracts.* Contracts that permit all income and expenses to accrue to the food service management company and ''cost-plus-a-percentage-of-cost'' and ''cost-plus-a-percentage-of-income'' contracts are prohibited. Contracts that provide for fixed fees such as those that provide for management fees established on a per meal basis are allowed. Contractual agreements with food service management companies shall include provisions which ensure that the requirements of this section are met. Such agreements shall also include the following:

(1) The food service management company shall maintain such records as the school food authority will need to support its Claim for Reimbursement under this part, and shall, at a minimum, report claim information to the school food authority promptly at the end of each month. Such records shall be made available to the school food authority, upon request, and shall be retained in accordance with § 210.23(c).

(2) The food service management company shall have State or local health certification for any facility outside the school in which it proposes to prepare meals and the food service management company shall maintain this health certification for the duration of the contract.

(3) No payment is to be made for meals that are spoiled or unwholesome at time of delivery, do not meet detailed specifications as developed by the school food authority for each food component specified in § 210.10, or do not otherwise meet the requirements of the contract. Specifications shall cover items such a grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.

(d) *Duration of contract.* The contract between a school food authority and food service management company shall be a of a duration of no longer than 1 year; and options for the yearly renewal of a contract signed after February 16, 1988, may not exceed 4 additional years. All contracts shall include a termination clause whereby either party may cancel for cause with 60-day notification.

[53 FR 29147, Aug. 2, 1988, as amended at 60 FR 31215, June 13, 1995; 65 FR 26912, May 9, 2000]

Subpart D—Requirements for State Agency Participation

§ 210.17 Matching Federal funds.

(a) *State revenue matching.* For each school year, the amount of State revenues appropriated or used specifically by the State for program purposes shall not be less than 30 percent of the

funds received by such State under section 4 of the National School Lunch Act during the school year beginning July 1, 1980; *provided that*, the State revenues derived from the operation of such programs and State revenues expended for salaries and administrative expenses of such programs at the State level are not considered in this computation. However, if the per capita income of any State is less than the per capita income of the United States, the matching requirements so computed shall be decreased by the percentage by which the State per capita income is below the per capita income of the United States.

(b) *Private school exemption.* No State in which the State agency is prohibited by law from disbursing State appropriated funds to nonpublic schools shall be required to match general cash assistance funds expended for meals served in such schools, or to disburse to such schools any of the State revenues required to meet the requirements of paragraph (a) of this section. Furthermore, the requirements of this section do not apply to schools in which the Program is administered by a FNSRO.

(c) *Territorial waiver.* American Samoa and the Commonwealth of the Northern Mariana Islands shall be exempted from the matching requirements of paragraph (a) of this section if their respective matching requirements are under $100,000.

(d) *Applicable revenues.* The following State revenues, appropriated or used specifically for program purposes which are expended for any school year shall be eligible for meeting the applicable percentage of the matching requirements prescribed in paragraph (a) of this section for that school year:

(1) State revenues disbursed by the State agency to school food authorities for program purposes, including revenue disbursed to nonprofit private schools where the State administers the program in such schools;

(2) State revenues made available to school food authorities and transferred by the school food authorities to the nonprofit school food service accounts or otherwise expended by the school food authorities in connection with the nonprofit school food service program; and

(3) State revenues used to finance the costs (other than State salaries or other State level administrative costs) of the nonprofit school food service program, i.e.:

(i) Local program supervision;

(ii) Operating the program in participating schools; and

(iii) The intrastate distribution of foods donated under part 250 of this chapter to schools participating in the program.

(e) *Distribution of matching revenues.* All State revenues made available under paragraph (a) of this section are to be disbursed to school food authorities participating in the Program, *except as* provided for under paragraph (b) of this section. Distribution of matching revenues may be made with respect to a class of school food authorities as well as with respect to individual school food authorities.

(f) *Failure to match.* If, in any school year, a State fails to meet the State revenue matching requirement, as prescribed in paragraph (a) of this section, the general cash assistance funds utilized by the State during that school year shall be subject to recall by and repayment to FNS.

(g) *Reports.* Within 120 days after the end of each school year, each State agency shall submit an Annual Report of Revenues (FNS–13) to FNS. This report identifies the State revenues to be counted toward the State revenue matching requirements specified in paragraph (a) of this section.

(h) *Accounting system.* The State agency shall establish or cause to be established a system whereby all expended State revenues counted in meeting the matching requirements prescribed in paragraph (a) of this section are properly documented and accounted for.

§ 210.18 Administrative reviews.

(a) *Implementation dates.* For the school year beginning July 1, 1992, each State agency shall conduct administrative reviews as prescribed under this section. However, FNS will approve a State agency's written request if FNS determines that the State agency has

demonstrated good cause to delay implementation of the provisions specified under this section to January 1, 1993. At State agency discretion, State agencies may begin implementation of the provisions of this section on August 16, 1991. FNS review responsibilities are specified under § 210.29 of this part.

(b) *Definitions.* The following definitions are provided in order to clarify State agency administrative review requirements:

(1) *Administrative reviews* means the initial comprehensive on-site evaluation of all school food authorities participating in the Program in accordance with the provisions of this section. The term ''administrative review'' is used to reflect a review of both critical and general areas in accordance with paragraphs (g) and (h) of this section, and includes other areas of Program operations determined by the State agency to be important to Program performance.

(2) *Critical areas* means the following two performance standards described in detail in paragraph (g) of this section which serve as measures of compliance with Program regulations:

(i) Performance Standard 1—Certification/Counting/Claiming—All free, reduced price and paid lunches claimed for reimbursement are served only to children eligible for free, reduced price and paid lunches, respectively; and counted, recorded, consolidated and reported through a system which consistently yields correct claims.

(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.

(3) *Documented corrective action* means written notification required of the school food authority to certify that the corrective action required for each violation has been completed and to notify the State agency of the dates of completion. Documented corrective action may be provided at the time of the review or may be submitted to the State agency within specified timeframes.

(4) *Follow-up reviews* means any visit(s) to the school food authority subsequent to the administrative review to ensure corrective actions are taken.

(5) *General areas* means the areas of review specified in paragraph (h) of this section.

(6) *Large school food authority* means, in any State:

(i) All school food authorities that participate in the Program and have enrollments of 40,000 children or more each; or

(ii) If there are less than two school food authorities with enrollments of 40,000 or more, the two largest school food authorities that participate in the Program and have enrollments of 2,000 children or more each.

(7) *Participation factor* means the percentages of children approved by the school for free lunches, reduced price lunches, and paid lunches, respectively, who are participating in the Program. The free participation factor is derived by dividing the number of free lunches claimed for any given period by the product of the number of children approved for free lunches for the same period times the operating days in that period. A similar computation is used to determine the reduced price and paid participation factors. The number of children approved for paid lunches is derived by subtracting the number of children approved for free and reduced price lunches for any given period from the total number of children enrolled in the reviewed school for the same period of time, if available. If such enrollment figures are not available, the most recent total number of children enrolled shall be used. If school food authority participation factors are unavailable or unreliable, State-wide data shall be employed.

(8) *Review period* means the period of time covered by the administrative review or follow-up review. The review period is specified in paragraph (f)(2) of this section.

(9) *Review threshold* means the degree of error in a critical area of review which, if exceeded during an administrative review or follow-up review of a school food authority, may trigger a follow-up review of that school food authority.

(10) *Small school food authority* means, in any State, a school food authority that participates in the Program and is not a large school food authority, as defined in this section.

(c) *Timing of reviews.* The first year of the first 5-year review cycle began on July 1, 1992, or as otherwise authorized under paragraph (a) of this section and shall end on June 30, 1994. For each State agency, the first 5-year review cycle shall end on June 30, 1998. Administrative reviews and follow-up reviews shall be conducted as follows:

(1) *Administrative reviews.* At a minimum, State agencies shall conduct administrative reviews of all school food authorities at least once during each 5-year review cycle; provided that each school food authority is reviewed at least once every 6 years. The on-site portion of the administrative review shall be completed during the school year in which the review was begun.

(2) *Expanded review cycle.* State agencies are encouraged to conduct administrative reviews of large school food authorities and of any school food authorities which may benefit from a more frequent interval than the minimum 5-year cycle required in paragraph (c)(1) of this section.

(3) *Exceptions.* FNS may, on an individual school food authority basis, approve written requests for 1-year extensions to the 6-year review interval specified in paragraph (c)(1) of this section if FNS determines this requirement conflicts with efficient State agency management of the Program.

(4) *Follow-up reviews.* The State agency is encouraged to conduct first follow-up reviews in the same school year as the administrative review; but in no event shall first follow-up reviews be conducted later than December 31 of the school year following the administrative review. Subsequent follow-up reviews shall be scheduled in accordance with paragraph (i)(5) of this section.

(d) *Scheduling school food authorities.* The State agency shall use its own criteria to schedule school food authorities for administrative reviews; provided that the requirements of paragraph (c) of this section are met. State agencies are encouraged to take into consideration the findings of the claims review process required under §210.8(b)(2) of this part in the selection of school food authorities.

(1) *Schedule of reviews.* To ensure no unintended overlap occurs, the State agency shall inform FNS of the anticipated schedule of school food authority reviews upon request.

(2) *Reporting follow-up review activity.* At such time as the State agency determines that a follow-up review is needed, the State agency shall notify FNS of the names of those large school food authorities exceeding any one of the critical area review thresholds specified in paragraph (i) of this section.

(3) *Exceptions.* In any school year in which FNS or OIG conducts a review or investigation of a school food authority in accordance with §210.19(a)(5) of this part, the State agency shall, unless otherwise authorized by FNS, delay conduct of a scheduled administrative review until the following school year. The State agency shall document any exception authorized under this paragraph.

(e) *Number of schools to review.* The State agency is encouraged to review all schools meeting the school selection criteria specified in paragraph (e)(1) of this section. At a minimum, the State agency shall review the number of schools specified in paragraph (e)(1) of this section and shall select the schools to be reviewed on the basis of the school selection criteria specified in paragraph (e)(2) of this section.

(1) *Minimum number of schools.* Except for residential child care institutions, the State agency shall review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more. In no event shall the State agency review less than the minimum number of schools illustrated in table A:

TABLE A

No. of schools in the school food authority	Minimum no. of schools to be reviewed
1 to 5	1
6 to 10	2
11 to 20	3
21 to 40	4
41 to 60	6
61 to 80	8
81 to 100	10

TABLE A—Continued

No. of schools in the school food authority	Minimum no. of schools to be reviewed
101 or more	[1] 12

[1] Twelve plus 5 percent of the number of schools over 100. Fractions shall be rounded to the nearest whole number.

(2) *School selection criteria.*

(i) Selection of additional schools to meet the minimum number of schools required under paragraph (e)(1) of this section, shall be based on the following criteria:

(A) Elementary schools with a free average daily participation of 100 or more and a free participation factor of 97 percent or more;

(B) Secondary schools with a free average daily participation of 100 or more and a free participation factor of 77 percent or more; and

(C) Combination schools with a free average daily participation of 100 or more and a free participation factor of 87 percent or more. A combination school means a school with a mixture of elementary and secondary grades.

(ii) When the number of schools selected on the basis of the criteria established in paragraph (A) through paragraph (C) of this paragraph are not sufficient to meet the minimum number of schools required under paragraph (e)(1) of this section, the schools selected for review shall be selected on the basis of State agency criteria which may include low participation schools, recommendations from a food service director based on findings from the on-site visits or the claims review process required under § 210.8(a) of this part; or any school in which the daily lunch counts appear questionable, e.g., identical or very similar claiming patterns, and/or large changes in free lunch counts.

(3) *Pervasive problems.* If the State agency review finds pervasive problems in a school food authority, FNS may authorize the State agency to cease review activities prior to reviewing the required number of schools under paragraph (e)(1) of this section. Where FNS authorizes the State agency to cease review activity, FNS may either conduct the review activity itself or refer the school food authority to OIG.

(f) *Scope of review.* During the course of an administrative review, each State agency shall monitor compliance with the critical and general areas identified in paragraphs (g) and (h) of this section.

(1) *Review form.* State agencies shall use the administrative review form prescribed by FNS for the critical areas of review specified in paragraph (g) of this section. State agencies may use their own administrative review form for the general areas of review specified in paragraph (h) of this section.

(2) *Review period.*

(i) The review period for administrative reviews and follow-up reviews shall cover, at a minimum, the most recent month for which a Claim for Reimbursement was submitted; provided that such Claim for Reimbursement covers at least 10 operating days.

(ii) Subject to FNS approval, the State agency may conduct a review early in the school year, prior to the submission of a Claim for Reimbursement. In such cases, the review period shall be the prior month of operation in the current school year, provided that such month includes at least 10 operating days.

(3) *Audit findings.* To prevent duplication of effort, the State agency may use any recent and currently applicable findings from Federally-required audit activity or from any State-imposed audit requirements. Such findings may be used only insofar as they pertain to the reviewed school(s) or the overall operation of the school food authority and they are relevant to the review period. The State agency shall document the source and the date of the audit.

(g) *Critical areas of review.* The performance standards listed in this paragraph are deemed critical since compliance in these areas is directly linked to the service of a reimbursable lunch.

(1) *Performance Standard 1 (All free, reduced price and paid lunches claimed for reimbursement are served only to children eligible for free, reduced price and paid lunches, respectively; and are counted, recorded, consolidated and reported through a system which consistently yields correct claims.)* The State agency shall determine that the free and reduced price eligibility determinations are correct.

In addition, the State agency shall determine that for each day of operation for the review period, the number of free, reduced price and paid lunches claimed for each reviewed school is not more than the number of lunches served to children eligible for free, reduced price and paid lunches, respectively, in those schools for the review period. The State agency shall also determine that a lunch counting system is being used which accurately counts, records, consolidates and reports the reimbursable lunches served, by type.

(i) For each school reviewed, the State agency shall:

(A) Determine the number of children eligible for free, reduced price and paid lunches, by type, for the review period. To make this determination:

(*1*) The State agency shall:

(*i*) Review all approved free and reduced price applications for children in the reviewed schools back to the beginning of the school year to determine whether each child's application is complete and correctly approved in accordance with all applicable provisions of 7 CFR part 245; or

(*ii*) Review all approved free and reduced price applications effective for the review period for children in the reviewed schools; or

(*iii*) Review all approved free and reduced price applications effective on the day(s) the review is conducted for children in the reviewed schools.

(*2*) In lieu of reviewing all of the free and reduced price applications as required under paragraph (g)(1)(i)(A)(*1*) of this section, the State agency may review a statistically valid sample of those applications. If the State agency chooses to review a statistically valid sample of applications, the State agency shall ensure that the sample size is large enough so that there is a 95 percent chance that the actual error rate for all applications is not less than 2 percentage points less than the error rate found in the sample (i.e., the lower bound of the one-sided 95 percent confidence interval is no more than 2 percentage points less than the point estimate). In addition, the State agency shall determine the need for follow-up reviews and base fiscal action upon the error rate found in the sample.

(*3*) Evaluate whether the previous year's eligibility determinations are used after 30 operating days following the first day of school, or as otherwise established by the State agency; provided that the State agency-developed timeframe does not exceed the 30 operating day limit.

(*4*) In the case where children are determined eligible for free lunches based on documentation from the local food stamp, Food Distribution Program on Indian Reservations (FDPIR) or Temporary Assistance for Needy Families (TANF) office which certifies that the children are currently members of households receiving benefits under the Food Stamp Program, FDPIR or TANF, determine that the certification from the Food Stamp Program, FDPIR or TANF is official; all the information required under §245.6 of this part is complete; and such children were enrolled in the school under review during the review period.

(B) Evaluate the system for issuing benefits and updating eligibility status by validating the mechanism(s) the reviewed school uses to provide benefits to eligible children, e.g., master list. The State agency shall determine whether the system is adequate and, within the timeframes established in §210.7(c)(1)(ii)(B), reflects changes due to verification findings, transfers, reported changes in household size or income, or from a household's decision to decline school lunch benefits or any notification from the household that it is no longer certified to receive food stamp, Food Distribution Program for Households on Indian Reservations (FDPIR) or Temporary Assistance for Needy Families (TANF) benefits.

(C) Determine whether the lunch counting system yields correct claims. At a minimum, the State agency shall determine whether:

(*1*) The daily lunch counts, by type, for the review period are more than the product of the number of children determined by the school/school food authority to be eligible for free, reduced price, and paid lunches for the review period times an attendance factor. If the lunch count, for any type, appears questionable or significantly exceeds the product of the number of eligibles,

for that type, times an attendance factor, documentation showing good cause must be available for review by the State agency.

(*2*) Each type of food service line provides accurate point of service lunch counts, by type, and those lunch counts are correctly counted and recorded. If an alternative counting system is employed (in accordance with § 210.7(c)(2)), the State agency shall ensure that it provides accurate counts of reimbursable lunches, by type, and is correctly implemented as approved by the State agency.

(*3*) All lunches are correctly counted, recorded, consolidated and reported for the day they are served.

(ii) For each school food authority reviewed, the State agency shall review lunch count records to ensure that the lunch counts submitted by each reviewed school are correctly consolidated, recorded, and reported by the school food authority on the Claim for Reimbursement.

(2) *Performance Standard 2 (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.* For each school reviewed, the State agency must:

(i) For the day of the review, observe the serving line(s) to determine whether all required meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10 are offered.

(ii) For the day of the review, observe a significant number of the Program lunches counted at the point of service for each type of serving line, to determine whether those lunches contain the required number of meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10.

(iii) Review menu records for the review period to determine whether all required meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10 have been offered.

(h) *General areas of review.* The general areas listed in this paragraph reflect major Program requirements. The general areas of review shall include, but are not limited to, the following areas:

(1) *Free and reduced price process.* In the course of the review of each school food authority, the State agency shall:

(i) Review the implementation of the free and reduced price policy statement to ensure it is implemented as approved.

(ii) Evaluate whether the required minimum number of applications are verified with respect to the selection method used.

(iii) Determine that applications for verification are selected through random or focused sampling in accordance with the provisions of § 245.6a of this title and FNS Instructions, and that no discrimination exists in the selection process.

(iv) Establish that verification is completed by December 15. If the administrative review occurs prior to the December 15 deadline, the State agency shall evaluate the verification activities that have occurred to date and assess whether these activities represent a good faith effort that will result in compliance with the requirements of § 245.6a of this title.

(v) Confirm that the verification process is complete for each application verified by or on behalf of the reviewed schools. Verification is considered complete either when a child's eligibility for the level of benefits for which he or she was approved is confirmed, changed to a higher level of benefit, or a letter of adverse action has been sent.

(vi) Ensure that verification records are maintained as required by § 245.6a(c) of this title.

(vii) Determine that, for each reviewed school, the lunch count system does not overtly identify children eligible for free and reduced price lunches.

(viii) Review a representative sample of denied applications to evaluate whether the determining official correctly denied applicants for free and reduced price lunches.

(2) *Food quantities.* For each school reviewed, the State agency must observe a significant number of Program lunches counted at the point of service for each type of serving line to determine whether those lunches appear to provide meal elements (food items/

components, menu items or other items, as applicable) in the quantities required under §210.10. If visual observation suggests that quantities are insufficient, the State agency shall require the reviewed schools to provide documentation demonstrating that the required amounts of food were available for service for each day of the review period.

(3) *Civil rights.* The State agency shall examine the school food authority's compliance with the civil rights provisions specified in §210.23(b) of this part.

(4) *Monitoring responsibilities.* The State agency shall ensure that the school food authority conducts on-site reviews in accordance with §210.8(a)(1) of this part and monitors claims in accordance with §210.8(a)(2) and (a)(3) of this part.

(5) *Reporting and recordkeeping.* The State agency shall determine that the school food authority submits reports and maintains records as required under 7 CFR parts 210 and 245.

(i) *Follow-up reviews.* All school food authorities found to have a critical area violation in excess of any one of the review thresholds specified in this paragraph are subject to follow-up reviews. State agencies shall notify FNS of the names of large school food authorities exceeding critical area review thresholds in accordance with paragraph (d)(2) of this section. The State agency shall conduct a first follow-up review of any large school food authority found on an administrative review to have critical area violations in excess of any one of the review thresholds. State agencies shall also conduct a first follow-up review of at least 25 percent of the small school food authorities found on a review to have critical area violations in excess of any one of the review thresholds. State agencies shall conduct additional follow-up reviews of any school food authority which has a critical area violation exceeding a review threshold on the first follow-up or any subsequent follow-up review regardless of whether such review is conducted by FNS or the State agency.

(1) *Selection of small school food authorities.* In determining which small school food authorities to include in the follow-up review sample, State agencies shall select those school food authorities which have the most serious problems, including, but not limited to, systemic accountability problems, large overclaims, significant lunch pattern violations, etc.

(2) *Selection of schools.*

(i) If the critical area violation(s) responsible for follow-up review activity are limited to school food authority level problems (e.g. centralized application processing or centralized kitchen), the State agency may limit the follow-up review to the school food authority level.

(ii) If the critical area violation(s) responsible for follow-up review activity were identified in the review of a school(s), then State agencies shall review at least the minimum number of schools required under paragraph (e)(1) of this section. State agencies shall meet the minimum number of schools requirement by selecting those schools found, on a previous review, to have significant critical area violations. If any additional schools must be selected to meet the minimum required number, the State agency shall select from those schools which meet State agency-developed criteria identified under paragraph (e)(2)(ii) of this section.

(3) *Review thresholds.* The review thresholds apply only to the critical areas of review and are designed to limit follow-up reviews to those school food authorities with serious problems. The provisions of paragraph (i) of this section apply when:

(i) For Performance Standard 1—

(A) A number of the reviewed schools in a school food authority, as specified in Table B, have an inadequate system for certification, issuing benefits or updating eligibility status; or for counting, recording, consolidating or reporting lunches, by type; or

(B) The school food authority has an inadequate system for consolidating lunch counts, by type, or for reporting claims; or, if applicable, for certification, issuing benefits or updating eligibility status.

(C) At the school and school food authority level, a system for certification, issuing benefits or updating eligibility status is inadequate if 10 percent or more (but not less than 100 lunches) of the free and reduced price

lunches claimed for the review period (for any school reviewed) are claimed incorrectly due to errors of certification, benefit issuance or updating of eligibility status.

TABLE B

Number of schools reviewed	Number of schools violating performance standard 1
1 to 5	1
6 to 10	2
11 to 20	3
21 to 30	4
31 to 40	5
41 to 50	6
51 to 60	7
61 to 70	8
71 to 80	9
81 to 90	10
91 to 100	11
101 or more	11*

*11 plus the number identified above for the appropriate increment.

(ii) For Performance Standard 2—10 percent or more of the total number of Program lunches observed in a school food authority are missing one or more of the required meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10.

(4) *Scope of follow-up reviews.* On any follow-up review, the State agency is encouraged to review all of the critical and general areas of review specified in paragraph (g) and (h) of this section for those schools which were not reviewed during the administrative review. At a minimum, the State agency shall:

(i) For each school selected for review (or for the school food authority, as applicable,) review the critical areas for which the review thresholds were exceeded by the school food authority on a previous review;

(ii) Determine whether the school food authority has satisfactorily completed the corrective actions in accordance with paragraph (k) of this section required for both critical and general areas within the timeframes established by the State agency;

(iii) Evaluate whether these corrective actions resolved the problem(s); and

(iv) If the State agency did not evaluate the certification, count and milk/meal service procedures for the School Breakfast Program (7 CFR part 220) and/or the Special Milk Program for Children (7 CFR part 215) or offering meal supplements in after hour care programs (7 CFR part 210) in those schools selected for the administrative review and participating in those Programs, the State agency shall do so for those schools selected for the first follow-up review.

(5) *Critical area violations identified in a follow-up review.* Critical area violations identified on a follow-up review shall be addressed as follows:

(i) If, during a follow-up review, the State agency determines, that corrective actions have not been satisfactorily completed in accordance with the documented corrective action, the State agency shall: require the school food authority to resolve the problems and to submit documented corrective action to the State agency ; take fiscal action for critical area violations as specified in paragraph (m) of this section; and withhold Program payments in accordance with paragraph (l) of this section, until such time as a follow-up review, requested by the school food authority, indicates the problem has been corrected. If the State agency determines that the corrective actions have been completed as specified in the documented corrective action, but those corrective actions do not effectively resolve the problem, the State agency shall follow the requirements for new critical area violations specified in paragraphs (i)(5)(ii) and (iii) of this section.

(ii) If new critical area violations are observed that exceed a review threshold, the State agency shall: Require the school food authority to resolve the problems and to submit documented corrective action to the State agency; take fiscal action as specified in paragraph (m) of this section; and conduct a follow-up review within 6 operating months of the first follow-up review.

(iii) If new critical area violations are observed which do not exceed review thresholds, the State agency shall: Require the school food authority to resolve the problem and to submit documented corrective action to the State agency within specified timeframes; and take fiscal action in accordance with paragraph (m) of this

section. If adequate documented corrective action is not received within those timeframes, the State agency shall withhold Program payments in accordance with paragraph (l) of this section, until such time as adequate documented corrective action is received.

(6) *General area violations identified in a follow-up review.* General area violations identified in a follow-up review shall be addressed as follows:

(i) If, during a follow-up review, the State agency determines that corrective actions have not been taken in accordance with the documented corrective action, the State agency shall withhold Program payments in accordance with paragraph (l) of this section, until such time as the State agency receives adequate documented corrective action.

(ii) If the State agency determines that the corrective actions taken did not effectively resolve the problem, or if new general area violations are observed on a follow-up review, the State agency shall require the school food authority to resolve the problem and to submit documented corrective action to the State agency within specified timeframes. If adequate documented corrective action is not received within those timeframes, the State agency shall withhold Program payments in accordance with paragraph (l) of this section, until such time as adequate documented corrective action is received.

(7) *Exceptions.* FNS may, on an individual school food authority basis, approve written requests for exceptions to the follow-up review requirement specified in paragraph (i)(1) of this section if FNS determines that the requirement conflicts with efficient State agency management of the program.

(j) *Exit conference and notification.* The State agency shall hold an exit conference at the close of the administrative review and of any subsequent follow-up review to discuss the violations observed, the extent of the violations and a preliminary assessment of the actions needed to correct the violations. The State agency shall discuss an appropriate deadline(s) for completion of corrective action, provided that the deadline(s) results in the completion of corrective action on a timely basis. After every review, the State agency shall provide written notification of the review findings to the school food authority's Superintendent (or equivalent in a non-public school food authority) or authorized representative. The written notification shall include the review findings, the needed corrective actions, the deadlines for completion of the corrective action, and the potential fiscal action. As a part of the denial of all or a part of a Claim for Reimbursement or withholding payment in accordance with the provisions of this section, the State agency shall provide the school food authority a written notice which details the grounds on which the denial of all or a part of the Claim for Reimbursement or withholding payment is based. This notice, which shall be sent by certified mail, return receipt requested, shall also include a statement indicating that the school food authority may appeal the denial of all or a part of a Claim for Reimbursement or withholding payment and the entity (i.e., FNS or State agency) to which the appeal should be directed. The State agency shall notify the school food authority, in writing, of the appeal procedures as specified in §210.18(q) for appeals of State agency findings, and for appeals of FNS findings, provide a copy of §210.29(d)(3) of the regulations.

(k) *Corrective action.* Corrective action is required for any violation under either the critical or general areas of the review. Corrective action shall be applied to all schools in the school food authority, as appropriate, to ensure that previously deficient practices and procedures are revised system-wide.

Corrective actions may include training, technical assistance, recalculation of data to ensure the correctness of any claim that the school food authority is preparing at the time of the review, or other actions. Fiscal action shall be taken in accordance with paragraph (m) of this section.

(1) *Extensions of the timeframes.* If extraordinary circumstances arise where a school food authority is unable to complete the required corrective action within the timeframes specified by

the State agency, the State agency may extend the timeframes upon written request of the school food authority.

(2) *Documented corrective action.* Documented corrective action is required for any degree of violation of general or critical areas identified in an administrative review or on any follow-up review. Documented corrective action may be provided at the time of the review; however, it shall be postmarked or submitted to the State agency no later than 30 days from the deadline for completion of each required corrective action, as specified under paragraph (j) of this section or as otherwise extended by the State agency under paragraph (k)(1) of this section. The State agency shall maintain any documented corrective action on file for review by FNS.

(l) *Withholding payment.* At a minimum, the State agency shall withhold Program payments to a school food authority as follows:

(1) *Cause.* (i) The State agency shall withhold all Program payments to a school food authority if documented corrective action for critical area violation(s) which exceed the review threshold(s) is not provided within the deadlines specified in paragraph (k)(2) of this section; and/or

(ii) The State agency shall withhold all Program payments to a school food authority if, in the event that a follow-up review is not conducted, the State agency finds that corrective action for a critical area violation which exceeded the review threshold was not completed within the deadlines specified in paragraph (j) of this section or as otherwise extended by the State agency under paragraph (k)(1) of this section; and/or

(iii) The State agency shall withhold all Program payments to a school food authority if, on a follow-up review, the State agency finds a critical area violation which exceeded the review threshold on a previous review and continues to exceed the review threshold on a follow-up review.

(iv) The State agency may withhold payments at its discretion, if the State agency finds that documented corrective action is not provided within the deadlines specified in paragraph (k)(2) of this section, that corrective action is not complete or that corrective action was not taken as specified in the documented corrective action for a general area violation or for a critical area violation which did not exceed the review threshold.

(2) *Duration.* In all cases, Program payments shall be withheld until such time as corrective action is completed, and documented corrective action is received and deemed acceptable by the State agency or as otherwise specified in paragraph (i)(5) of this section. Subsequent to the State agency's acceptance of the corrective actions (and a follow-up review, when required), payments will be released for all lunches served in accordance with the provisions of this part during the period the payments were withheld. In very serious cases, the State agency will evaluate whether the degree of non-compliance warrants termination in accordance with § 210.25 of this part.

(3) *Exceptions.* The State agency may, at its discretion, reduce the amount required to be withheld from a school food authority pursuant to paragraph (l)(1)(i) through (iii) of this section by as much as 60 percent of the total Program payments when it is determined to be in the best interest of the Program. FNS may authorize a State agency to limit withholding of funds to an amount less than 40 percent of the total Program payments, if FNS determines such action to be in the best interest of the Program.

(4) *Failure to withhold payments.* FNS may suspend or withhold Program payments, in whole or in part, to those State agencies failing to withhold Program payments in accordance with paragraph (l)(1) of this section and may withhold administrative funds in accordance with § 235.11(b) of this title. The withholding of Program payments will remain in effect until such time as the State agency documents compliance with paragraph (l)(1) of this section to FNS. Subsequent to the documentation of compliance, any withheld administrative funds will be released and payment will be released for any lunches served in accordance with the provisions of this part during the period the payments were withheld.

(m) *Fiscal action.* For purposes of the critical areas of the administrative review and any follow-up reviews, fiscal action is required for all violations of Performance Standards 1 and 2. Except that, on an administrative review, the State agency may limit fiscal action from the point corrective action occurs back through the beginning of the review period for errors identified under paragraphs (g)(1)(i)(A) and (g)(1)(i)(B) of this section, provided corrective action occurs. Fiscal action shall be taken in accordance with the provisions identified under §210.19(c) of this part.

(n) *Miscellaneous reporting requirement.* Each State agency shall report to FNS the results of reviews by March 1 of each school year, on a form designated by FNS. In such annual reports, the State agency shall include the results of all administrative reviews and follow-up reviews conducted in the preceding school year.

(o) *Summary of reporting requirements.* Each State agency shall report to FNS:

(1) The names of those large school food authorities exceeding any one of the critical area review thresholds as described in paragraph (d)(2) of this section.

(2) The results of reviews by March 1 of each school year on a form designated by FNS, as specified under paragraph (n) of this section.

(p) *Recordkeeping.* Each State agency shall keep records which document the details of all reviews and demonstrate the degree of compliance with the critical and general areas of review. Records shall be retained by the State agency as specified in §210.23(c) of this part. Such records shall include documentation of administrative reviews and follow-up reviews. As appropriate, the records shall include documented corrective action, and documentation of withholding of payments and fiscal action, including recoveries made. Additionally, the State agency must have on file:

(1) Criteria for selecting schools on first and follow-up reviews in accordance with paragraphs (e)(2)(ii) and (i)(2)(ii) of this section.

(2) Its system for selecting small school food authorities for follow-up reviews in accordance with paragraph (i)(1) of this section.

(3) Documentation demonstrating compliance with the statistical sampling requirements in accordance with paragraph (g)(1)(i)(A)(1) of this section, if applicable.

(q) *School food authority appeal of State agency findings.* Except for FNS-conducted reviews authorized under §210.29(d)(2), each State agency shall establish an appeal procedure to be followed by a school food authority requesting a review of a denial of all or a part of the Claim for Reimbursement or withholding payment arising from administrative or follow-up review activity conducted by the State agency under §210.18 of this part. State agencies may use their own appeal procedures provided the same procedures are applied to all appellants in the State and the procedures meet the following requirements: appellants are assured of a fair and impartial hearing before an independent official at which they may be represented by legal counsel; decisions are rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for review; appellants are afforded the right to either a review of the record with the right to file written information, or a hearing which they may attend in person; and adequate notice is given of the time, date, place and procedures of the hearing. If the State agency has not established its own appeal procedures or the procedures do not meet the above listed criteria, the State agency shall observe the following procedures at a minimum:

(1) The written request for a review shall be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of the Claim for Reimbursement or withholding of payment, and the State agency shall acknowledge the receipt of the request for appeal within 10 calendar days;

(2) The appellant may refute the action specified in the notice in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice. The appellant

may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant school food authority's representative to appear at a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official;

(3) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time, date and place of the hearing;

(4) Any information on which the State agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(5) The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(6) The review official shall make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(7) Within 60 calendar days of the State agency's receipt of the request for review, by written notice, sent by certified mail, return receipt requested, the review official shall inform the State agency and the appellant of the determination of the review official. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(8) The State agency's action shall remain in effect during the appeal process;

(9) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(r) *FNS review activity.* The term ''State agency'' and all the provisions specified in paragraphs (a)–(h) of this section refer to FNS when FNS conducts administrative reviews or follow-up reviews in accordance with § 210.29(d)(2). FNS will notify the State agency of the review findings and the need for corrective action and fiscal action. The State agency shall pursue any needed follow-up activity.

[56 FR 32942, July 17, 1991; 56 FR 55527, Oct. 28, 1991, as amended at 57 FR 38584, Aug. 26, 1992; 57 FR 40729, Sept. 4, 1992; 59 FR 1894, Jan. 13, 1994; 60 FR 31215, June 13, 1995; 60 FR 57147, Nov. 14, 1995; 64 FR 50740, 50741, Sept. 20, 1999; 64 FR 72471, Dec. 28, 1999; 65 FR 26922, May 9, 2000]

§ 210.19 Additional responsibilities.

(a) *General Program management.* Each State agency shall provide an adequate number of consultative, technical and managerial personnel to administer programs and monitor performance in complying with all Program requirements.

(1) *Compliance with nutrition standards.* (i) Beginning with School Year 1996–1997, State agencies shall evaluate compliance, over the school week, with the nutrition standards for lunches and, as applicable, for breakfasts. Review activity may be confined to lunches served under the Program unless a menu planning approach is used exclusively in the School Breakfast Program or unless the school food authority only offers breakfasts under the School Breakfast Program. For lunches, compliance with the requirements in § 210.10(b) and § 210.10(c), (d), or (i)(1) or the procedures developed under § 210.10(l), as applicable, is assessed. For breakfasts, see § 220.13(f)(3) of this chapter.

(A) These evaluations may be conducted at the same time a school food authority is scheduled for an administrative review in accordance with § 210.18. State agencies may also conduct these evaluations in conjunction with technical assistance visits, other reviews, or separately.

(B) The type of evaluation conducted by the State agency shall be determined by the menu planning approach chosen by the school food authority. At

a minimum, the State agency shall review at least one school for each type of menu planning approach used in the school food authority.

(C) In addition, State agencies are encouraged to review breakfasts offered under 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 §220.13(f)(3) of this chapter 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.

(ii) At a minimum, State agencies shall conduct evaluations of compliance with the nutrition standards in §210.10 and §220.8 of this Chapter 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 in which such evaluation is conducted. The week selected must continue to represent the current menu planning approach(es).

(iii) For school food authorities choosing the nutrient standard or assisted nutrient standard menu planning approaches provided in §210.10(i), §210.10(j), §220.8(e) or §220.8(f) of this chapter, or developed under the procedures in §210.10(l) or §220.8(h) of this chapter, the State agency shall assess the nutrient analysis to determine if the school food authority is properly applying the methodology in these paragraphs, as applicable. Part of this assessment shall be an independent review of menus and production records to determine if they correspond to the analysis conducted by the school food authority and if the menu, as offered, over a school week, corresponds to the nutrition standards set forth in §210.10(b) and the appropriate calorie and nutrient levels in §210.10(c) or §210.10(i)(1), whichever is applicable.

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

(A) Use the nutrient analysis of any school or school food authority that offers lunches or breakfasts using the food-based menu planning approaches provided in §210.10(k) and §220.8(g) of this chapter and that conducts its own nutrient analysis under the criteria for such analysis established in §210.10 and §220.8 of this chapter for the nutrient standard and assisted nutrient standard menu planning approaches; or

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

(v) If the menu for the school week fails to comply with the nutrition standards specified in §210.10(b) and/or §220.8(a) and the appropriate nutrient levels in either §210.10(c), §210.10(d), or §210.10(i)(1) whichever is applicable, and/or §220.8(b), §220.8(c) or §220.8(e)(1) of this chapter, whichever is applicable, the school food authority shall develop, with the assistance and concurrence of the State agency, a corrective action plan designed to rectify those deficiencies. The State agency shall monitor the school food authority's execution of the plan to ensure that the terms of the corrective action plan are met.

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

(vii) If a school food authority fails to meet the terms of the corrective action plan, the State agency shall determine if the school food authority is

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

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

(3) *Improved management practices.* The State agency shall work with the school food authority toward improving the school food authority's management practices where the State agency has found poor food service management practices leading to decreasing or low child participation and/or poor child acceptance of the Program or of foods served. If a substantial number of children who routinely and over a period of time do not favorably accept a particular item that is offered; return foods; or choose less than all food items/components or foods and menu items, as authorized under § 210.10, poor acceptance of certain menus may be indicated.

(4) *Program compliance.* Each State agency shall require that school food authorities comply with the applicable provisions of this part. The State agency shall ensure compliance through audits, administrative reviews, technical assistance, training guidance materials or by other means.

(5) *Investigations.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. State agencies shall maintain on file, evidence of such investigations and actions. FNS and OIG may make reviews or investigations at the request of the State agency or where FNS or OIG determines reviews or investigations are appropriate.

(6) *Food service management companies.* Each State agency shall annually review each contract between any school food authority and food service management company to ensure compliance with all the provisions and standards set forth in § 210.16 of this part. Each State agency shall perform an onsite review of each school food authority contracting with a food service management company, at least once during each 5-year period. The State agency is encouraged to conduct such a review when performing reviews in accordance with § 210.18. Such reviews shall include an assessment of the school food authority's compliance with § 210.16 of this part. The State agency may require that all food service management companies that wish to contract for food service with any school food authority in the State register with the State agency. State agencies shall provide assistance upon request of a school food authority to assure compliance with Program requirements.

(b) *Donated food distribution information.* Information on schools eligible to receive donated foods available under section 6 of the National School Lunch Act (42 U.S.C. 1755) shall be prepared

each year by the State agency with accompanying information on the average daily number of lunches to be served in such schools. This information shall be prepared as early as practicable each school year and forwarded no later than September 1 to the Distributing agency. The State agency shall be responsible for promptly revising the information to reflect additions or deletions of eligible schools, and for providing such adjustments in participation as are determined necessary by the State agency. Schools shall be consulted by the Distributing agency with respect to the needs of such schools relating to the manner of selection and distribution of commodity assistance.

(c) *Fiscal action.* State agencies are responsible for ensuring Program integrity at the school food authority level. State agencies shall take fiscal action against school food authorities for Claims for Reimbursement that are not properly payable under this part including, if warranted, the disallowance of funds for failure to take corrective action in accordance with paragraph (a)(1) of this section. In taking fiscal action, State agencies shall use their own procedures within the constraints of this part and shall maintain all records pertaining to action taken under this section. The State agency may refer to FNS for assistance in making a claims determination under this part.

(1) *Definition.* Fiscal action includes, but is not limited to, the recovery of overpayment through direct assessment or offset of future claims, disallowance of overclaims as reflected in unpaid Claims for Reimbursement, submission of a revised Claim for Reimbursement, and correction of records to ensure that unfiled Claims for Reimbursement are corrected when filed. Fiscal action also includes disallowance of funds for failure to take corrective action in accordance with paragraph (a)(1) of this section.

(2) *General principles.* When taking fiscal action, State agencies shall consider the following:

(i) The State agency shall identify the school food authority's correct entitlement and take fiscal action when any school food authority claims or receives more Federal funds than earned under §210.7 of this part. In order to take fiscal action, the State agency shall identify accurate counts of reimbursable lunches through available data, if possible. In the absence of reliable data, the State agency shall reconstruct the lunch accounts in accordance with procedures established by FNS. Such procedures will be based on the best available information including, participation factors for the review period, data from similar schools in the school food authority, etc.

(ii) Unless otherwise specified under §210.18(m) of this part, fiscal action shall be extended back to the beginning of the school year or that point in time during the current school year when the infraction first occurred, as applicable. Based on the severity and longevity of the problem, the State agency may extend fiscal action back to previous school years, as applicable. The State agency shall ensure that any Claim for Reimbursement, filed subsequent to the reviews conducted under §210.18 and prior to the implementation of corrective action, is limited to lunches eligible for reimbursement under this part.

(iii) In taking fiscal action, State agencies shall assume that children determined by the reviewer to be incorrectly approved for free and reduced price lunches participated at the same rate as correctly approved children in the corresponding lunch category.

(3) *Failure to collect.* If a State agency fails to disallow a claim or recover an overpayment from a school food authority, as described in this section, FNS will notify the State agency that a claim may be assessed against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning overpayment. If after considering all available information, FNS determines that a claim is warranted, FNS will assess a claim in the amount of such overpayment against the State agency. If the State agency fails to pay any such demand for funds promptly, FNS will reduce the State agency's Letter of Credit by the sum due in accordance with FNS' existing offset procedures for Letter of Credit. In such event, the State agency shall provide the funds

necessary to maintain Program operations at the level of earnings from a source other than the Program.

(4) *Interest charge.* If an agreement cannot be reached with the State agency for payment of its debts or for offset of debts on its current Letter of Credit, interest will be charged against the State agency from the date the demand leter was sent, at the rate established by the Secretary of Treasury.

(5) *Use of recovered payment.* The amounts recovered by the State agency from school food authorities may be utilized during the fiscal year for which the funds were initially available, first, to make payments to school food authorities for the purposes of the Program; and second, to repay any State funds expended in the reimbursement of claims under the Program and not otherwise repaid. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of this part.

(6) *Exceptions.* The State agency need not disallow payment or collect an overpayment arising out of the situations described in paragraphs (c)(6) (i) and (ii) of this section; provided that the school food authority corrects the problem(s) to the satisfaction of the State agency:

(i) When any review or audit reveals that a school food authority is failing to meet the quantities for each meal element (food item/component, menu item or other items, as applicable) as required under § 210.10.

(ii) when any review or audit reveals that a school food authority is approving applications which indicate that the households' incomes are within the Income Eligibility Guidelines issued by the Department or the applications contain a food stamp or AFDC case number but the applications are missing the documentation specified under 7 CFR 245.2 (a–4) (3) and/or (4); or

(iii) when any review or audit reveals that a school food authority's failure to meet the nutrition standards of § 210.10 is unintentional and the school food authority is meeting the requirements of a corrective plan developed and agreed to under paragraph (a)(1)(iii) of this section.

(7) *Claims adjustment.* FNS will have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. FNS will also have the authority to waive such claims if FNS determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of title 28, U.S. Code, to conduct litigation on behalf of the United States.

(d) *Management evaluations.* Each State agency shall provide FNS with full opportunity to conduct management evaluations of all State agency Program operations and shall provide OIG with full opportunity to conduct audits of all State agency Program operations. Each State agency shall make available its records, including records of the receipt and disbursement of funds under the Program and records of any claim compromised in accordance with this paragraph, upon a reasonable request by FNS, OIG, or the Comptroller General of the United States. FNS and OIG retain the right to visit schools and OIG also has the right to make audits of the records and operations of any school. In conducting management evaluations, reviews or audits for any fiscal year, the State agency, FNS, or OIG may disregard any overpayment if the total overpayment does not exceed $600 or, in the case of State agency claims in State administered Programs, it does not exceed the amount established under State law, regulations or procedure as a minimum amount for which claim will be made for State losses but not to exceed $600. However, no overpayment is to be disregarded where there is substantial evidence of violations of criminal law or civil fraud statutes.

(e) *Additional requirements.* Nothing contained in this part shall prevent a State agency from imposing additional requirements for participation in the Program which are not inconsistent with the provisions of this part.

(f) *Cooperation with the Child and Adult Care Food Program.* On an annual basis, the State agency shall provide the State agency which administers the Child and Adult Care Food Program with a list of all elementary schools in the State participating in

the National School Lunch Program in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of the previous October, or other month specified by the State agency. The first list shall be provided by March 15, 1997; subsequent lists shall be provided by February 1 of each year or, if data is based on a month other than October, within 90 calendar days following the end of the month designated by the State agency. The State agency may provide updated free and reduced price enrollment data on individual schools to the State agency which administers the Child and Adult Care Food Program only when unusual circumstances render the initial data obsolete. In addition, the State agency shall provide the current list, upon request, to sponsoring organizations of day care homes participating in the Child and Adult Care Food Program.

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 12582, Mar. 28, 1989; 56 FR 32947, July 17, 1991; 57 FR 38586, Aug. 26, 1992; 59 FR 1894, Jan. 13, 1994; 60 FR 31215, June 13, 1995; 60 FR 57147, Nov. 14, 1995; 62 FR 901, Jan. 7, 1997; 63 FR 9104, Feb. 24, 1998; 64 FR 50741, Sept. 20, 1999; 65 FR 26912, 26922, May 9, 2000]

§ 210.20 Reporting and recordkeeping.

(a) *Reporting summary*. Participating State agencies shall submit forms and reports to FNS to demonstrate compliance with Program requirements. The reports include but are not limited to:

(1) Requests for cash to make reimbursement payments to school food authorities as required under § 210.5(a);

(2) Information on the amounts of Federal Program funds expended and obligated to date (SF–269) as required under § 210.5(d);

(3) Statewide totals on Program participation (FNS–10) as required under § 210.5(d);

(4) Information on State funds provided by the State to meet the State matching requirements (FNS–13) specified under § 210.17(g);

(5) The names of school food authorities in need of a follow-up review;

(6) Results of reviews and audits; and

(7) Results of the commodity preference survey and recommendations for commodity purchases as required under § 250.13(k) of this chapter.

(b) *Recordkeeping summary*. Participating State agencies are required to maintain records to demonstrate compliance with Program requirements. The records include but are not limited to:

(1) Accounting records and source documents to control the receipt, custody and disbursement of Federal Program funds as required under § 210.5(a);

(2) Documentation supporting all school food authority claims paid by the State agency as required under § 210.5(d);

(3) Documentation to support the amount the State agency reported having used for State revenue matching as required under § 210.17(h);

(4) Records supporting the State agency's review of net cash resources as required under § 210.19(a);

(5) Reports on the results of investigations of complaints received or irregularities noted in connection with Program operations as required under § 210.19(a)

(6) Records of all reviews and audits, including records of action taken to correct Program violations; and records of fiscal action taken, including documentation of recoveries made;

(7) State agency criteria for selecting schools for reviews and small school food authorities for follow-up reviews;

(8) Documentation of action taken to disallow improper claims submitted by school food authorities, as required by § 210.19(c) and as determined through claims processing, resulting from actions such as reviews, audits and USDA audits;

(9) Records of USDA audit findings, State agency's and school food authorities' responses to them and of corrective action taken as required by § 210.22(a);

(10) Records pertaining to civil rights responsibilities as defined under § 210.23(b); and

(11) Records pertaining to the annual food preference survey of school food authorities as required by § 250.13(k) of this chapter.

[53 FR 29147, Aug. 2, 1988, as amended at 56 FR 32948, July 17, 1991; 56 FR 55527, Oct. 28, 1991; 64 FR 50741, Sept. 20, 1999]

Subpart E—State Agency and School Food Authority Responsibilities

§ 210.21 Procurement.

(a) *General.* State agencies and school food authorities shall comply with the requirements of 7 CFR part 3015 concerning the procurement of supplies, food, equipment and other services with Program funds. These requirements ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in 7 CFR part 3015 do not relieve the State agency or school food authority of any contractual responsibilities under its contracts. The State agency or school food authority is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State, or Federal authority that has proper jurisdiction.

(c) *Procurement procedure.* The State agency or school food authority may use its own procurement procedures which reflect applicable State and local laws and regulations, *provided that* procurements made with Program funds adhere to the standards set forth in 7 CFR part 3015.

(d) *Buy American.*—(1) *Definition of domestic commodity or product.* In this paragraph (d), the term 'domestic commodity or product' means—

(i) An agricultural commodity that is produced in the United States; and

(ii) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

(2) *Requirement.* (i) *In general.* Subject to paragraph (d)(2)(ii) of this section, the Department shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.

(ii) *Limitations.* Paragraph (d)(2)(i) of this section shall apply only to—

(A) A school food authority located in the contiguous United States; and

(B) A purchase of domestic commodity or product for the school lunch program under this part.

(3) *Applicability to Hawaii.* Paragraph (d)(2)(i) of this section shall apply to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school lunch program under this part.

[53 FR 29147, Aug. 2, 1988, as amended at 64 FR 50741, Sept. 20, 1999]

§ 210.22 Audits.

(a) *General.* State agencies and school food authorities shall comply with the requirements of 7 CFR part 3015 concerning the audit requirements for recipients and subrecipients of the Department's financial assistance.

(b) *Audit procedure.* These requirements call for organization-wide financial and compliance audits to ascertain whether financial operations are conducted properly; financial statements are presented fairly; recipients and subrecipients comply with the laws and regulations that affect the expenditures of Federal funds; recipients and subrecipients have established procedures to meet the objectives of federally assisted programs; and recipients and subrecipients are providing accurate and reliable information concerning grant funds. States and school food authorities shall use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in 7 CFR part 3015.

§ 210.23 Other responsibilities.

(a) *Free and reduced price lunches and meal supplements.* State agencies and school food authorities shall ensure that lunches and meal supplements are made available free or at a reduced price to all children who are determined by the school food authority to be eligible for such benefits. The determination of a child's eligibility for free

or reduced price lunches and meal supplements is to be made in accordance with 7 CFR part 245.

(b) *Civil rights.* In the operation of the Program, no child shall be denied benefits or be otherwise discriminated against because of race, color, national origin, age, sex, or disability. State agencies and school food authorities shall comply with the requirements of: Title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a, and 15b); and FNS Instruction 113–6.

(c) *Retention of records.* State agencies and school food authorities may retain necessary records in their original form or on microfilm. State agency records shall be retained for a period of 3 years after the date of submission of the final Financial Status Report for the fiscal year. School food authority records shall be retained for a period of 3 years after submission of the final Claim for Reimbursement for the fiscal year. In either case, if audit findings have not been resolved, the records shall be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

[53 FR 29147, Aug. 2, 1988, as amended at 58 FR 42489, Aug. 10, 1993; 64 FR 50741, Sept. 20, 1999]

Subpart F—Additional Provisions

§ 210.24 Withholding payments.

In accordance with § 3015.103 of this title, the State agency shall withhold Program payments, in whole or in part, to any school food authority which has failed to comply with the provisions of this part. Program payments shall be withheld until the school food authority takes corrective action satisfactory to the State agency, or gives evidence that such corrective action will be taken, or until the State agency terminates the grant in accordance with § 210.25 of this part. Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any lunches served in accordance with the provisions of this part during the period the payments were withheld.

[56 FR 32948, July 17, 1991]

§ 210.25 Suspension, termination and grant closeout procedures.

Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FNS guidelines and instructions, FNS may suspend or terminate the Program in whole, or in part, or take any other action as may be available and appropriate. A State agency may also terminate the Program by mutual agreement with FNS. FNS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR part 3015, subpart N concerning grant suspension, termination and closeout procedures. Furthermore, the State agency shall apply these provisions to suspension or termination of the Program in school food authorities.

[53 FR 29147, Aug. 2, 1988. Redesignated at 56 FR 32948, July 17, 1991]

§ 210.26 Penalties.

Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part whether received directly or indirectly from the Department, shall if such funds, assets, or property are of a value of $100 or more, be fined no more than $25,000 or imprisoned not more than 5 years or both; or if such funds, assets, or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals, or retains for personal use or gain, funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties.

[53 FR 29147, Aug. 2, 1988. Redesignated at 56 FR 32948, July 17, 1991, as amended at 64 FR 50741, Sept. 20, 1999]

§ 210.27 Educational prohibitions.

In carrying out the provisions of the Act, the Department shall not impose any requirements with respect to teaching personnel, curriculum, instructions, methods of instruction, or materials of instruction in any school as a condition for participation in the Program.

[53 FR 29147, Aug. 2, 1988. Redesignated at 56 FR 32948, July 17, 1991, as amended at 64 FR 50741, Sept. 20, 1999]

§ 210.28 Pilot project exemptions.

Those State agencies or school food authorities selected for the pilot projects mandated under section 18(d) of the Act may be exempted by the Department from some or all of the counting and free and reduced price application requirements of this part and 7 CFR part 245, as necessary, to conduct an approved pilot project. Additionally, those schools selected for pilot projects that also operate the School Breakfast Program (7 CFR part 220) and/or the Special Milk Program for Children (7 CFR part 215), may be exempted from the counting and free and reduced price application requirements mandated under these Programs. The Department shall notify the appropriate State agencies and school food authorities of its determination of which requirements are exempted after the Department's selection of pilot projects.

[55 FR 41504, Oct. 12, 1990. Redesignated at 56 FR 32948, July 17, 1991. Further redesignated at 64 FR 50741, Sept. 20, 1999]

§ 210.29 Management evaluations.

(a) *Management evaluations.* FNS will conduct a comprehensive management evaluation of each State agency's administration of the National School Lunch Program.

(b) *Basis for evaluations.* FNS will evaluate all aspects of State agency management of the Program using tools such as State agency reviews as required under § 210.18 or § 210.18a of this part; reviews conducted by FNS in accordance with § 210.18 of this part; FNS reviews of school food authorities and schools authorized under § 210.19(a)(4) of this part; follow-up reviews and actions taken by the State agency to correct violations found during reviews; FNS observations of State agency reviews; and audit reports.

(c) *Scope of management evaluations.* The management evaluation will determine whether the State agency has taken steps to ensure school food authority compliance with Program regulations, and whether the State agency is administering the Program in accordance with Program requirements and good management practices.

(1) *Local compliance.* FNS will evaluate whether the State agency has actively taken steps to ensure that school food authorities comply with the provisions of this part.

(2) *State agency compliance.* FNS will evaluate whether the State agency has fulfilled its State level responsibilities, including, but not limited to the following areas: use of Federal funds; reporting and recordkeeping; agreements with school food authorities; review of food service management company contracts; review of the claims payment process; implementation of the State agency's monitoring responsibilities; initiation and completion of corrective action; recovery of overpayments; disallowance of claims that are not properly payable; withholding of Program payments; oversight of school food authority procurement activities; training and guidance activities; civil rights; and compliance with the State Administrative Expense Funds requirements as specified in 7 CFR part 235.

(d) *School food authority reviews.* FNS will examine State agency administration of the Program by reviewing local Program operations. When conducting these reviews under paragraph (d)(2) of this section, FNS will follow all the administrative review requirements specified in § 210.18(a)–(h) of this part. When FNS conducts reviews, the findings will be sent to the State agency to ensure all the needed follow-up activity occurs. The State agency will, in all cases, be invited to accompany FNS reviewers.

(1) *Observation of State agency reviews.* FNS may observe the State agency conduct of any review and/or any follow-up review as required under this part. At State agency request, FNS may assist in the conduct of the review.

(2) *Section 210.18 reviews.* FNS will conduct administrative reviews or follow-up reviews in accordance with §210.18(a)–(h) of this part which will count toward meeting the State agency responsibilities identified under §210.18 of this part.

(3) *School food authority appeal of FNS findings.* When administrative or follow-up review activity conducted by FNS in accordance with the provisions of paragraph (d)(2) of this section results in the denial of all or part of a Claim for Reimbursement or withholding of payment, a school food authority may appeal the FNS findings by filing a written request with the Chief, Administrative Review Branch, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia, 22302, in accordance with the appeal procedures specified in this paragraph:

(i) The written request for a review of the record shall be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of the Claim for Reimbursement or withholding payment and the envelope containing the request shall be prominently marked ''REQUEST FOR REVIEW''. FNS will acknowledge the receipt of the request for appeal within 10 calendar days. The acknowledgement will include the name and address of the FNS Administrative Review Officer (ARO) reviewing the case. FNS will also notify the State agency of the request for appeal.

(ii) The appellant may refute the action specified in the notice in person and by written documentation to the ARO. In order to be considered, written documentation must be filed with the ARO not later than 30 calendar days after the appellant received the notice. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the ARO in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant school food authority's representative to appear at a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the ARO, unless the ARO agrees to reschedule the hearing. A representative of FNS shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the ARO;

(iii) If the appellant has requested a hearing, the appellant shall be provided with a least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time, date, and place of the hearing;

(iv) Any information on which FNS's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(v) The ARO shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(vi) The ARO shall make a determination based on information provided by FNS and the appellant, and on Program regulations;

(vii) Within 60 calendar days of the receipt of the request for review, by written notice, sent by certified mail, return receipt requested, the ARO shall inform FNS, the State agency and the appellant of the determination of the ARO. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(viii) The action being appealed shall remain in effect during the appeal process;

(ix) The determination by the ARO is the final administrative determination to be afforded to the appellant.

(4) *Coordination with State agency.* FNS will coordinate school food authority selection with the State agency to ensure that no unintended overlap exists and to ensure reviews are conducted in a consistent manner.

(e) *Management evaluation findings.* FNS will consider the results of all its review activity within each State, including school food authority reviews, in performing management evaluations and issuing management evaluation reports. FNS will communicate the findings of the management evaluation to appropriate State agency personnel in an exit conference. Subsequent to the

exit conference, the State agency will be notified in writing of the management evaluation findings and any needed corrective actions or fiscal sanctions in accordance with the provisions § 210.25 of this part and/or 7 CFR part 235.

[56 FR 32949, July 17, 1991, as amended at 57 FR 38586, Aug. 26, 1992. Redesignated at 64 FR 50741, Sept. 20, 1999]

§ 210.30 Regional office addresses.

School food authorities desiring information concerning the Program should write to their State educational agency or to the appropriate Regional Office of FNS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 10 Causeway Street, Room 501, Boston, Massachusetts 02222–1065.

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 61 Forsyth Street SW, Room 8T36, Atlanta, Georgia 30303.

(c) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 77 West Jackson Boulevard, 20th Floor, Chicago, Illinois 60604–3507.

(d) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75242.

(e) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, the Commonwealth of the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

(f) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, 300 Corporate Boulevard, Robbinsville, New Jersey 08691–1598.

(g) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 1244 Speer Boulevard, Suite 903, Denver, Colorado 80204.

[53 FR 29147, Aug. 2, 1988. Redesignated at 55 FR 41503, Oct. 12, 1990. Further redesignated at 56 FR 32948, July 17, 1991. Further redesignated at 64 FR 50741, Sept. 20, 1999; 65 FR 12434, Mar. 9, 2000]

§ 210.31 OMB control numbers.

The following control numbers have been assigned to the information collection requirements in 7 CFR part 210 by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

7 CFR section where requirements are described	Current OMB control No.
210.3(b)	0584–0327
210.5(d)	0584–0006
210.5(d)(1)	0584–0002
210.5(d)(2)	0584–0341
210.5(d)(3)	0584–0341
210.6(b)	0584–0006
210.8	0584–0006
	0584–0284
210.9	0584–0006
	0584–0026
	0584–0329
210.10(b)	0584–0006
210.10(i)(1)	0584–0006
210.14(c)	0584–0006
210.16	0584–0006
210.17	0584–0006
210.17(g)	0584–0075
210.18	0584–0006
210.19	0584–0006
210.22	0584–0006
210.23(c)	0584–0006
210.24	0584–0006
210.27	0584–0006

[53 FR 29147, Aug. 2, 1990. Redesignated at 55 FR 41503, Oct. 12, 1990. Further redesignated at 56 FR 32948, July 17, 1991. Further redesignated at 64 FR 50741, Sept. 20, 1999]

APPENDIX A TO PART 210—ALTERNATE FOODS FOR MEALS

I. ENRICHED MACARONI PRODUCTS WITH FORTIFIED PROTEIN

1. Schools may utilize the enriched macaroni products with fortified protein defined in paragraph 3 as a food item in meeting the meal requirements of this part under the following terms and conditions:

(a) One ounce (28.35 grams) of a dry enriched macaroni product with fortified protein may be used to meet not more than one-

half of the meat or meat alternate requirements specified in §210.10, when served in combination with 1 or more ounces (28.35 grams) of cooked meat, poultry, fish, or cheese. The size of servings of the cooked combination may be adjusted for various age groups.

(b) Only enriched macaroni products with fortified protein that bear a label containing substantially the following legend shall be so utilized: ''One ounce (28.35 grams) dry weight of this product meets one-half of the meat or meat alternate requirements of lunch or supper of the USDA child nutrition programs when served in combination with 1 or more ounces (28.35 grams) of cooked meat, poultry, fish, or cheese. In those States where State or local law prohibits the wording specified, a legend acceptable to both the State or local authorities and FNS shall be substituted.''

(c) Enriched macaroni product may not be used for infants under 1 year of age.

2. Only enriched macaroni products with fortified protein that have been accepted by FNS for use in the USDA Child Nutrition Programs may be labeled as provided in paragraph 1(b) of this appendix. Manufacturers seeking acceptance of their product shall furnish FNS a chemical analysis, the Protein Digestibility-Corrected Amino Acid Score (PDCAAS), and such other pertinent data as may be requested by FNS, except that prior to November 7, 1994, manufacturers may submit protein efficiency ratio analysis in lieu of the PDCAAS. This information is to be forwarded to: Director, Nutrition and Technical Services Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, room 607, Alexandria, VA 22302. All laboratory analyses are to be performed by independent or other laboratories acceptable to FNS. (FNS prefers an independent laboratory.) All laboratories shall retain the ''raw'' laboratory data for a period of 1 year. Such information shall be made available to FNS upon request. Manufacturers must notify FNS if there is a change in the protein portion of their product after the original testing. Manufacturers who report such a change in protein in a previously approved product must submit protein data in accordance with the method specified in this paragraph.

3. The product should not be designed in such a manner that would require it to be classified as a Dietary Supplement as described by the Food and Drug Administration (FDA) in 21 CFR part 105. To be accepted by FNS, enriched macaroni products with fortified protein must conform to the following requirements:

(a)(1) Each of these foods is produced by drying formed units of dough made with one or more of the milled wheat ingredients designated in 21 CFR 139.110(a) and 139.138(a), and other ingredients to enable the finished food to meet the protein requirements set out in paragraph 3.(a)(2)(i) under Enriched Macaroni Products with Fortified Protein in this appendix. Edible protein sources, including food grade flours or meals made from nonwheat cereals or from oilseeds, may be used. Vitamin and mineral enrichment nutrients are added to bring the food into conformity with the requirements of paragraph (b) under Enriched Macaroni Products with Fortified Protein in this appendix. Safe and suitable ingredients, as provided for in paragraph (c) under Enriched Macaroni Products with Fortified Protein in this appendix, may be added. The proportion of the milled wheat ingredient is larger than the proportion of any other ingredient used.

(2) Each such finished food, when tested by the methods described in the pertinent sections of ''Official Methods of Analysis of the AOAC International,'' (formerly the Association of Official Analytical Chemists), 15th Ed. (1990) meets the following specifications. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the AOAC International, 2200 Wilson Blvd., suite 400, Arlington, VA 22201–3301. This publication may be examined at the Food and Nutrition Service, Nutrition and Technical Services Division, 3101 Park Center Drive, room 607, Alexandria, Virginia 22302 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(i) The protein content (N×6.25) is not less than 20 percent by weight (on a 13 percent moisture basis) as determined by the appropriate method of analysis in the AOAC manual cited in (a)(2) under Enriched Macaroni Products with Fortified Protein in this appendix. The protein quality is not less than 95 percent that of casein as determined on a dry basis by the PDCAAS method as described below:

(A) The PDCAAS shall be determined by the methods given in sections 5.4.1, 7.2.1. and 8.0 as described in ''Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation,'' Rome, 1990, as published by the Food and Agriculture Organization (FAO) of the United Nations/World Health Organization (WHO). This report is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this report may be obtained from the Nutrition and Technical Services Division, Food and Nutrition Service, 3101 Park Center Drive, room 607, Alexandria, Virginia 22302. This report may also be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://*

www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(B) The standard used for assessing protein quality in the PDCAAS method is the amino acid scoring pattern established by FAO/WHO and United Nations University (UNU) in 1985 for preschool children 2 to 5 years of age which has been adopted by the National Academy of Sciences, Recommended Dietary Allowances (RDA), 1989.

(C) To calculate the PDCAAS for an individual food, the test food must be analyzed for proximate analysis and amino acid composition according to AOAC methods.

(D) The PDCAAS may be calculated using FDA's limited data base of published true digestibility values (determined using humans and rats). The true digestibility values contained in the WHO/FAO report referenced in paragraph 3.(a)(2)(i)(A) under Enriched Macaroni Products with Fortified Protein in this appendix may also be used. If the digestibility of the protein is not available from these sources it must be determined by a laboratory according to methods in the FAO/WHO report (sections 7.2.1 and 8.0).

(E) The most limiting essential amino acid (that is, the amino acid that is present at the lowest level in the test food compared to the standard) is identified in the test food by comparing the levels of individual amino acids in the test food with the 1985 FAO/WHO/UNU pattern of essential amino acids established as a standard for children 2 to 5 years of age.

(F) The value of the most limiting amino acid (the ratio of the amino acid in the test food over the amino acid value from the pattern) is multiplied by the percent of digestibility of the protein. The resulting number is the PDCAAS.

(G) The PDCAAS of food mixtures must be calculated from data for the amino acid composition and digestibility of the individual components by means of a weighted average procedure. An example for calculating a PDCAAS for a food mixture of varying protein sources is shown in section 8.0 of the FAO/WHO report cited in paragraph 3.(a)(2)(i)(A) under Enriched Macaroni Products with Fortified Protein in this appendix.

(H) For the purpose of this regulation, each 100 grams of the product (on a 13 percent moisture basis) must contain protein in amounts which is equivalent to that provided by 20 grams of protein with a quality of not less than 95 percent casein. The equivalent grams of protein required per 100 grams of product (on a 13 percent moisture basis) would be determined by the following equation:

$$X = \frac{a \times b}{c}$$

X=grams of protein required per 100 grams of product

a=20 grams (amount of protein if casein)

b=.95 [95% ×1 (PDCAAS of casein)

c=PDCAAS for protein used in formulation

(ii) The total solids content is not less than 87 percent by weight as determined by the methods described in the ''Official Methods of Analysis of the AOAC International'' cited in paragraph (a)(2) under Enriched Macaroni Products with Fortified Protein in this appendix.

(b)(1) Each pound of food covered by this section shall contain 5 milligrams of thiamine, 2.2 milligrams of riboflavin, 34 milligrams of niacin or niacinamide, and 16.5 milligrams of iron.

(2) Each pound of such food may also contain 625 milligrams of calcium.

(3) Only harmless and assimilable forms of iron and calcium may be added. The enrichment nutrients may be added in a harmless carrier used only in a quantity necessary to effect a uniform distribution of the nutrients in the finished food. Reasonable overages, within the limits of good manufacturing practice, may be used to assure that the prescribed levels of the vitamins and mineral(s) in paragraphs (b)(1) and (2) under Enriched Macaroni Products with Fortified Protein in this appendix are maintained throughout the expected shelf life of the food under customary conditions of distribution.

(c) Ingredients that serve a useful purpose such as to fortify the protein or facilitate production of the food are the safe and suitable ingredients referred to in paragraph (a) under Enriched Macaroni Products with Fortified Protein in this appendix. This does not include color additives, artificial flavorings, artificial sweeteners, chemical preservatives, or starches. Ingredients deemed suitable for use by this paragraph are added in amounts that are not in excess of those reasonably required to achieve their intended purposes. Ingredients are deemed to be safe if they are not food additives within the meaning of section 201(s) of the Federal Food, Drug and Cosmetic Act, or in case they are food additives if they are used in conformity with regulations established pursuant to section 409 of the act.

(d)(1) The name of any food covered by this section is ''Enriched Wheat _____ Macaroni Product with Fortified Protein'', the blank being filled in with appropriate word(s) such as ''Soy'' to show the source of any flours or meals used that were made from non-wheat cereals or from oilseeds. In lieu of the words ''Macaroni Product'' the words ''Macaroni'', ''Spaghetti'', or ''Vermicelli'' as appropriate, may be used if the units conform in shape and size to the requirements of 21 CFR 139.110 (b), (c), or (d).

(2) When any ingredient not designated in the part of the name prescribed in paragraph (d)(1) under Enriched Macaroni Products

with Fortified Protein in this appendix, is added in such proportion as to contribute 10 percent or more of the quantity of protein contained in the finished food, the name shall include the statement ''Made with _____'', the blank being filled in with the name of each such ingredient, e.g. ''Made with nonfat milk''.

(3) When, in conformity with paragraph (d)(1) or (d)(2) under Enriched Macaroni Products with Fortified Protein in this appendix, two or more ingredients are listed in the name, their designations shall be arranged in descending order of predominance by weight.

(4) If a food is made to comply with a section of 21 CFR part 139, but also meets the compositional requirements of the Enriched Macaroni with Fortified Protein Appendix, it may alternatively bear the name set out in the other section.

(e) Each ingredient used shall declare its common name as required by the applicable section of 21 CFR part 101. In addition, the ingredients statement shall appear in letters not less than one half the size of that required by 21 CFR 101.105 for the declaration of net quantity of contents, and in no case less than one-sixteenth of an inch in height.

II. Alternate Protein Products

A. What Are the Criteria for Alternate Protein Products Used in the National School Lunch Program?

1. An alternate protein product used in meals planned under the food-based menu planning approaches in §210.10(k), must meet all of the criteria in this section.

2. An alternate protein product whether used alone or in combination with meat or other meat alternates must meet the following criteria:

a. The alternate protein product must be processed so that some portion of the nonprotein constituents of the food is removed. These alternate protein products must be safe and suitable edible products produced from plant or animal sources.

b. The biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS).

c. The alternate protein product must contain at least 18 percent protein by weight when fully hydrated or formulated. (''When hydrated or formulated'' refers to a dry alternate protein product and the amount of water, fat, oil, colors, flavors or any other substances which have been added).

d. Manufacturers supplying an alternate protein product to participating schools or institutions must provide documentation that the product meets the criteria in paragraphs A2. a through c of this appendix.

e. Manufacturers should provide information on the percent protein contained in the dry alternate protein product and on an as prepared basis.

f. For an alternate protein product mix, manufacturers should provide information on:

(1) the amount by weight of dry alternate protein product in the package;

(2) hydration instructions; and

(3) instructions on how to combine the mix with meat or other meat alternates.

B. How Are Alternate Protein Products Used in the National School Lunch Program?

1. Schools, institutions, and service institutions may use alternate protein products to fulfill all or part of the meat/meat alternate component discussed in §210.10.

2. The following terms and conditions apply:

a. The alternate protein product may be used alone or in combination with other food ingredients. Examples of combination items are beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

b. Alternate protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form. The moisture content of the fully hydrated alternate protein product (if prepared from a dry concentrated form) must be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

C. How Are Commercially Prepared Products Used in the National School Lunch Program?

Schools, institutions, and service institutions may use a commercially prepared meat or meat alternate product combined with alternate protein products or use a commercially prepared product that contains only alternate protein products.

[51 FR 34874, Sept. 30, 1986; 51 FR 41295, Nov. 14, 1986, as amended at 53 FR 29164, Aug. 2, 1988; 59 FR 51086, Oct. 7, 1994; 60 FR 31216; June 13, 1995; 61 FR 37671, July 19, 1996; 65 FR 12434, Mar. 9, 2000; 65 FR 26912, May 9, 2000; 69 FR 18803, Apr. 9, 2004]

Appendix B to Part 210—Categories of Foods of Minimal Nutritional Value

(a) *Foods of minimal nutritional value*—Foods of minimal nutritional value are:

(1) Soda Water—A class of beverages made by absorbing carbon dioxide in potable water. The amount of carbon dioxide used is not less than that which will be absorbed by the beverage at a pressure of one atmosphere

and at a temperature of 60° F. It either contains no alcohol or only such alcohol, not in excess of 0.5 percent by weight of the finished beverage, as is contributed by the flavoring ingredient used. No product shall be excluded from this definition because it contains artificial sweeteners or discrete nutrients added to the food such as vitamins, minerals and protein.

(2) *Water Ices*—As defined by 21 CFR 135.160 Food and Drug Administration Regulations except that water ices which contain fruit or fruit juices are not included in this definition.

(3) *Chewing Gum*—Flavored products from natural or synthetic gums and other ingredients which form an insoluble mass for chewing.

(4) *Certain Candies*—Processed foods made predominantly from sweeteners or artifical sweeteners with a variety of minor ingredients which characterize the following types:

(i) *Hard Candy*—A product made predominantly from sugar (sucrose) and corn syrup which may be flavored and colored, is characterized by a hard, brittle texture, and includes such items as sour balls, fruit balls, candy sticks, lollipops, starlight mints, after dinner mints, sugar wafers, rock candy, cinnamon candies, breath mints, jaw breakers and cough drops.

(ii) *Jellies and Gums*—A mixture of carbohydrates which are combined to form a stable gelatinous system of jelly-like character, and are generally flavored and colored, and include gum drops, jelly beans, jellied and fruit-flavored slices.

(iii) *Marshmallow Candies*—An aerated confection composed as sugar, corn syrup, invert sugar, 20 percent water and gelatin or egg white to which flavors and colors may be added.

(iv) *Fondant*—A product consisting of microscopic-sized sugar crystals which are separated by thin film of sugar and/or invert sugar in solution such as candy corn, soft mints.

(v) *Licorice*—A product made predominantly from sugar and corn syrup which is flavored with an extract made from the licorice root.

(vi) *Spun Candy*—A product that is made from sugar that has been boiled at high temperature and spun at a high speed in a special machine.

(vii) *Candy Coated Popcorn*—Popcorn which is coated with a mixture made predominantly from sugar and corn syrup.

(b) *Petitioning Procedures*—Reconsideration of the list of foods of minimal nutritional value identified in paragraph (a) of this section may be pursued as follows:

(1) Any person may submit a petition to FNS requesting that an individual food be exempted from a category of foods of minimal nutritional value listed in paragraph (a). In the case of artificially sweetened foods, the petition must include a statement of the percent of Reference Daily Intake (RDI) for the eight nutrients listed in §210.11(a)(2) ''Foods of minimal nutritional value,'' that the food provides per serving and the petitioner's source of this information. In the case of all other foods, the petition must include a statement of the percent of RDI for the eight nutrients listed in §210.11(a)(2) ''Foods of minimal nutritional value,'' that the food provides per serving and per 100 calories and the petitioner's source of this information. The Department will determine whether or not the individual food is a food of minimal nutritional value as defined in §210.11(a)(2) and will inform the petitioner in writing of such determination, and the public by notice in the FEDERAL REGISTER as indicated below under paragraph (b)(3) of this section. In determining whether an individual food is a food of minimal nutritional value, discrete nutrients added to the food will not be taken into account.

(2) Any person may submit a petition to FNS requesting that foods in a particular category of foods be classified as foods of minimal nutritional value as defined in §210.11(a)(2). The petition must identify and define the food category in easily understood language, list examples of the food contained in the category and include a list of ingredients which the foods in that category usually contain. If, upon review of the petition, the Department determines that the foods in that category should not be classified as foods of minimal nutritional value, the petitioners will be so notified in writing. If, upon review of the petition, the Department determines that there is a substantial likelihood that the foods in that category should be classified as foods of minimal nutritional value as defined in §210.11(a)(2), the Department shall at that time inform the petitioner. In addition, the Department shall publish a proposed rule restricting the sale of foods in that category, setting forth the reasons for this action, and soliciting public comments. On the basis of comments received within 60 days of publication of the proposed rule and other available information, the Department will determine whether the nutrient composition of the foods indicates that the category should be classified as a category of foods of minimal nutritional value. The petitioner shall be notified in writing and the public shall be notified of the Department's final determination upon publication in the FEDERAL REGISTER as indicated under paragraph (b)(3) of this section.

(3) By May 1 and November 1 of each year, the Department will amend appendix B to exclude those individual foods identified under paragraph (b)(1) of this section, and to include those categories of foods identified under paragraph (b)(2) of this section, *provided*, that there are necessary changes. The

schedule for amending appendix B is as follows:

Actions for publication	Publication	
	May	November
Deadline for receipt of petitions by USDA.	Nov. 15	May 15.
USDA to notify petitioners of results of Departmental review and publish proposed rule (if applicable).	Feb. 1	Aug. 1.
60 Day comment period	Feb. 1 through Apr. 1.	Aug. 1 through Oct. 1.
Public notice of amendment of appendix B by.	May 1	Nov. 1.

(4) Written petitions should be sent to the Chief, Technical Assistance Branch, Nutrition and Technical Services Division, FNS, USDA, Alexandria, Virginia 22302, on or before November 15 or May 15 of each year. Petitions must include all information specified in paragraph (b) of this appendix and §220.12(b) (1) or (2) as appropriate.

[53 FR 29147, Aug. 2, 1988, as amended at 54 FR 18465, May 1, 1989; 59 FR 23614, May 6, 1994]

APPENDIX C TO PART 210—CHILD NUTRITION LABELING PROGRAM

1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Nutrition Service in conjunction with the Food Safety and Inspection Service (FSIS), and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture, and National Marine Fisheries Service of the U.S. Department of Commerce (USDC) for the Child Nutrition Programs. This program essentially involves the review of a manufacturer's recipe or product formulation to determine the contribution a serving of a commercially prepared product makes toward meal pattern requirements and a review of the CN label statement to ensure its accuracy. CN labeled products must be produced in accordance with all requirements set forth in this rule.

2. Products eligible for CN labels are as follows:

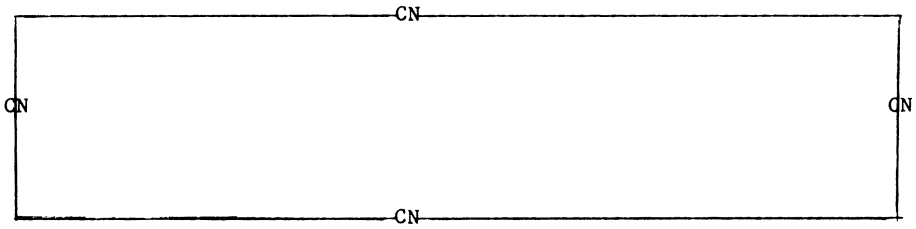
(a) Commercially prepared food products that contribute significantly to the meat/meat alternate component of meal pattern requirements of 7 CFR 210.10, 225.20, and 226.20 and are served in the main dish.

(b) Juice drinks and juice drink products that contain a minimum of 50 percent full-strength juice by volume.

3. For the purpose of this appendix the following definitions apply:

(a) ''CN label'' is a food product label that contains a CN label statement and CN logo as defined in paragraph 3 (b) and (c) below.

(b) The ''CN logo'' (as shown below) is a distinct border which is used around the edges of a ''CN label statement'' as defined in paragraph 3(c).



(c) The ''CN label statement'' includes the following:

(1) The product identification number (assigned by FNS),

(2) The statement of the product's contribution toward meal pattern requirements of 7 CFR 210.10, §220.8 or §220.8a, whichever is applicable, §§225.20, and 226.20. The statement shall identify the contribution of a specific portion of a meat/meat alternate product toward the meat/meat alternate, bread/bread alternate, and/or vegetable/fruit component of the meal pattern requirements. For juice drinks and juice drink products the statement shall identify their contribution toward the vegetable/fruit component of the meal pattern requirements,

(3) Statement specifying that the use of the CN logo and CN statement was authorized by FNS, and

(4) The approval date.

For example:

CN

000000

This 3.00 oz serving of raw beef pattie provides when cooked
CN 2.00 oz equivalent meat for Child Nutrition Meal Pattern CN
Requirements. (Use of this logo and statement authorized
by the Food and Nutrition Service, USDA 05-84.)

CN

(d) *Federal inspection* means inspection of food products by FSIS, AMS or USDC.

4. Food processors or manufacturers may use the CN label statement and CN logo as defined in paragraph 3 (b) and (c) under the following terms and conditions:

(a) The CN label must be reviewed and approved at the national level by FNS and appropriate USDA or USDC Federal agency responsible for the inspection of the product.

(b) The CN labeled product must be produced under Federal inspection by USDA or USDC. The Federal inspection must be performed in accordance with an approved partial or total quality control program or standards established by the appropriate Federal inspection service.

(c) The CN label statement must be printed as an integral part of the product label along with the product name, ingredient listing, the inspection shield or mark for the appropriate inspection program, the establishment number where appropriate, and the manufacturer's or distributor's name and address. The inspection marking for CN labeled non-meat, non-poultry, and non-seafood products with the exception of juice drinks and juice drink products is established as follows:

INSPECTED BY THE
U.S. DEPT. OF AGRICULTURE
IN ACCORDANCE WITH
FNS REQUIREMENTS

(d) Yields for determining the product's contribution toward meal pattern requirements must be calculated using the *Food Buying Guide for Child Nutrition Programs* (Program AID Number 1331).

5. In the event a company uses the CN logo and CN label statement inappropriately, the company will be directed to discontinue the use of the logo and statement and the matter will be referred to the appropriate agency for action to be taken against the company.

6. Products that bear a CN label statement as set forth in paragraph 3(c) carry a warranty. This means that if a food service authority participating in the Child Nutrition Programs purchases a CN labeled product and uses it in accordance with the manufacturer's directions, the school or institution will not have an audit claim filed against it for the CN labeled product for noncompliance with the meal pattern requirements of 7 CFR 210.10, §220.8 or §220.8a, whichever is applicable, §§225.20, and 226.20. If a State or Federal auditor finds that a product that is CN labeled does not actually meet the meal pattern requirements claimed on the label, the auditor will report this finding to FNS. FNS will prepare a report of the findings and send it to the appropriate divisions of FSIS and AMS of the USDA, National Marine Fisheries Services of the USDC, Food and Drug Administration, or the Department of Justice for action against the company. Any or all of the following courses of action may be taken:

(a) The company's CN label may be revoked for a specific period of time;

(b) The appropriate agency may pursue a misbranding or mislabeling action against the company producing the product;

(c) The company's name will be circulated to regional FNS offices;

(d) FNS will require the food service program involved to notify the State agency of the labeling violation.

7. FNS is authorized to issue operational policies, procedures, and instructions for the CN Labeling Program. To apply for a CN label and to obtain additional information on CN label application procedures write to: CN Labels, U.S. Department of Agriculture, Food and Nutrition Service, Nutrition and Technical Services Division, 3101 Park Center Drive, Alexandria, Virginia 22302.

[51 FR 34874, Sept. 30, 1986, as amended at 53 FR 29164, Aug. 2, 1988; 60 FR 31216, June 13, 1995; 65 FR 26912, May 9, 2000]

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

Sec.

215.1 General purpose and scope.
215.2 Definitions.
215.3 Administration.
215.4 Payments of funds to States and FNSROs.
215.5 Method of payment to States.
215.6 Use of funds.
215.7 Requirements for participation.
215.8 Reimbursement payments.
215.9 Effective date for reimbursement.
215.10 Reimbursement procedures.