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National School Lunch Program and School Breakfast Program: Additional Menu Planning Approaches; Final Rule

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

RIN: 0584–AC38

National School Lunch Program and School Breakfast Program: Additional Menu Planning Approaches

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Healthy Meals for Children Act expanded the number of approaches that schools may use to plan menus under the National School Lunch and School Breakfast Programs. One of the menu planning approaches specified in that law is the traditional meal pattern that was in effect in School Year 1994–95. This final rule also adds a method that allows schools to use ''any reasonable approach'' to plan menus. The various menu planning approaches now available allow schools greater flexibility in planning menus that both meet the nutrition requirements of the school lunch and breakfast programs and appeal to the nation's schoolchildren. We are also clarifying several State agency monitoring responsibilities associated with the implementation of the nutrition standards of the National School Lunch Act.

EFFECTIVE DATE: June 8, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; telephone 703–305–2620.

SUPPLEMENTARY INFORMATION:

Background

What Is the Purpose of this Rule?

The Food and Nutrition Service (FNS or we) published a proposed rule on May 15, 1998 (63 FR 27162), as another step in our efforts to enhance the nutritional quality of the National School Lunch Program (NSLP) and School Breakfast Program (SBP). That rule proposed to increase the number of menu planning approaches available to schools and to clarify how State agencies should assess the progress of schools in meeting the Dietary Guidelines for Americans (''the Dietary Guidelines'') and other nutrition standards. The purpose of this final rule is to discuss the comments we received and any revisions we made to the proposal as well as to codify these changes into the regulations.

How Has FNS Modified the Nutrition Requirements for School Lunches and Breakfasts?

In 1995, we issued a final rule (60 FR 31188, June 13, 1995) that updated the nutrition requirements for school lunches and breakfasts. School lunches and breakfasts now must meet the Dietary Guidelines including limits on fat (30% or less of total calories) and saturated fat (less than 10% of total calories). School lunches and breakfasts must also meet specific minimum standards for key nutrients (protein, calcium, iron, Vitamin A and Vitamin C), and for calories.

To help schools implement the updated nutrition standards, we provided additional menu planning approaches. Initially, we added two analysis-based approaches—nutrient standard menu planning (NSMP) and assisted nutrient standard menu planning (ANSMP). Schools adopting these approaches use computer analyses of the menus to determine if they meet the appropriate nutrient and calorie levels as well as the limits on fat and saturated fat. Schools using NSMP analyze their own menus. Schools using ANSMP rely on an outside entity (such as another school district) to conduct an analysis of their menus. Along with the analysis, recipes, product specifications, and such are provided to support the analyzed menus.

We then developed a meal pattern or food-based menu planning approach for schools that preferred this type of approach. This food-based menu planning approach is called the enhanced food-based menu planning approach. It is ''enhanced'' as the number of servings of grains/breads and fruits/vegetables were increased to provide sources of low-fat calories. In 1995, when we published the final rule, the meal pattern that schools had used since the beginning of the lunch program was going to be phased out. However, as discussed below, that meal pattern as well as an option for schools to develop alternate menu planning approaches were made available through legislation.

What Were the Provisions in the Proposed Rule?

The May 15, 1998, proposed rule addressed and requested comments on the following issues:

1. Reinstating the meal pattern in effect in School Year 1994–95 as one of the permanent menu planning approaches; this meal pattern is designated ''the traditional food-based menu planning approach'';
2. Establishing Recommended Dietary Allowances (RDAs) and calories levels for the traditional menu planning approach using the age/grade groups already established for the meal pattern;
3. Establishing guidelines for any reasonable approach to menu planning (hereinafter called alternate menu planning approach) with two tiers: Minor, pre-approved modifications to existing menu planning approaches and major changes to existing approaches or new approaches developed by either a school food authority (SFA) or a State agency;
4. Requiring approval for alternate menu planning approaches unless the alternate approach has on-going State agency support and assistance, has five or more SFAs adopting the approach and had a public notification issued prior to implementation of the alternate approach;
5. Requiring that any alternate menu planning approaches based on nutrient analysis use weighted averages and approved software unless the approach has on-going State agency support and assistance and five or more SFAs adopt the approach;
6. Clarifying certain monitoring procedures for State agencies; and
7. Citing the 1995 Dietary Guidelines.

What Is the Statutory Basis for These Changes?

This final rule implements sections of two public laws (Pub. L.):

Pub.L. 104–149, the Healthy Meals for Children Act (May 29, 1996); and Pub.L. 104–193, the Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 (August 22, 1996).

Pub.L. 104–149 expanded the number of menu planning approaches which schools may adopt. One menu planning approach specified in Pub.L. 104–149 is the approach that was in effect for School Year 1994–95. We named this menu planning approach the ''traditional food-based menu planning approach.'' The other menu planning approach included in the statute was ''any reasonable approach, within guidelines established by the Secretary. . . .''

Before a proposed rule to implement Pub.L. 104–149 was published, Pub.L. 104–193, was enacted. This law amended Section 9(f) of the National School Lunch Act (NSLA) (42 USC 1758(f)(1)(B)) to require that school lunches and breakfasts provide, over a week, one-third and one-fourth, respectively, of the RDAs established by the Food and Nutrition Board of the

National Research Council of the National Academy of Sciences. However, our regulations at 7 CFR § 210.10 already included these requirements.

Who Commented on the Proposed Rule?

The comment period for the proposed rule ended on November 12, 1998. We received a total of 70 comment letters. The following chart shows the distribution of commentors by type:

Type of commentor	Number of responses
Local level school food service professionals	29
State level school food service professionals	15
Advocacy groups	2
School food service associations	2
Food industry and food industry groups	19
Health/nutrition professionals	3
Total	70

Discussion of comments and their resolution

What Did We Ask for Comments On?

We solicited comments on the specific provisions to implement ''any reasonable approach'' to menu planning as well as other provisions concerning revisions to the nutrition standards and to the assessment requirements. In addition, we specifically requested comments on areas that were not proposed changes to the regulations. One of these areas was the appropriateness of the age/grade groups used to determine the nutrient levels under the traditional food-based menu planning approach.

What Are the Basic Age/Grade Requirements for Planning School Lunches?

In order to provide schools with a framework for menu planning and to reflect the increasing nutrient needs of children as they grow, we established age/grade groupings for both nutrient levels and, for the food-based menu planning approaches, portion sizes. Because we do not mandate portion sizes for the NSMP and ANSMP approaches, age/grade groupings are only established for nutrients. The age/grade groupings for the enhanced-food based approach (both portion sizes and nutrients) and the nutrient standard approach (nutrients only) are the same. Age/grade groupings for nutrients in the traditional food-based approach were not addressed when we initially established nutrient standards since that approach was to be phased-out.

When the traditional food-based menu planning approach was reinstated by law, we developed a chart with the RDA requirements that matched the age/grade groups used in the traditional approach in effect for school year 1994–1995. These age/grade groups are two preschool groups, grades K–3, and 4–12. There is an optional group for grades 7–12. We used the same groups as those already required for portion sizes since the law stipulated that the ''school nutrition meal pattern in effect for the 1994–1995 school year'' be one of the approaches available to schools. These age/grade groupings are different than the ones developed for the new menu planning approaches.

There are a significant number of schools that continue to use the traditional menu planning approach and offer lunches to all ages of children using only the meal pattern for grades 4–12 (Group IV). Use of Group IV for all students regardless of age is allowed by the regulations and is common practice in the NSLP. Because of this situation, we specifically asked for comments on the appropriateness of using a single age/grade group to establish the nutrient standards for schools using the traditional approach.

What Did the Commentors Suggest?

We received a total of 17 comments on this issue. Nine commentors supported use of the same set of age/grade groups for the nutrient levels for all menu planning approaches (preschool, K–6, 7–12, optional K–3). Eight commentors supported using the same age/grade groups for nutrient levels in both of the food-based menu planning approaches. The preferred groups were those established for the enhanced food-based menu planning approach.

As discussed earlier, we cannot make changes to the traditional food-based approach. Congress was clear that the traditional meal pattern must be available. Therefore, we are adopting without revision, the proposed changes at §§ 210.10(d)(1) and 220.8(c)(1), which provide the minimum requirements for nutrient levels under the traditional food-based menu planning approach. However, under the provisions for alternate menu planning approaches, we are adding two optional modifications for the lunch program concerning age/grade groups. These are discussed below.

What Modifications of Age/Grade Groups Are Permitted Under the Food-Based Menu Planning Approaches?

The first proposed modification concerned using age/grade groups for the majority of children enrolled. Children enrolled in a given school may span different age/grade groups for the nutrient and calorie levels and for the corresponding portion sizes for components under the food-based menu planning approaches. Under NSMP and ANSMP, if only one age or grade is outside the established levels for most of the children, schools may use the nutrition standards for the majority. We proposed extending this option to the food-based approaches for consistency and flexibility. We received nine comments on this provision, with seven supporting it. We are adopting this provision as final. Schools using either food-based approach may plan menus using the minimum nutrient and quantity requirements applicable to the majority of children as long as only one age or grade is outside the levels for the majority of children. This change is found at § 210.10(l)(2)(iii).

The second modification allows schools using the traditional food-based menu planning approach to adopt the nutrient standards developed for the other menu planning approaches. Under this modification, schools could do the following:

For grades	Portion sizes	Nutrient levels
K–6	Use the portion sizes for grades 4–12 from the traditional food-based menu planning approach.	Use the nutrient levels for grades K–6 from the other menu planning approaches.
7–12	Use the portion sizes for grades 4–12 from the traditional food-based menu planning approach.	Use the nutrient levels for grades 7–12 from the other menu planning approaches.

This modification allows schools to continue to follow the familiar portion sizes from the traditional food-based menu planning approach for children in grades K–6 while adopting the more focused nutrient and calorie levels developed under the other menu planning approaches. For children in grades 7–12, this modification would

allow schools the option of following the portion sizes for grades 4–12 from the traditional food-based menu planning approach while meeting the nutrient and calorie levels specific to children in grades 7–12. Use of the more accurate groupings for the nutrient and calorie levels gives schools better information on how well they are meeting the needs of their students. The State agency would also use the modification as the basis for its nutrition assessment review. This modification is found at § 210.10(l)(2)(ii).

Why Not Count a Grain-Based Dessert Under Both of the Food-Based Menu Planning Approaches?

Under the enhanced food-based menu planning approach, schools may count one grain-based dessert each day towards the weekly total. This policy gives additional flexibility for menu planners as the number of required grain/bread items increased substantially over the number required for the traditional menu planning approach. For example, for grades 7–12, the traditional approach food-based menu planning approach requires eight grain/bread servings (but recommends 10 servings) while 15 servings are required for the enhanced food-based approach. We were asked to extend this policy to the traditional menu planning approach.

We did not propose making this option available as a modification allowed under alternate approach provisions. However, we requested comments on this issue. We received 28 comments on this issue, 21 of which supported extending counting grain-based desserts under the traditional menu planning approach.

While most of the comments supported a provision that would count a grain-based dessert under the traditional menu planning approach, we are not including it in this final rule because none of the commentors provided a strong justification other than preference. We continue to believe that counting up to one grain-based dessert daily as a serving of the grains/breads component for the traditional food-based menu planning approach is too significant a proportion of the total number of required grain/bread items (up to 5 of only 8 servings versus up to 5 of 12 or 15 servings in the enhanced food-based menu planning approach). A child selecting a grains-based dessert on a daily basis would have the majority of their grains/breads component over the week met through the consumption of dessert.

What Did Commentors Say About Reinstatement of the Traditional Meal Pattern?

In the proposed rule, we incorporated the traditional meal pattern and any of its specific provisions in § § 210.10(k) and 220.8(g) which outline the food-based menu planning approaches. We received 25 comments on this provision with only two comments expressing concern that following the traditional menu planning approach makes it more difficult to meet the nutrition standards. The main concern of commentors about the traditional food-based menu planning approach is the age/grade groups used for the nutrition standards which we discussed earlier. We are hopeful that the optional modifications for the food-based menu planning approaches will alleviate the commentors' concerns. Therefore, the proposed provisions to incorporate the traditional meal pattern as a permanent option are adopted without change.

What Guidelines Were Proposed for Alternate Menu Planning Approaches?

Public Law 104–149 allows SFAs to use ''any reasonable approach'' to menu planning. The law also states that these alternate methods must meet guidelines established by the Secretary. We proposed two distinct classes of alternate menu planning approaches. First, there are those approaches which make relatively minor modifications to the four established menu planning approaches. For this type of approach, we proposed that State agencies establish a general policy allowing SFAs to adopt such approaches without prior approval from FNS. The second class of menu planning approaches involves unique proposals that depart significantly from existing approaches. Because this latter class of alternate menu planning approaches would be more unique, we proposed guidelines for their development.

In General, What Did Commentors Say About the Provisions for Alternate Menu Planning Approaches?

We received 23 comments on the overall concept of allowing States and SFAs to develop their own menu planning approaches. All but one comment supported the concept in general. We also received 13 comments on the guidelines we proposed for the alternate approaches. Ten of these comments stated that the guidelines were too complex, too restrictive, and needed to be more general in nature. We also received a number of comments on the specific provisions for alternate menu planning approaches which are discussed separately below.

We are required by the statute to provide guidelines for alternate menu planning approaches. We based these guidelines primarily on other statutory requirements such as serving fluid milk and meeting the Dietary Guidelines for Americans. The other guidelines we proposed addressed regulatory provisions on program and nutritional integrity for the school lunch and breakfast programs. Therefore, we are adopting the general structure for alternate menu planning approaches and their guidelines as final in § 210.10(l) and § 220.8(h). Revisions and modifications are discussed below in detail.

What Was Proposed About Minor Pre-approved Modifications to Existing Menu Planning Approaches?

The first class of alternate menu planning approaches proposed was specific, minor modifications to provisions of the existing menu planning approaches. While the State agency may require prior approval or may establish additional guidelines for their adoption, these modifications could be ''pre-approved'' as State agencies may allow their use without any additional review. The modifications we proposed only apply to the NSLP. Two of these modifications concern adapting age/grade groups to the school and were previously discussed. The third modification allows a weekly meat/meat alternate standard and is discussed below.

What Was Proposed About the Weekly Meat/Meat Alternate Standard?

We proposed that schools using either of the food-based menu planning approaches be allowed to vary the quantity of meat/meat alternate on a daily basis as long as the total amount served over the school week equals the minimum daily quantity multiplied by the number of serving days in the week. We were asked to consider this option because it is not always practical to offer the full daily minimum portion of the meat/meat alternate component required for the lunch program for the food-based menu planning approaches. For example, a serving of less than the required four tablespoons of peanut butter or two ounces of cheese in a sandwich may produce a more appealing entree while the full amount required can lead to waste. We proposed that the minimum amount of meat/meat alternate served on a given day could be only one ounce (or its equivalent) provided that the full 10 ounces (for grades 4–12 in the traditional approach/

grades 7–12 for the enhanced approach) or their equivalent of meat/meat alternate were available over a five day week. This would provide menu planners using a food-based approach much of the same flexibility enjoyed by their counterparts using NSMP while still ensuring that minimum quantities of essential foods were offered to children over a week's time. We noted that the option to vary the size of the meat component does not apply when the minimum quantity requirement is one ounce or less.

What Did Commentors Say About the Proposal on a Weekly Meat/Meat Alternate Standard?

We received 31 comments on this issue with 25 supporting the general idea. However, some of the commentors requested some clarification about how the option would work in schools with multiple choices of meat/meat alternate and those having offer versus serve (OVS) procedure. Other commentors noted that this modification would be difficult to monitor by State reviewers given the possibility of multiple choices of meat/meat alternate items. As the majority of comments supported this provision, we are adopting it as final (at § 210.10(l)(2)(i) as proposed. Below, we discuss the comments on how each day's meat/meat alternate choices (which may range from a one ounce minimum to two or more ounces) are counted when determining the weekly total.

What Is the Amount That Counts Towards the Weekly Total?

A number of commentors asked us to clarify how to consider multiple choices of meat/meat alternate items on a daily basis. For example, on Tuesday, the school offers a 3 ounce hamburger, a 1½ ounce grilled cheese sandwich, and a turkey sandwich with 2 ounces of meat. Which item or average would be used for the weekly total?

Commentors suggested that the item with the most ounces of meat/meat alternate be counted. This is similar to the method used to determine the weekly total for grains/breads and is most advantageous to schools. Others recommend that the item with the fewest ounces be counted. This would help to alleviate the concern of a few commentors that some children, especially under OVS, may not take items that would give them the full 10 ounces over the week. One commentor recommended that schools with various menu choices offer at least one two ounce meat/meat alternate item daily. While this would ensure that a child could select an item with two ounces of meat/meat alternate every day, it limits the school's flexibility to plan menus.

There are other components (fruits/vegetables and grains/breads) that have both daily and weekly minimums. We address how the weekly amounts are counted in guidance, not in the regulations. Therefore, to be consistent, we are not including this provision in the regulations. Also consistent with established practice and in response to some of the commentors' suggestions, schools would count the largest meat/meat alternate item offered. Using our earlier example, the three ounces of meat in the hamburger would be counted towards the weekly total. This method is easiest to track, both for schools and for State agency reviewers. We will be incorporating this method into our guidance materials as appropriate. In terms of nutritional integrity, the lunches offered by schools adopting this modification must continue to meet the appropriate nutrient levels and the Dietary Guidelines. Therefore, § 210.10(l)(2)(i), as proposed, is adopted as final without change.

Should the Weekly Option for Meat/Meat Alternates Be Extended to the Breakfast Program?

We did not propose extending this modification to the meat/meat alternate-grains/breads component of school breakfasts because flexibility is already provided under the food-based menu planning approaches. We did ask for comments on this issue. We received only seven comments—three supporting extending this option to the SBP and four recommending we do not include it as an option for the breakfast program. We are not extending this option to the SBP in the final rule. We continue to believe there is already adequate flexibility to vary portion sizes of the meat/meat alternate component in the breakfast program.

What Was Proposed Concerning Major Changes or New Approaches Proposed by SFAs or State agencies?

We also proposed guidelines for a second class of alternate menu planning approaches which involves major changes to one of the existing menu planning approaches. These alternate approaches could be developed by either SFAs or State agencies. We proposed some basic guidelines concerning written submissions, approval and monitoring procedures. We also provided other guidelines based primarily on the statutory requirements and those provisions that we felt were vital to the programs' nutritional and fiscal integrity in order to allow States agencies and SFAs maximum flexibility to develop creative alternate menu planning approaches. Below, we discuss the major guidelines and any comments received that addressed that guideline.

What Were the General Comments About Alternate Approaches That Involved Major Changes?

We received 13 comments on the overall policies for alternate approaches, with 3 commentors approving of the methodologies and 10 commentors disapproving. Those that disapproved felt the procedures were too complex and restrictive. Commentors stated that we needed more general guidelines that provided more flexibility. One commentor stated that the alternate approach should only need to demonstrate that the nutrition standards are met, that a reimbursable lunch or breakfast is easily identifiable and that the approach can be monitored.

In response to these general comments, as discussed earlier, we are required by the statute to issue guidelines on use of alternate menu planning approaches. The regulatory guidelines are limited to the statutory requirements and only those elements needed to support program integrity, such as an identifiable reimbursable lunch or breakfast. The guidelines and specific comments on them are discussed below.

What Was Proposed About Written Submissions?

We proposed that any alternate menu planning approaches be available in writing. A written document is needed for the State agency or FNS to review prior to approval and for the State agency to follow when monitoring compliance with the procedures of the alternate menu planning approach and with the nutrition assessment and compliance aspects of the programs. We proposed requiring that any alternate menu planning approach subject to State agency or FNS approval be submitted in writing. We also proposed that any alternate approach not needing prior approval must be available in writing for review purposes. We received no comments on written submissions. Therefore we are including the provision on written submissions in the final regulation at § § 210.10(l)(3) and 220.8(h)(2). We are also incorporating a notification procedure for certain State agency-level alternate approaches. When a State agency implements an alternate approach that is exempt from FNS approval, we are requiring that we be notified in writing of its use. This is simply a notification procedure to keep FNS informed and to

allow us to share this information with other State agencies that might wish to adopt a similar alternate approach. This provision is incorporated into § 210.10(l)(3) and § 220.8(h)(2).

What Was Proposed Concerning the Approval of Major Changes Requested by SFAs?

We proposed that any major change or new approaches developed by SFAs be subject to State agency review and approval. State agency approval is critical because major variations developed and used only by SFAs should be carefully assessed to gauge potential impact on the delivery of lunches and breakfasts to children, both nutritionally and fiscally. Further, SFAs would not have the benefit of the State agency's expertise when designing their own alternate menu planning approach. A State agency review would also help to ensure that program guidelines were met and that the SFA had the ability to administer an alternate menu planning approach. We received only four comments concerning approval of SFAs' proposed alternate approaches. Three commentors supported the prior approval requirement, while one commentor noted that the process will add to the State agency's workload. While we recognize that this is an additional task for State agencies, we also feel that a prior review and approval is vital to program integrity. Therefore, we are adopting the proposal without change at § 210.10(l)(3)(i) and § 220.8(h)(2)(i).

In General, What Was Proposed About The Approval Process For State-Level Alternate Menu Planning Approaches?

We proposed that only certain types of State agency-developed alternate menu planning approaches be subject to approval by FNS. State agency-developed alternate menu planning approaches would be reviewed and approved by FNS regional offices *unless* there was an on-going State agency/SFA partnership and enough SFAs intended to adopt the alternate menu planning approach to warrant the significant involvement of the State agency. We received only three comments on State-level approaches that required pre-approval, two of which supported the review and approval process. Therefore, we are adopting these provisions as proposed at § 210.10(l)(3)(ii) and § 220.8(h)(2)(ii).

When Are State-Level Alternate Approaches Not Subject to FNS Approval?

The next type of alternate menu planning approach could also involve either modifications to one of the existing menu planning approaches or development of an altogether new approach. However, we proposed that these alternate approaches would *not* need FNS approval if:

- The State agency is an active and on-going partner with the schools;
- There are a sufficient number of SFAs adopting the alternate approach to warrant the State agency's commitment of resources necessary to its successful operation; and
- The State agency issues an announcement notifying the public of the alternate menu planning approach.

By being an active and on-going partner with SFAs and thus continuing to be involved with the operation of the alternate approach, the State agency has an oversight role. Also, in this capacity, the State agency has the ability to promptly adjust the policies and procedures of the alternate approach to ensure efficient and effective operation and compliance with all applicable requirements. This type of State agency-developed alternate approach is intended to allow innovative, large-scale State agency-sponsored menu planning approaches to operate without prior approval.

We proposed that these alternate approaches must be adopted by at least five SFAs within the State. We also proposed that States issue a public announcement so that any concerned parents, students, or program administrators are advised of the change. We also requested comments on whether States should also hold public hearings (in accordance with established State procedures) on these types of alternate approaches.

Are There Any Exemptions Specifically for State-Level Alternate Approaches With On-Going Support?

Yes. We also proposed that alternate menu planning approaches supported by the State agency's expertise and technical assistance were not required to meet certain guidelines that are required for other major changes. These guidelines affect alternate menu planning approaches that use nutrient analysis. The two guidelines are the requirement to use FNS approved software and to weight the menu selections.

What Did the Commentors Say About State Level Alternate Approaches With On-Going Support?

We received a total of 26 comments on these types of alternate menu planning approaches, primarily on public announcements and hearings. Three commentors felt that there should be prior approval for any alternate approach that would be significantly different from the standard requirements. One commentor approved of the various exemptions, and one commentor felt that FNS approved software should be used.

We agree that any type of alternate menu planning approach needs to be scrutinized and needs oversight. We are establishing these controls for all alternate approaches, albeit in different ways. We are requiring prior review for any alternate approach developed by SFAs as we recognize that the State agency has the experience to determine if the alternative is feasible. The State agency needs to determine if all required elements are addressed and if the school has the resources to follow the alternate procedures. We also have established oversight for State agency-developed alternate approaches, depending upon how much on-going interaction the State agency will have with the schools using them. If the State agency will simply make their alternate approach available but not assist schools in a systematic way, we are requiring prior FNS approval to determine if the alternative is generally workable and if the required elements are met. We are, however, allowing additional flexibility for those States that commit to a continuous, systematic oversight of schools that adopt the alternate approach. Because we believe that we have established adequate methods for oversight, we are adopting the proposed requirements on the approval and guideline exemptions for alternate approaches with on-going State support. These provisions are found at § 210.10(l)(3)(iii) and § 220.8(h)(2)(iii).

What Did Commentors Say About Public Announcements and Public Hearings?

We proposed requiring that States issue a public announcement for any alternate menu planning approach developed by the State agency. We also asked for comments on the possibility of requiring a public hearing concerning the alternate approach. Twenty-one comments were received on these issues—seven on the public announcement proposal and 14 on the proposal for public hearings. Five of those that commented on the proposal for public announcements opposed it, saying notification should be left to the State agency, depending on any internal requirements. Two commentors supported the public announcement proposal, suggesting that a comment period be required. Fourteen commentors mentioned the proposed

requirement for public hearings, and all opposed it.

Given the opposition, we are deleting our proposed requirement for a public announcement. We are also not adding a requirement for a public hearing. We feel that States should have the flexibility to determine if a public announcement is warranted, either by the nature of the intended changes to menu planning or by State law or precedent. Further, it would be difficult and inefficient for those States that do not have an existing procedure to establish a procedure just for our purposes. Therefore, this final rule does not include the provision that was proposed at §§ 210.10(l)(2)(iii)(C) and 220.8(h)(2)(iii)(C).

What Were the Proposed Guidelines for Alternate Menu Planning Approaches?

As we mentioned earlier, we established a limited number of guidelines for alternate approaches. These guidelines concerned: Offering fluid milk, offer versus serve, the nutrition standards, competitive foods, how various foods are counted towards meeting the requirements for reimbursable meals, identification of reimbursable lunch or breakfast, monitoring, weighted averages and approved software. In the preamble to the proposed rule, we discussed these guidelines in detail. In this final rule, we will summarize each and discuss any comments that were received on them.

What Was Proposed About Offering Fluid Milk?

Section 9(a)(2) of the NSLA (42 U.S.C. 1758(a)(2)) requires that schools offer fluid milk to children participating in the NSLP. Section 4(e)(1)(A) of the Child Nutrition Act of 1966 (CNA), (42 U.S.C. 1773 (e)(2)), requires that a combination of foods be served in the SBP and that breakfasts ''. . . meet minimum nutritional requirements prescribed by the Secretary. . . .'' The provision of fluid milk is one of the minimum nutritional requirements established for the SBP under § 220.8. Therefore, any alternate menu planning approach must also offer fluid milk for both the NSLP and SBP. Since we received no comments and because this requirement is statutory, we are adopting it as final without change. The provisions requiring that milk be offered in the school programs for any alternate menu planning approach are found in this final rule at § 210.10(l)(4)(i) and § 220.8(h)(3)(i), for the NSLP and SBP, respectively.

What Was Proposed About Offer Versus Serve (OVS)?

Section 9(a)(3)of the NSLA, (42 U.S.C.1758(a)(3)) requires that schools implement OVS in the NSLP for senior high school children; at local option, SFAs may adopt OVS in the lunch program for lower grades as well. Section 4(e)(2) of the CNA (42 U.S.C. 1773(e)(2)) gives local SFAs the option of adopting OVS for the SBP. We included the OVS provisions in the guidelines for alternate menu planning approaches, stressing that any modifications to OVS must be based on the existing regulatory OVS structures as much as possible. The description of the alternate approach must indicate what age/grade groups are included, how plate waste would be reduced and how the lunch or breakfast, as taken, will provide a reasonable level of nutrients and calories. Any modifications to the existing OVS procedures must include the number and type of items (and, if applicable, the quantities for the items) that constitute a reimbursable lunch or breakfast. We received no comments on this issue. We are adopting as final without changes at § 210.10(l)(4)(ii) and § 220.8(h)(3)(ii).

What Was Proposed About Nutrition Standards?

Section 9(f) of the NSLA (42 U.S.C. 1758(f)) requires school lunches to approximate, over a week's time, one-third of the RDAs (breakfasts must provide one-fourth) needed by growing children of different ages. In addition, menus must comply with the recommendations of the Dietary Guidelines. Because these requirements cannot be modified, we included them as guidelines for alternate approaches in the proposed rule.

We proposed that any alternate menu planning approach must show how these nutrition standards would be met for the age/grade groups to be served. We received no comments on this guideline and are adopting the proposed provisions as final at § 210.10(l)(4)(iii) and § 220.8(h)(3)(iii).

What Was Proposed About Competitive Foods?

For both the NSLP and SBP, Section 10(a) of the CNA (42 U.S.C. 1779(a)) requires regulations ''. . . relating to the service of food . . . in competition with the (school meals) programs. . . .'' To implement this provision, § 210.11(b) and § 220.12(a) prohibit the sale of ''foods of minimal nutritional value'' in the cafeteria area during the service of lunch or breakfast. Appendix B to each of these parts lists the foods considered to be foods of minimal nutritional value. Any alternate approach may not alter this statutory provision and the implementing regulations. We received no comments on this proposed guideline, so it is adopted as final without change at § 210.10(l)(4)(iv) and § 220.8(h)(3)(iv) for the lunch and breakfast programs, respectively.

What Was Proposed About Determining How Various Foods Count Towards the Meal Pattern Under the Food-Based Alternate Menu Planning Approaches?

We proposed that the current provisions on how foods are counted towards meeting the meal pattern requirements (found in § 210.10 and § 220.8, the appendices to Parts 210 and 220 and FNS instructions and guidance) apply to alternate menu planning approaches that were food-based (as opposed to nutrient analysis-based approaches) in design. Our standards on counting food items maintain the nutritional integrity of school meals by ensuring that foods used to satisfy quantity and component requirements provide a sufficient amount of the component to count toward meeting the meal requirements.

We received five comments on applying the policies on how foods are counted towards the meal patterns to alternate menu planning approaches. Four of the comments opposed it while one supported it. One commentor felt that policies on counting foods towards meeting the meal patterns do not ensure the nutritional integrity of meals. Another commentor felt we should allow for alternate means for counting foods towards the meal patterns to encourage experimentation.

We continue to believe that our policies on how foods are counted towards the meal patterns are needed to support use of appropriate food products in the school meals programs and to provide schools with guidance on how different food items meet all or part of the various food components. We have kept our guidance to a minimum, usually relying on the standards of identity established by other Federal agencies. Given the relatively small number of comments and the rationale for our current guidance, we are adopting, as final without changes, the proposed provision requiring that the policies on counting foods towards the meal patterns be followed for alternate menu planning approaches. These provisions are found at § 210.10(l)(4)(v) and § 220.8(h)(3)(v).

Did Anyone Comment on Vegetable Protein Products?

Eight commentors wanted us to reconsider our requirements on vegetable protein products in the NSLP and SBP. Since publication of this proposed rule on alternate menu planning approaches, we issued both a proposed (64 FR 38839; July 20, 1999) and final rule (65 FR 12429 March 9, 2000) on the use of VPP in the child nutrition programs. Please refer to these publications for information on this issue.

What Was Proposed About How To Identify a Reimbursable Lunch or Breakfast?

Our regulations currently define what must be contained in a reimbursable lunch or breakfast for the four menu planning approaches. (For additional information about what constitutes a reimbursable lunch or breakfast under the various approaches, please refer to 7 CFR 210.10 for the lunch program and 7 CFR 220.8 for the breakfast program.)

We proposed that an alternate menu planning approach should meet the existing food component and food item or menu item requirements for reimbursable lunches or breakfasts to the extent possible. However, if the existing procedures are modified, we proposed that the State agency or SFA detail what food components/food items or menu items constitute a reimbursable lunch or breakfast under the alternate menu planning approach. The alternate approach must describe the number of items and the types of items (and if applicable, the quantities for each item) and how a reimbursable lunch or breakfast is identified at the point of service by the children, the cashiers, and reviewers. We received no comments on this guideline. Therefore, the proposals are adopted as final at § 210.10(l)(4)(vi) and § 220.8(h)(3)(vi), respectively, for the school lunch and breakfast programs.

What Was Proposed About Monitoring Alternate Approaches?

Our regulations establish methods for determining if schools are meeting the administrative requirements for the school lunch or breakfast programs and for assessing compliance with the nutrition standards. One guideline proposed for alternate approaches addressed monitoring. This is needed because the State agency must be able to determine if reimbursable lunches are being offered, accepted, and properly counted and if the lunch service is in compliance with all of the nutrition and administrative standards. In the large majority of cases, alternate menu planning approaches probably can be monitored within the existing criteria for both coordinated review effort (CRE) and assessments of how schools are meeting the nutrition standards.

However, in some cases, the proposed alternate approach may not lend itself to the established nutrition assessment methods. In a nutrition assessment, the State agency reviews the school's nutrient analysis or conducts a nutrient analysis for those schools that use a food-based menu planning approach. Therefore, any alternate approach must indicate if it can be monitored under the existing criteria. If not, the alternate approach must include a method for the State agency's assessment. We anticipate that this will primarily involve a description of the records that schools maintain to document compliance with administrative and nutrition requirements.

We received only one comment on this guideline. The commentor stated that the school should not develop any monitoring criteria; rather, the State agency should do it. We reiterate that most alternate approaches will lend themselves to the existing monitoring procedures. The only time an SFA would need to address monitoring in the design of the alternate menu planning approach would be to indicate what differences there were in the structure of a reimbursable lunch and the like. The SFA would also need to indicate where and how the State agency would find the needed information to determine compliance with the nutrition standards. The SFA would not need to outline a monitoring system for the State agency to follow; rather, it would show differences between the existing menu planning approaches and their alternate approach and ways to assist the State agency with either using or adapting the standard monitoring procedures. Therefore, we are adopting this guideline as proposed without any changes. These provisions are found at § 210.10(l)(4)(vii) and § 220.8(h)(3)(vii) with conforming amendments at § 210.19(a).

What Was Proposed About Using Weighted Averages for Alternate Menu Planning Approaches Based on Nutrient Standard Menu Planning?

We proposed that alternate menu planning approaches using nutrient analysis have the analysis conducted based on weighting of all foods planned to be offered as part of the reimbursable lunch or breakfast based on planned production except for certain alternate approaches developed by State agencies. However, subsequent to issuing the proposed rule, Pub. L. 105–336, the Child Nutrition Reauthorization Act of 1998 was enacted. Section 102(b) of that law (42 U.S.C.1758(f)(4)(B)) prohibits the Department from requiring use of weighting until September 30, 2003. One commentor noted that the requirement for weighting was in violation of Pub. L. 105–336. In total, only three comment letters addressed this guideline. All of them opposed requiring this guideline. Weighting proportionately accounts for the popularity of the various foods and menu items offered.

We are amending the regulations to clarify that schools are *not* required to conduct a weighted nutrient analysis through September 30, 2003. Therefore, when either SFAs or State agencies conduct a nutrient analysis for any reason, weighting cannot be required by FNS. We are adding that date to the requirements (at § 210.10(l)(4)(viii) and § 220.8(h)(3)(viii)) on weighted averages under alternate menu planning approaches. Except for adding the date, the proposed provisions are adopted, as final. We are also adding the date at § 210.10(i)(5)(i) and § 220.8(e)(5)(i) which provide the requirements for the nutrient standard menu planning approach.

In the preamble to the proposed regulation, we requested comments on the use of a weighted nutrient analysis versus an unweighted method. We received 27 comments on this issue with eight commentors supporting the use of weighted averages and 19 opposing some aspect of weighted averages. As mentioned earlier, the provision on weighting is temporarily suspended. While we believe that weighted averages may be one method to reflect what students actually select (which then results in more accurate nutrient analysis), we are continuing to assess the accuracy of both weighted and unweighted averages as indicators of how well the nutrition standards are met.

What Was Proposed About the Use of Approved Software for Alternate Approaches That Used Nutrient Analysis?

We also proposed that alternate approaches use FNS approved software as required by §§ 210.10(i)(4) and 220.8(e)(4). Software used for nutrient analysis of school lunches and breakfasts must meet the minimum requirements established by FNS and must incorporate the Child Nutrition Database. Approved software is designed to meet the needs of school food service professionals and fulfills two essential criteria—the ability to

perform all the requirements of the regulations and the achievement of uniform results. However, we did propose to permit modification of this criterion if an alternate menu planning approach was developed by the State agency which would remain an active partner and was adopted by five or more SFAs.

We received five comments on this provision, all in opposition. We continue to believe that the use of approved software is vital to the nutritional integrity of the programs and that use of approved software (expect in very limited circumstances) assures that it meets the regulatory requirements. Also, there are a number of approved software packages available which schools can select depending on their specific needs. In those limited situations where schools using an alternate menu planning approach would not be required to use approved software, the State agency would be available to provide a continual source of guidance and expertise to assist schools. Therefore, we are adopting this guideline as proposed without changes at § 210.10(l)(4)(viii) and § 220.8(h)(3)(viii).

What Clarifications Were Proposed About Assessing Compliance With the Nutrition Standards?

We proposed amendments to § 210.18 and § 210.19 to clarify that the existing monitoring requirements apply to the traditional food-based menu planning approach. We also proposed some technical amendments to modify the terminology in § 210.18 and § 210.19. These changes clarify that these assessment and monitoring requirements apply to all menu planning approaches, including alternate approaches developed by State agencies or SFAs. We had no comments on these changes. Therefore, the amendments to § 210.18(b)(2)(ii), (g)(2), and (i)(3)(ii) and to § 210.19(c)(6)(i) are adopted as final without changes.

What Was Proposed About Adjusting the Week Selected for the Nutrition Assessment?

We proposed an adjustment to the period of the nutrition assessments to provide State agencies additional flexibility in choosing a week to evaluate. Currently, paragraphs (a)(1)(i) and (ii) of § 210.19 stipulate that the State agency must review the school's nutrition analysis or conduct an independent analysis for the last completed week prior to the assessment. However, some State agencies told us that for the administrative/CRE review under § 210.18, they can select the month prior to the month of the review as the sample period. Consequently, State agencies which elect to conduct nutrition assessments concurrently with CRE reviews will likely need to look at two different review periods during the same visit. To remedy this situation, we proposed that reviewers could conduct the nutrition standard assessment on any week of the current school year prior to the month of the review as long as that week still represented the current lunch or breakfast service.

We received 9 comments on this proposal, all but one of them supported the change. One commentor suggested that we delete the wording about a week ''prior to'' to the month in which the assessment is conducted. The commentor felt this limited the reviewer if s/he wanted to select a week in the month of the review. We are adopting this recommendation to provide reviewers with additional flexibility. We are making this modification to § 210.19 (a)(1)(i) but are otherwise adopting as final the changes as proposed to this paragraph.

What Was Proposed About the Extent of Assessments?

We proposed that State agencies must review at least one school for each type of menu planning used by the SFA. We also clarified that State agencies would only need to do a nutrition assessment on the lunch program unless the SFA uses a particular menu planning approach only for the breakfast program or only participates in the SBP. We received no comments on these proposed changes, so they are adopted at § 210.19(a)(1) as final without change.

What Was Proposed About Conforming the CRE and Nutrition Assessment Cycles?

We proposed a minor technical amendment to § 210.19(a)(1)(i) to make the cycle for nutrition assessments consistent with the cycle for administrative reviews under § 210.18. Originally, we established a five-year cycle for assessments of nutrition compliance and intended that cycle to run concurrently with the CRE cycle so that those States electing to conduct nutrition assessments at the same time as administrative reviews could do so efficiently. That first cycle began on July 1, 1996, unless the State agency authorized a temporary waiver of compliance with the nutrition standards, in which case the first year of the cycle could have begun as late as July 1, 1998. Consequently, the first five-year cycle would end as early as June 30, 2001 or as late as June 30, 2003, depending upon actual implementation. The current CRE cycle ends on June 30, 1998, however, and the next cycle will end on June 30, 2003. The two cycles are then out of sequence for State agencies which implement the regulations before School Year 1998/1999. We proposed a schedule to have the two cycles coincide by establishing an initial cycle of seven years for nutrition assessments, from July 1, 1996 through June 30, 2003. Thereafter, the cycles would be five years in length. We received 13 comments on this proposed provision, all but one of which supported the change. Therefore, we are adopting this proposal without change at § 210.19(a)(1)(i).

What Technical Changes Were Proposed?

We proposed to update references to the 1990 Dietary Guidelines for Americans to reflect the 1995 edition as well as the minor word changes between the two versions. We received no comments on these changes, so they are adopted as final at § 210.10(b) and § 220.8(a) and to the footnotes for the tables in §§ 210.10(c), 210.10(d), 220.8(b), and 220.8(c).

We proposed to revise the name of the database used in the nutrient analysis software from the ''National Nutrient Database for the Child Nutrition Programs'' to the ''Child Nutrition Database.'' We received no comments on this and are adopting it as final at § 210.10(i) and § 220.8(e). We are also deleting obsolete sections of §§ 210.10 and 220.8 (paragraphs (o) and (m), respectively) as these refer to implementation deadlines that have passed. Sections 210.10a and 220.8a are also deleted as the pertinent provisions are now incorporated into §§ 210.10 and 220.8. As we received no comments on these technical changes, they are all adopted as final without change.

Please keep in mind, however, that we did rewrite most of §§ 210.10 and 220.8 in plain language. We may have reworded some of the proposed changes for simplicity. We also conformed the language for the traditional food-based menu planning approach to the terms used in the enhanced food-based menu planning approach. We did not intentionally revise the content of the proposed or existing regulations. Please note that we did not include the section on supplemental foods (§ 210.10(n)) as this section is being rewritten as a separate rulemaking to incorporate the recent expansion of the afterschool snack service. However, in the interests of plain language and in anticipation of the regulations that will incorporate the term, this regulation uses ''afterschool snack'' in lieu of ''meal supplement''

(the currently used term) and clarifies where requirements apply only to lunches and breakfasts and those that apply to all of the meal services including the afterschool snack service.

Does This Final Rule Include Any Additional Technical Changes?

Yes. This final rule designates a previously undesignated paragraph in § 210.18(i)(3)(i). This is only a technical amendment to conform our regulations to the formatting requirements of the Office of the Federal Register.

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally prepares a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory approaches and adopt the least costly, more cost-effective or least burdensome that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

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

Executive Order 12372

The NSLP and the SBP are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.553, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V and final rule-related notice at 48 FR 29112, June 24, 1983.)

Executive Order 12988

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the information reporting and recordkeeping requirements included in this final rule were reviewed by the Office of Management and Budget (OMB). OMB approved these requirements for part 210 under control number 0584–0006.

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grant programs-social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Children, Food assistance programs, Grant programs-social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

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

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

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

Authority: 42 U.S.C. 1751–1760, 1779.

2. In part 210, the words ''or § 210.10a, whichever is applicable'' are removed wherever they appear in the following places:

a. § 210.9(b)(5);
b. § 210.9(c)(1);
c. § 210.16(b)(1);
d. § 210.19(a)(3);
e. Appendix A to Part 210; and
f. Appendix C to Part 210.

3. In part 210, the words ''or § 210.10a(b), whichever is applicable'' are removed wherever they appear in the following places:

a. § 210.7(c)(1)(v); and
b. § 210.15(b)(3).

4. In part 210, the words ''or § 210.10a(j)(1), whichever is applicable'' are removed wherever they appear in the following places:

a. § 210.4(b)(3);
b. § 210.7(d); and
c. § 210.9(c), introductory text.

§ 210.2 [Amended].

4. In § 210.2:

a. The definition of ''*Food component*'' is revised;
b. The definition of ''*Food item*'' is revised;
c. The definition of ''*Lunch*'' is revised; and
d. The definition of ''*Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning*'' is revised.

The revisions read as follows:

§ 210.2 Definitions.

* * * * *

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.

Lunch means a meal service that meets the applicable nutrition standards

and portion sizes in § 210.10 for lunches.

* * * * *

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).

* * * * *

5. In § 210.10:

a. Paragraph (o) is removed;

b. Paragraphs (a) through (k) are revised;

c. Paragraphs (l) and (m) are redesignated as paragraphs (m) and (o), respectively, and are revised; and

d. A new paragraph (l) is added.

The revisions and additions read as follows:

§ 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 should schools do about nutrition disclosure?* 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 (1/5th) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (1/5th) 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 on-going 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.

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(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) *Requirements for lunches for infants under the age of one.* Infants under 1 year of age must be served an infant lunch as specified in this paragraph (o). Foods served in the infant lunch pattern must be of a texture and consistency appropriate for the particular age group served. Foods must be served to the infant during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready. Whenever possible, the school should consult with the infant's parents in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food in the meal patterns in paragraph (o)(2)(iii) of this section must be provided to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. Either breast milk or iron-fortified infant formula must be served for the entire first year. 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 ounces offered if the infant is still hungry. The infant lunch pattern must have at least each of the following components in the amounts indicated for the appropriate age group:

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

(ii) 4 through 7 months:

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

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

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

(iii) 8 through 11 months:

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

(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 (weight or volume) of cottage cheese, cheese food or cheese spread of appropriate consistency; and

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

LUNCH PATTERN FOR INFANTS

	Birth through 3 months	4 through 7 months	8 through 11 months
Lunch	4-6 fluid ounces of breast milk[2,3] or formula[1]	4-8 fluid ounces of breast milk[2,3] or formula[1]; 0-3 tablespoons of infant cereal[1,4]; 0-3 tablespoons of fruit and/or vegetable[4]	6-8 fluid ounces of breast milk[2,3] or formula[1]; 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 tablespoons of cottage cheese, cheese food, or cheese spread; and 1-4 tablespoons of fruit and/or vegetable

[1] Infant formula and dry infant cereal must 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] A serving of this component is optional.

§ 210.10a [Removed]

6. Section 210.10a is removed.

§ 210.15 [Amended]

7. In section 210.15, paragraph (b)(2) is amended by removing the words ''menu records as required under § 210.10a and production and''.

§ 210.18 [Amended]

8. In section 210.18:

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

b. Paragraph (g)(2) is revised;

c. The first sentence of paragraph (h)(2) is revised;

d. Paragraph (i)(3) is amended by designating the undesignated paragraph following paragraph (i)(3)(i)(B) as paragraph (i)(3)(i)(C); and

e. Paragraph (i)(3)(ii) is revised.

The revisions read as follows:

§ 210.18. Administrative reviews.

* * * * *

(b) *Definitions.* * * *

(2) * * *

(ii) *Performance Standard 2—Meal Elements.* Lunches claimed for reimbursement within the school food authority contain meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10.

* * * * *

(g) *Critical areas of review.* * * *

(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.* * * *

(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. * * *

* * * * *

(i) *Follow-up reviews.* * * *

(3) *Review thresholds.* * * *

(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.

* * * * *

9. In § 210.19:

a. Redesignate paragraph (a)(1) introductory text, paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv) as paragraphs (a)(1)(i), (a)(1)(iii), (a)(1)(iv), (a)(1)(v), and (a)(1)(vii), respectively, and add new paragraphs (a)(1)(ii) and (a)(1)(vi);

b. Revise newly redesignated paragraph (a)(1)(i);

c. Revise the first sentence in newly redesignated paragraph (a)(1)(iii);

d. Revise newly redesignated paragraph (a)(1)(iv); and

e. Revise paragraph (c)(6)(i).

The additions and revisions read as follows:

§ 210.19 Additional responsibilities.

(a) *General Program management.* * * *

(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. * * *

(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.

* * * * *

(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.

* * * * *

(c) *Fiscal action.* * * *

(6) *Exceptions.* * * *

(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.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation continues to read as follows:

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

2. In part 220, the words ''or § 220.8a, whichever is applicable'' are removed wherever they appear in the following places:

a. § 220.2(b);

b. § 220.7(e)(2);

c. § 220.9(a);

d. Appendix A to Part 220; and

e. Appendix C to Part 220.

3. In § 220.2,

a. Revise paragraph (p–1), and

b. Amend paragraph (t) by removing the words ''or § 220.8, whichever is applicable,''.

The revision reads read as follows:

§ 220.2 Definitions.

* * * * *

(p–1) *Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning* means ways to develop breakfast 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 § 220.8(e)(5). However, for the purposes of Assisted Nutrient Standard Menu Planning, breakfast 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 § 220.8(f).

* * * * *

4. Section 220.8 is revised to read as follows:

§ 220.8. What are the nutrition standards and menu planning approaches for breakfasts?

(a) *What are the nutrition standards for breakfasts for children age 2 and over?* School food authorities must ensure that participating schools provide nutritious and well-balanced breakfasts. For children age 2 and over, breakfasts, when averaged over a school week, must meet the nutrition standards and the appropriate nutrient and calorie levels in this section. The nutrition standards are:

(1) Provision of one-fourth of the Recommended Dietary Allowances

(RDA) for protein, calcium, iron, vitamin A and vitamin C in the appropriate levels (see paragraphs (b), (c), (e)(1), or (h) of this section);

(2) Provision of the breakfast energy allowances (calories) for children in the appropriate levels (see paragraphs (b), (c), (e)(1), or (h) of this section);

(3) These applicable recommendations of 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 breakfasts must offer depends on the menu planning approach used and the age/grades served. The menu planning approaches are:

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

(ii) Assisted nutrient standard menu planning (see paragraphs (b) and (f) of this section);

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

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

(v) Alternate menu planning as provided for in paragraph (h) of this section.

(6) Schools must keep production and menu records for the breakfasts they produce. These records must show how the breakfasts contribute to the required food components, food items or menu items every day. In addition, these records must show how the breakfasts contribute to the nutrition standards in paragraph (a) of this section and the appropriate calorie and nutrient levels (see paragraphs (c), (d) or (h) 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 breakfasts, when averaged over each school week, meet:

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

(ii) The nutrient and calorie levels for children for each age or grade group in accordance with paragraphs (b), (e)(1) of this section or developed under paragraph (h) of this section.

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

(1) The required levels are:

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

	MINIMUM REQUIREMENTS		OPTIONAL
NUTRIENTS AND ENERGY ALLOWANCES	PRESCHOOL	GRADES K-12	GRADES 7-12
Energy allowances (calories)	388	554	618
Total fat (as a percentage of actual total food energy)	[1]	[1,2]	[2]
Saturated fat (as a percentage of actual total food energy)	[1]	[1,3]	[3]
RDA for protein (g)	5	10	12
RDA for calcium (mg)	200	257	300
RDA for iron (mg)	2.5	3	3.4
RDA for Vitamin A (RE)	113	197	225
RDA for Vitamin C (mg)	11	13	14

[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 are:

OPTIONAL MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL BREAKFASTS 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)	419	500	588	625
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)	5.5	7	11.25	12.5
RDA for calcium (mg)	200	200	300	300
RDA for iron (mg)	2.5	2.5	3.4	3.4
RDA for Vitamin A (RE)	119	175	225	225
RDA for Vitamin C (mg)	11.00	11.25	12.5	14.4

[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) 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.

(c) *What are the nutrient and calorie levels for breakfasts 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 BREAKFASTS TRADITIONAL FOOD-BASED MENU PLANNING APPROACH (SCHOOL WEEK AVERAGES)			
NUTRIENTS AND ENERGY ALLOWANCES	AGE 2	AGES 3,4,5	GRADES K-12
Energy allowances (calories)	325	388	554
Total fat (as a percentage of actual total food energy)	[1]	[1]	[1,2]
Saturated fat (as a percentage of actual total food energy)	[1]	[1]	[1,3]
RDA for protein (g)	4	5	10
RDA for calcium (mg)	200	200	257
RDA for iron (mg)	2.5	2.5	3
RDA for Vitamin A (RE)	100	113	197
RDA for Vitamin C (mg)	10	11	13

[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 BREAKFASTS ENHANCED FOOD-BASED MENU PLANNING APPROACH (SCHOOL WEEK AVERAGES)			
	REQUIRED FOR		OPTION FOR
NUTRIENTS AND ENERGY ALLOWANCES	PRESCHOOL	GRADES K-12	GRADES 7-12
Energy allowances (calories)	388	554	618
Total fat (as a percentage of actual total food energy)	[1]	[1,2]	[2]
Saturated fat (as a percentage of actual total food energy)	[1]	[1, 3]	[3]
RDA for protein (g)	5	10	12
RDA for calcium (mg)	200	257	300
RDA for iron (mg)	2.5	3	3.4
RDA for Vitamin A (RE)	113	197	225
RDA for Vitamin C (mg)	11	13	14

[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.

(d) *What exceptions and variations are allowed in reimbursable breakfasts?*
(1) *Exceptions for medical or special dietary needs.* Schools must make substitutions in breakfasts 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 breakfast 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 breakfasts. Variations on an experimental or continuing basis in the food components for the food-based menu planning approaches in paragraph (g) 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 breakfasts for reimbursement that do not meet the requirements in this section.

(e) *What are the requirements for 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 (a) of this section and the preschool nutrient and calorie levels in paragraph (b)(1) of this section over a school week. Schools may also use the preschool nutrient and calorie levels in paragraph (b)(2) of this section or may calculate nutrient and calorie levels for two year olds. FNS has a method for calculating these levels in menu planning guidance materials.

(ii) *Minimum levels for nutrients.* Breakfasts must at least offer the nutrient and calorie levels for the required grade groups in the table in paragraph (b)(1) of this section. Schools may also offer breakfasts meeting the nutrient and calorie levels for the age groups in paragraph (b)(2) of this section. If only one grade or age group is outside the 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 breakfasts.*

(i) *Contents of a reimbursable breakfast.* A reimbursable breakfast must include at least three menu items. All menu items or foods offered in a reimbursable breakfast contribute to the nutrition standards in paragraph (a) of this section and to the levels of nutrients and calories that must be met in paragraphs (c) or (e)(1) of this section. Unless offered as part of a menu item in a reimbursable breakfast, foods of minimal nutritional value (see appendix B to part 220) are not included in the nutrient analysis. Reimbursable breakfasts planned under the nutrient standard menu planning approach must meet the nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraph (b) or (e)(1) of this section.

(ii) *Offer versus serve.* Schools must offer at least three menu items. At their option, school food authorities may allow students to select only two menu items and to decline a maximum of one menu item. The price of a reimbursable breakfast does not change if the student does not take a menu item or requests smaller portions.

(3) *Doing the analysis.* Schools using nutrient standard menu planning must conduct the analysis on all menu items and foods offered in a reimbursable breakfast. The analysis is conducted over a school week. Unless offered as part of a menu item in a reimbursable breakfast, foods of minimal nutritional value (see appendix B to part 220) 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 breakfasts 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 breakfasts 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 breakfasts offered under this part and lunches offered under part 210 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 (b) of this section or those developed under paragraph (e)(1) of this section. This comparison determines the school week's average. Schools must also make comparisons to the nutrition standards in paragraph (a) 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 (e)(5) and (e)(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 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 (a) and either paragraph (b) or (e)(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 (e)(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 State agencies must obtain the levels of calories, nutrients, and dietary components listed in paragraph (e)(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 (a) of this section and the appropriate levels of nutrients and calories in paragraph (b) of this section or customized levels developed under paragraph (e)(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 breakfasts 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 analysis 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 breakfasts for these programs using the nutrient standard menu planning approach for children age two and over. FNS has guidance on the levels of nutrient and calories for adult breakfasts offered under the Child and Adult Care Food Program.

(f) *What are the requirements for 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 schools, 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 (e)(1) through (e)(10) of this section. The menu cycles must also incorporate local food preferences and accommodate local food service operations. The menu cycles must meet the nutrition standards in paragraph (a) of this section and meet the applicable nutrient and calorie levels for nutrient standard menu planning in paragraphs (b) or (e)(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 menu 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 make sure 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 (e)(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 final responsibility for meeting the nutrition standards in paragraph (a) of this section and the applicable calorie and nutrient levels in paragraphs (b) or (e)(1) of this section.

(6) *Adjustments to the menus.* If the nutrient analysis shows that the breakfasts offered are not meeting the nutrition standards in paragraph (a) of this section and the applicable calorie and nutrient levels in paragraphs (b) or (e)(1) of this section, the State agency, school food authority or school must take action to make sure the breakfasts offered meet these requirements. Actions needed include technical assistance and training.

(7) *Other Child Nutrition Programs and assisted nutrient analysis 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 breakfasts 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 breakfasts offered under the Child and Adult Care Food Program.

(g) *What are the requirements for the food-based menu planning approaches?* (1) *Food items.* 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 must offer these food items in at least the portions required for various age/grade groups:

(i) A serving of fluid milk as a beverage or on cereal or used partly for both;

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

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

(A) Grains/breads; and/or

(B) Meat/meat alternate.

(2) *Quantities for the traditional food-based menu planning approach.* At a minimum, schools must offer the food items in the quantities specified for the appropriate age/grade group in the following table:

TRADITIONAL FOOD-BASED MENU PLANNING APPROACH-MEAL PATTERN FOR BREAKFASTS			
FOOD COMPONENTS AND FOOD ITEMS	AGES 1-2	AGES 3,4 AND 5	GRADES K-12
MILK (fluid) (as a beverage, on cereal or both)	4 fluid ounces	6 fluid ounces	8 fluid ounces
JUICE/FRUIT/VEGETABLE: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice	¼ cup	½ cup	½ cup
SELECT ONE SERVING FROM EACH OF THE FOLLOWING COMPONENTS, TWO FROM ONE COMPONENT, OR AN EQUIVALENT COMBINATION:			
GRAINS/BREADS :			
Whole-grain or enriched bread	½ slice	½ slice	1 slice
Whole-grain or enriched biscuit, roll, muffin, etc.	½ serving	½ serving	1 serving
Whole-grain, enriched or fortified cereal	¼ cup or 1/3 ounce	1/3 cup or ½ ounce	¾ cup or 1 ounce
MEAT OR MEAT ALTERNATES:			
Meat/poultry or fish	½ ounce	½ ounce	1 ounce
Alternate protein products[1]	½ ounce	½ ounce	1 ounce
Cheese	½ ounce	½ ounce	1 ounce
Large egg	½	½	½
Peanut butter or other nut or seed butters	1 tablespoon	1 tablespoon	2 tablespoons
Cooked dry beans and peas	2 tablespoons	2 tablespoons	4 tablespoons
Nuts and/or seeds (as listed in program guidance)[2]	½ ounce	½ ounce	1 ounce
Yogurt, plain or flavored, unsweetened or sweetened	2 ounces or ¼ cup	2 ounces or ¼ cup	4 ounces or ½ cup

[1] Must meet the requirements in appendix A of this part.

[2] No more than 1 ounce of nuts and/or seeds may be served in any one breakfast.

(3) *Quantities for the enhanced food-based menu planning approach.* At a minimum, schools must offer the food items in the quantities specified for the appropriate age/grade group in the following table:

ENHANCED FOOD-BASED MENU PLANNING APPROACH-MEAL PATTERN FOR BREAKFASTS				
FOOD COMPONENTS AND FOOD ITEMS	REQUIRED FOR			OPTION FOR
	AGES 1-2	PRESCHOOL	GRADES K-12	GRADES 7-12
Milk (fluid) (as a beverage, on cereal or both)	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces
JUICE/FRUIT/VEGETABLE: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice	¼ cup	½ cup	½ cup	½ cup
SELECT ONE SERVING FROM EACH OF THE FOLLOWING COMPONENTS, TWO FROM ONE COMPONENT OR AN EQUIVALENT COMBINATION:				
GRAINS/BREADS:				
Whole-grain or enriched bread	½ slice	½ slice	1 slice	1 slice
Whole-grain or enriched biscuit, roll, muffin, etc.	½ serving	½ serving	1 serving	1 serving
Whole-grain, enriched or fortified cereal	¼ cup or 1/3 ounce	1/3 cup or ½ ounce	¾ cup or 1 ounce	¾ cup or 1 ounce plus an additional serving of one of the Grains/Breads above.
MEAT OR MEAT ALTERNATES:				
Meat/poultry or fish	½ ounce	½ ounce	1 ounce	1 ounce
Alternate protein products[1]	½ ounce	½ ounce	1 ounce	1 ounce
Cheese	½ ounce	½ ounce	1 ounce	1 ounce
Large egg	½	½	½	½
Peanut butter or other nut or seed butters	1 tablespoon	1 tablespoon	2 tablespoons	2 tablespoons
Cooked dry beans and peas	2 tablespoons	2 tablespoons	4 tablespoons	4 tablespoons
Nuts and/or seeds (as listed in program guidance)[2]	½ ounce	½ ounce	1 ounce	1 ounce
Yogurt, plain or flavored, unsweetened or sweetened	2 ounces or ¼ cup	2 ounces or ¼ cup	4 ounces or ½ cup	4 ounces or ½ cup

[1] Must meet the requirements in appendix A of this part.

[2] No more than 1 ounce of nuts and/or seeds may be served in any one breakfast.

(4) *Offer versus serve.* Each school must offer all four required food items listed in paragraph (g)(1) of this section. At the option of the school food authority, each school may allow students to refuse one food item from any component. The refused food item may be any of the four items offered to the student. A student's decision to accept all four food items or to decline one of the four food items must not affect the charge for a reimbursable breakfast.

(5) *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.

(h) *What are the requirements for alternate menu planning approaches?*

(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 (e) through (g) of this section.

(2) *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 (e) through (g) 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 (h)(3) of this section are met. A State agency that develops an alternate approach that is exempt from FNS approval under paragraph (h)(2)(iii) of this section must notify FNS in writing when implementing the alternate approach.

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

(ii) *Approval of State agency plans.* Unless exempt under paragraph (h)(2)(iii) of this section, any State agency-developed menu planning approach must have prior FNS approval.

(iii) *State agency plans 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 on-going 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 in paragraph (h)(3) of this section are met.

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

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

(ii) include the procedures for offer versus serve if the school food authority chooses to implement the offer versus serve option. Alternate approaches should follow the offer versus serve procedures in paragraphs (e)(2)(ii) and (g)(4) of this section, as appropriate. If these requirements are not followed, the approach 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 breakfast under offer versus serve;

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

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

(iii) Meet the Recommended Dietary Allowances and breakfast 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 § § 220.2(i–1) and 220.12 and appendix B to this part;

(v) Follow the requirements for counting food items and products towards meeting the meal patterns. These requirements are found in paragraphs (g) and (i) 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 breakfast at the point of service.

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

(B) Any alternate approach that deviates from the provisions in paragraph (e)(2)(i) or paragraph (g) of this section must indicate what constitutes a reimbursable breakfast, including the number and type of items (and, if applicable, the quantities for the items) which comprise the breakfast, and how a reimbursable breakfast 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 of this chapter, 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 of this chapter cannot be used to monitor the alternate approach, a description of review procedures which will enable the State agency to assess compliance with the nutrition standards in paragraphs (a)(1) through (a)(4) of this section must be included; and

(viii) follow the requirements for weighted analysis and for approved software for nutrient standard menu planning as required by paragraphs (e)(4) and (e)(5) of this section unless a State agency-developed approach meets the criteria in paragraph (h)(2)(iii) of this section. Through September 30, 2003, schools are not required to conduct a weighted analysis.

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

(1) *Serving milk.* A serving of milk as a beverage or on cereal or used in part for each purpose must be offered for breakfasts.

(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 breakfasts 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 allow schools to substitute canned or dry milk in the required quantities in the preparation of breakfasts. 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 otherwise as allowed by FNS through a written exception.

(j) *What are the requirements for the infant meal pattern?* Schools must offer infants ages birth through 11 months of age an infant breakfast. Foods included in the infant breakfast pattern must be of texture and consistency appropriate for the age group served. Foods must be served to the infant during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready. Whenever possible, the school should consult with the infant's parents in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food in the meal patterns in paragraph (j)(3) of this section must be provided to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. Either breast milk or iron-fortified infant formula must be served for the entire first year. 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 ounces offered if the infant is still hungry. The infant breakfast pattern must have at least each of the following components in the amounts indicated for the appropriate age group:

(1) Birth through 3 months—4 to 6 fluid ounces of breast milk or iron-fortified infant formula.

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

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

BREAKFAST PATTERN FOR INFANTS

	Birth through 3 months	4 through 7 months	8 through 11 months
Breakfast	4-6 fluid ounces formula[1] or breast milk[2,3]	4-8 fluid ounces of formula[1] or breast milk[2,3]; 0-3 tablespoons of infant cereal[1,4]	6-8 fluid ounces of formula[1] or breast milk[2,3] ; and 2-4 tablespoons of infant cereal[1]; and 1-4 tablespoons of fruit and/or vegetable

[1] Infant formula and dry infant cereal must 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] A serving of this component is optional.

(k) *What about serving additional foods?* Schools may offer additional foods with breakfasts to children over one year of age.

(l) *Must schools offer choices at breakfast?* FNS encourages schools to offer children a selection of foods and menu items at breakfast. Choices provide variety and encourage consumption. Schools may offer choices of reimbursable breakfasts or foods within a reimbursable breakfast. When a school offers a selection of more than one type of breakfast or when it offers a variety of food components, menu items or foods and milk for choice as a reimbursable breakfast, the school must offer all children the same selection(s) regardless of whether the child is eligible for free or reduced price breakfasts or must pay the designated full price. The school may establish different unit prices for each type of breakfast offered provided that the benefits made available to children eligible for free or reduced price breakfasts are not affected.

(m) *What should schools do about nutrition disclosure?* FNS encourages schools to inform the students, parents, and the public about efforts they are making to meet the nutrition standards in paragraph (a) for school breakfasts.

§ 220.8a [Removed].

5. Section 220.8a is removed in its entirety.

6. In § 220.13, paragraph (f)(3) is revised to read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(f) * * *

(3) For the purposes of compliance with the nutrition standards in § 220.8(a) and the nutrient and calorie levels in § 220.8(b) or (c) or those developed under § 220.8(e)(1) or (h), the State agency shall follow the provisions specified § 210.19(a)(1) of this chapter.

* * * * *

§ 220.14 [Amended].

7. In § 220.14, amend paragraph (h) by removing the words ''or § 220.8a(a)(1), (b)(2), and (b)(3)''.

Dated: April 27, 2000.

Shirley R. Watkins,

Under Secretary, Food, Nutrition, and Consumer Services.

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