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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 2

#### Revisions of Delegations of Authority

**AGENCY:** Office of the Secretary, Department of Agriculture.

**ACTION:** Final rule.

**SUMMARY:** This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department of Agriculture (USDA) to reflect an internal reorganization of the pollution prevention, control, and abatement program within USDA.

**EFFECTIVE DATE:** Effective March 9, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Terry Harwood, Executive Director, USDA Hazardous Materials Policy Council, United States Department of Agriculture, Washington, D.C. 20250, telephone (202) 401-4747.

**SUPPLEMENTARY INFORMATION:** On January 15, 1999, the Secretary of Agriculture established the USDA Hazardous Materials Policy Council (Council) to direct and coordinate pollution prevention, control, and abatement within USDA. The Council is chaired by an appointee of the Secretary and consists of senior policy representatives of the affected USDA mission areas and agencies and USDA's Office of the General Counsel. By memorandum dated April 14, 1999, the Secretary assigned to the Council lead responsibility for USDA hazardous materials management and Federal facilities compliance activities, with the Council Chairman coordinating program direction with the assistance of an Executive Director. The director of the USDA Hazardous Materials Management Group (HMMG) serves as the Council's Executive Director. The HMMG, which serves as staff to the

Council, was placed organizationally in Departmental Administration for administrative support. The Council's Executive Director/HMMG Director reports to the Council Chairman for both management and policy direction. The Assistant Secretary for Administration and the Council Chairman are responsible for presenting the USDA Hazardous Waste Management appropriation budget request to the Office of Management and Budget (OMB) and Congress. The Council Chairman is responsible for reporting on hazardous materials management and Federal facilities compliance program accomplishments to Congress, OMB, and the United States Environmental Protection Agency. Decisions on the allocation of funds to USDA agencies from the USDA central hazardous waste management account are the responsibility of the Council. Finally, the Secretary directed that Departmental Manual (DM) 5600-1, Environmental Pollution Prevention, Control, and Abatement Manual, be revised to reflect these changes in organization and responsibilities. The revisions to DM 5600-1 were issued June 25, 1999. This final rule revises the delegations of authority from the Secretary of Agriculture and general officers of USDA to incorporate the provisions of the Secretary's memoranda and the June 25, 1999, amendments to DM-5600-1.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12866 and 12988. In addition, this action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and, thus, is exempt from the provisions of that Act. Accordingly, as authorized by section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, this rule may be made effective upon publication in the **Federal Register**.

#### List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR Part 2 is amended as follows:

## PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

**Authority:** 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949-1953 Comp., p. 1024.

### Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. In § 2.16, paragraph (a)(9) is added to read as follows:

#### § 2.16 Under Secretary for Farm and Foreign Agricultural Services.

(a) \* \* \*

(9) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Recommend actions and policies of the loan and grant programs under his or her authority concerning compliance with the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996, Subtitle E of Public Law No. 104-208.

\* \* \* \* \*

3. In § 2.17, the section heading is revised and paragraph (a)(23) is added to read as follows:

#### § 2.17 Under Secretary for Rural Development.

(a) \* \* \*

(23) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and

other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Recommend actions and policies of the loan and grant programs under his or her authority concerning compliance with the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996, Subtitle E of Public Law No. 104–208.

\* \* \* \* \*

4. In § 2.18, paragraph (a)(7) is added to read as follows:

**§ 2.18 Under Secretary for Food Safety.**

(a) \* \* \*

(7) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable the USDA agency under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Exercise primary responsibility to regulate drug, pesticide, and environmental contaminants in food products as covered by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*), including the Food Quality Protection Act of 1996, Public Law 104–170, and the Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*), as implemented by the Food Safety and Inspection Service through a Memorandum of Understanding with the United States Department of Health and Human Services, Food and Drug Administration, and the United States Environmental Protection Agency.

\* \* \* \* \*

5. In § 2.20, paragraph (a)(1)(ii) is revised and paragraphs (a)(1)(ix), (x), and (xi) are added to read as follows:

**§ 2.20 Under Secretary for Natural Resources and Environment.**

(a) \* \* \*

(1) \* \* \*

(ii) Represent USDA on Regional Response Teams on hazardous spills and oil spills pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*), the Clean Water Act, as amended

(33 U.S.C. 1251 *et seq.*), the Oil Pollution Act (OPA), as amended (33 U.S.C. 2701 *et seq.*), Executive Order 12580, 3 CFR, 1987 Comp., p. 193, Executive Order 12777, 3 CFR, 1991 Comp., p. 351, and the National Contingency Plan, 40 CFR Part 300.

\* \* \* \* \*

(ix) Serve on the USDA Hazardous Materials Policy Council.

(x) Recommend actions and policies that enable agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(xi) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

\* \* \* \* \*

6. In § 2.21, paragraph (a)(10) is added to read as follows:

**§ 2.21 Under Secretary for Research, Education, and Economics.**

(a) \* \* \*

(10) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Serve as a USDA Environmental Executive responsible for coordinating waste prevention; recycling; and the procurement, acquisition, and use of recycled products and environmentally preferable products, including biobased products, and services pursuant to Executive Order 13101 (dual assignment with the Assistant Secretary for Administration).

\* \* \* \* \*

7. In § 2.22, paragraph (a)(10) is added to read as follows:

**§ 2.22 Under Secretary for Marketing and Regulatory Programs.**

(a) \* \* \*

(10) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or

her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

\* \* \* \* \*

8. In § 2.24:

a. Paragraph (a)(3)(i)(I) is removed and paragraphs (a)(3)(i)(J) and (a)(3)(i)(K) are re-designated paragraphs (a)(3)(i)(I) and (a)(3)(i)(J) respectively; and

b. Paragraphs (a)(3)(xi), (a)(3)(xii), and (a)(14) are added to read as follows:

**§ 2.24 Assistant Secretary for Administration.**

(a) \* \* \*

(3) \* \* \*

(xi) Serve as a USDA Environmental Executive responsible for coordinating waste prevention; recycling; and the procurement, acquisition, and use of recycled products and environmentally preferable products, including biobased products, and services pursuant to Executive Order 13101 (dual assignment with the Under Secretary for Research, Education, and Economics).

(xii) Provide administrative support to the USDA Hazardous Materials Management Group.

\* \* \* \* \*

(14) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Present, in coordination with the Chairman of the USDA Hazardous Materials Policy Council, the USDA Hazardous Waste Management Appropriation budget request to the Office of Management and Budget and to Congress.

\* \* \* \* \*

**Subpart D—Delegations of Authority to the Other General Officers and Agency Heads**

9. In § 2.31, paragraph (p) is added to read as follows:

**§ 2.31 General Counsel.**

\* \* \* \* \*

(p) Serve on the USDA Hazardous Materials Policy Council.

\* \* \* \* \*

**Subpart J—Delegations of Authority  
By the Under Secretary for Natural  
Resources and Environment**

10. In § 2.60, paragraph (a)(35) is revised to read as follows:

**§ 2.60 Chief, Forest Service.**

(a) \* \* \*

(35) Represent USDA on Regional Response Teams on hazardous spills and oil spills pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*), the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*), the Oil Pollution Act (OPA), as amended (33 U.S.C. 2701 *et seq.*), Executive Order 12580, 3 CFR, 1987 Comp., p. 193, Executive Order 12777, 3 CFR, 1991 Comp., p. 351, and the National Contingency Plan, 40 CFR Part 300.

\* \* \* \* \*

Dated: March 1, 2000.

**Dan Glickman,**

*Secretary of Agriculture.*

[FR Doc. 00-5770 Filed 3-8-00; 8:45 am]

BILLING CODE 3410-01-P

**DEPARTMENT OF AGRICULTURE****Food and Nutrition Service**

**7 CFR Parts 210, 215, 220, 225 and 226  
RIN 0584-AC82**

**Modification of the “Vegetable Protein  
Products” Requirements for the  
National School Lunch Program,  
School Breakfast Program, Summer  
Food Service Program and Child and  
Adult Care Food Program**

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule updates the requirements for using “Vegetable Protein Products” in the National School Lunch Program, School Breakfast Program, Summer Food Service Program, and Child and Adult Care Food Program (the Child Nutrition programs). The major changes are to: rename “Vegetable Protein Products” as “Alternate Protein Products;” remove the limit on the amount of these products that can be used; eliminate the requirement that alternate protein products be specially fortified; and

update the test used to determine protein quality. These changes provide menu planners with more flexibility to incorporate these products into their menus along with the traditional protein sources of meat, poultry and seafood.

**EFFECTIVE DATE:** April 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Wagoner or Ms. Janice Fabina, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302 or by telephone at (703) 305-2590.

**SUPPLEMENTARY INFORMATION:****Background***What Was Proposed?*

On July 20, 1999, the U.S. Department of Agriculture (USDA) published a rule in the **Federal Register** (64 FR 38839) proposing to update the requirements for using vegetable protein products in the Child Nutrition Programs. Under the National School Lunch Act (NSLA) and the Child Nutrition Act of 1966 (CNA), the Secretary of Agriculture is authorized to establish minimum nutritional requirements for meals served in the various Child Nutrition Programs administered by FNS. One important element of establishing these nutritional requirements is determining how various foods, such as vegetable protein products, should be credited under the meals patterns established for the Child Nutrition Programs. Section 9(a) of the NSLA (42 U.S.C. 1758 (a)) requires the Secretary to establish minimum nutritional requirements for the National School Lunch Program (NSLP). Section 13(f) of the NSLA (42 U.S.C., 1761(f)) mandates this requirement for the Summer Food Service Program (SFSP), as does section 17(g)(1)(A) of the NSLA (42 U.S.C. 1766(g)(1)(A) for the Child and Adult Care Food Program (CACFP). Section 4(e) of the CNA incorporates this oversight requirement as a central feature of the School Breakfast Program (SBP).

The following were the major modifications that we proposed:

- (1) Change the name from vegetable protein products to alternate protein products and remove the requirement that alternate protein products only be of plant origin;
- (2) Remove the requirement that vegetable protein products could only constitute 30 percent (by weight) of the meat/meat alternate component of the food-based menu planning approaches;
- (3) Remove the fortification requirement; and
- (4) Update the protein quality test to the Protein Digestibility Corrected Amino Acid Score (PDCAAS) from the Protein Efficiency Ratio (PER) test.

We proposed to amend the requirements found in Appendix A, entitled “Alternate Foods for Meals-Vegetable Protein Products,” to the following Code of Federal Regulation (CFR) Parts: 7 CFR Part 210, for the NSLP; 7 CFR Part 225, for the SFSP; and 7 CFR Part 226, for the CACFP. Appendix A to Part 210 also applies to 7 CFR Part 220, the SBP. For additional background on the history of vegetable protein products in the Child Nutrition programs, please refer to the proposed rule.

*How Long Was the Comment Period for  
the Proposed Rule?*

We originally established a 60-day comment period which would have ended on September 20, 1999. However, potential commentors requested an extension of the comment period to allow them more time to review the proposed changes. We extended the comment period until November 19, 1999 in response to these requests. The extension notice was published in the **Federal Register** on August 25, 1999 (64 FR 46319).

*How Many Comments Were Received?*

We received 635 comment letters, including a number of e-mails. The following is a breakdown of the types of commentors:

Commentor classification	Number
General Public* .....	573
State and Local Food Service Including Child Care Providers .....	17
Food Industry .....	26
Advocates .....	19
Total .....	635

\*Includes unaffiliated health professionals.

The vast majority of commentors (619) approved of the proposed changes. The largest group of commentors that approved of the changes in their entirety (355) made the following points:

1. The changes would increase flexibility for menu planners;
2. The current requirements severely restricted the use of vegetable protein products (VPP) in the Child Nutrition programs; and
3. The changes will provide healthful alternatives to meat products. These commentors also noted that the changes are good for consumers, animals, the environment and those administering the Child Nutrition programs, especially child care providers.

Specific comments are discussed in detail below.

### *What Did Commentors Say About Changing the Name of VPP?*

We proposed removing the requirement that protein products used in the Child Nutrition programs be derived only from plant protein sources. Because of this, we proposed using the term "Alternate Protein Products" (APP) instead of "Vegetable Protein Products" (VPP) to indicate that such products are no longer only vegetable-based.

Only 26 comment letters specifically addressed this provision. Of these, 24 commentors opposed the name change, while two commentors supported it, saying that the term "APP" enhances flexibility and recognizes changes in food technology. Those commentors who opposed the name change felt it was not necessary because there are only two possible sources of protein products that are not vegetable-based that could be used in the Child Nutrition programs, i.e., fruit puree and whey protein. Commentors stated that these sources were the only products that could meet the requirements of the protein quality test used. Commentors also felt that these particular products would not be used in sufficient quantities to meet the protein requirements.

We proposed the name change to indicate that the meat alternate requirement could be met with protein sources other than those that were vegetable-based. Also, we did not want to restrict the use of any alternate protein products that might be developed in the future that were not vegetable-based. We believe the term Alternate Protein Products, as opposed to the term Vegetable Protein Products, most accurately reflects the fact that protein is available from a variety of sources including vegetable-based sources. Therefore, we are adopting the name change as proposed without changes.

### *What Did Commentors Say About Removing the Limit on the Amount of VPP?*

We proposed removing the requirement that that VPP could only constitute up to 30 percent of the meat/meat alternate component of the food-based menu planning approaches used in all of the Child Nutrition programs. One reason for this proposed change was because that limitation did not apply to menus planned under the nutrient standard menu planning approaches used in the NSLP and the SBP, thus there was an inconsistency among the menu planning approaches for the school meals programs. Another reason was that the 30 percent

limitation was based on the best data available at the time that regulation was issued in 1983. That data indicated that VPP appeared to inhibit the absorption of iron and other nutrients. This is no longer supported by current research.

Only a few comment letters (26) mentioned this issue; 17 supported removing the limit while 9 opposed it. The following concerns were raised by those who opposed the removing the limit:

1. Use of 100% APP indicates that USDA feels such products are the nutritional equivalent to meat and the commentors feel that the protein quality of meat and that of APP are not the same; and

2. If 100% APP products are offered, the commentors felt menu planners must also offer meat, seafood or poultry in addition for those who do not want the menu items that only consist of APP.

In response to comments about varying levels of protein quality, please note we are maintaining the same protein quality test currently in the regulations which requires that protein quality be at least 80 percent that of casein (milk protein). This is the established benchmark for a high quality protein product used by USDA-sponsored programs for the past several years. We are also maintaining the requirement that APP used in the CN programs be at least 18% protein by weight, the level of protein readily available in meat, poultry or seafood. Given these two standards, APP used in the CN programs is limited to products that provide a level and quality of protein that is similar to that provided by the traditional sources of the meat component.

In response to comments about requiring menu planners to offer choices other than those with 100% APP, we are committed to giving menu planners flexibility to meet the various needs of the participants in the various Child Nutrition programs. Many factors go into menu planning for our programs—preferences of those consuming the meals, economics, availability of foods, and the need to meet program meal patterns as well as the nutrition standards, including the Dietary Guidelines for Americans' recommendation that people consume a variety of foods. We stress the importance of schools and institutions offering choices if possible. We also support adoption of the offer versus serve (OVS) provision in the school meals programs which allows children to select the foods they prefer and decline foods they would not eat. For the NSLP, OVS is required (7 CFR

210.10(k)) for senior high school students and is strongly encouraged for younger children. Given these factors, we believe that menu planners will provide choices and variety to the greatest extent possible and that they will use APP appropriately and will take into account the varied dietary demands of all program participants.

We are adopting the proposed change to eliminate the limit on use of APP in the Child Nutrition programs as final without change. This decision reflects current research on APP and seeks to enhance the flexibility of menu planners in finding ways to reduce fat and saturated fat in the meals they plan as well as the need to meet the increasingly varied dietary demands of students.

### *How Will Program Participants Be Able To Identify Menu Items With APP?*

Some commentors suggested that we establish a different category for menu items that contain more than 30% APP. These commentors also stated that such products should not be considered as beef, pork, poultry, or fish. Other commentors were concerned that, particularly given food allergies and the special dietary needs of program participants such as vegetarians, the source of the APP be clearly identified. Some commentors suggested that we require a label showing the percentage and source of the APP in a product and whether the product fulfills the requirement for a meat alternate product (e.g., does the product contain more bread than APP?). Other commentors were concerned that APP offered in the Child Nutrition programs be easily identified at the point of service and for parents of children participating in the various programs.

We proposed in the July, 1999, rulemaking that manufacturers document that their products meet the following requirements in order to assure that schools and institutions can determine if the APP used in the Child Nutrition programs meet the protein quality standards:

1. The APP is processed so that some portion of the non-protein constituents of the food is removed;

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

3. The APP contains at least 18 percent protein by weight when fully hydrated or formulated.

We did not specify the form of documentation required. For example, the manufacturer could provide

specification sheets, could provide a letter attesting that the requirements were met, or could put a label on the product. While we want to assure that the APP used in the Child Nutrition programs meet our nutritional standards, we do not want to impose a burden on manufacturers to individually label their products unless they choose to do so.

Food product labeling is regulated by both the Food Safety Inspection Service (FSIS) in USDA and by the Food and Drug Administration (FDA) in the Department of Health and Human Services. FSIS labeling regulations are found at Title 9 of the CFR and cover meat, poultry and egg products. FDA labeling requirements are found at Title 21 of the CFR and cover all other non-meat foods such as shellfish, fruit, milk and grain products. Current FSIS and FDA rules require food manufacturers to list, by common name, the ingredients used in the formulation of processed food products on the label for that product. For FSIS, these provisions are found at 9 CFR 317.2f and 9 CFR 381.118; for FDA, at 21 CFR 101.3. Information about the source or type of protein will be clearly indicated in the ingredient listing, such as whey protein concentrate or hydrolyzed soy protein. However, according to FSIS and FDA regulations, percent labeling is voluntary. FNS cannot modify the rules governing labeling of meat and non-meat products since the authority for labeling rests with FSIS and FDA.

Another method available to schools and institutions to determine how to credit APP in the programs comes through the Child Nutrition (CN) labeling program. The CN labeling program (7 CFR Part 210, Appendix C) has reviewed labels of products containing VPP since 1984 and will continue to do so for APP labels. The CN labeling program, which is widely used by the food manufacturers who market their products to the CN programs, provides information on how products are to be credited under the meal patterns established for each program. In this way, schools and institutions have yet another way to determine the content and creditability of the APP items they use.

With regard to the point of service menu labeling, FNS encourages program administrators to provide menus that accurately describe menu items served to students and their parents to assist them in making choices that meet their dietary demands. Clear point of service menu labeling can assist students and their parents in making menu selections consistent with their dietary needs. We also note that children with special

dietary needs due to a disability such as a life-threatening reaction to certain foods or ingredients must be accommodated in accordance with §§ 210.10(g)(1), 210.10a(i)(1), 220.8(b)(1), 220.8a(f), 225.16(g)(4) and 226.20(h).

#### *What Did Commentors Say About Eliminating the Fortification Requirement?*

Another proposed change was to remove the requirement that APP used in the Child Nutrition programs be fortified with iron and zinc. At the time the original requirements on VPP were established, fortification with iron and zinc was an additional safeguard to further assure that children received adequate nutrients. We did this so that the fully hydrated VPP was similar to meat in both nutrients and the bioavailability of minerals. However, current scientific research indicates that by eating a variety of foods, mineral intake is adequate and our concern is that unrestricted use of *fortified* APP could actually result in excessive intakes of iron and zinc. Eliminating the requirement on fortification allows the food industry to directly market their existing products to schools and sponsors as they would no longer need to develop and maintain a special product exclusively for the CN programs.

Some commentors addressed this proposed change, saying that they were concerned with the elimination of the fortification requirement because of the difficulty in obtaining the necessary nutrients when an entire food category, such as meat, is removed from the diet. They felt that the fortification requirement should be retained especially as they noted that about two-thirds of APP products they surveyed informally were fortified with iron and zinc, suggesting that a fortification requirement is not overly burdensome.

Because we are removing the limit on the use of APP and because of the current research on minerals and total diet, we feel eliminating the specific fortification requirement is warranted. We feel that the food industry is in the best position to determine if and to what extent APP should be fortified based on available research and the needs and preferences of consumers. Further, current data indicates that APP without any special fortification is equivalent to other meat/meat alternates in terms of the nutrients they supply. Also, the School Nutrition Dietary Assessment Study, issued in 1993, showed that school meals exceeded the minimum Recommended Dietary Allowances for both iron and zinc. All meals served in

the Child Nutrition programs must meet certain nutrition standards. For school meals, the Dietary Guidelines for Americans must be met and the meals must provide minimum levels of the Recommended Dietary Allowances for specific nutrients, including iron, as well. The meal patterns for all of the programs are designed to provide children and adult participants with a variety of foods and minimum levels of calories and other nutrients. Therefore, we are adopting this provision as proposed without change.

#### *What Was Proposed About Protein Quality?*

As we discussed earlier, the proposed rule did not propose any changes to the requirement that the biological quality of the protein in the APP be at least 80 percent that of casein (milk protein). As indicated earlier, this is an established benchmark for high quality protein products allowed by the Child Nutrition Programs. We also did not propose to change the requirement that the protein content of the fully hydrated APP be a minimum of 18 percent by weight. We received only 4 comments on these provisions, all of which supported the protein quality requirements. We are adopting these provisions as proposed without change.

We also proposed to replace the protein quality test, Protein Efficiency Ratio (PER), with the Protein Digestibility Corrected Amino Acid Score (PDCAAS) test. FDA now requires use of the PDCAAS test for all foods intended for all ages except for infants. We proposed use of the PDCAAS test to achieve consistency with FDA regulations and to reflect the latest scientific advances. As discussed in our proposed rule, we are not requiring that the PER test be conducted in determining protein quality of APP for infants since the infant meal pattern is based on specific foods, not the more general food components. Consequently menu planners are unlikely to offer APP to infants.

We received 7 comments on this provision, all of which approved of the change. Therefore, we are incorporating the PDCAAS test into this final regulation as proposed.

#### *What Technical Amendments Were Proposed?*

We proposed adding to 7 CFR Part 220, Appendix A, a new section entitled "Alternate Protein Products." We also issued the proposed rule in plain language. We received no comments on either of these changes. Therefore, the proposed language and structure of Appendix A and the addition of the

provisions on APP to Part 220 are adopted as final without change.

We are also amending the Meal Pattern for the various CN programs charts to indicate how APP is credited under the food-based menu planning approaches. This specificity was not needed previously as VPP was blended into other meat/meat alternate products. Because we are removing the 30% limitation, we are making these technical changes in §§ 210.10, 210.10a, 220.8, 220.8a, 225.16, and 226.20. We are also updating the Meal Pattern chart in § 210.10a to reflect the current requirements on offering milk in the lunch program (see 42 U.S.C. 1758 (a)(2)).

We also proposed to make some minor technical amendments to § 210.30, § 215.16, § 220.20, § 225.19, and § 226.26. These amendments would update information about addresses and coverage of FNS' regional offices.

#### **Executive Order 12866**

This final rule was determined to be non-significant and is not subject to review by the Office of Management and Budget under Executive Order 12866.

#### **Public Law 104-4**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 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 alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

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

#### **Regulatory Flexibility Act**

This final rule was reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of FNS

has certified that this rule will not have a significant economic impact on a substantial number of small entities. First, there are relatively few companies that supply alternate protein products to the Child Nutrition programs. Secondly, removing the fortification requirement eliminates the burden on manufacturers to develop and market a product specially for use in the Child Nutrition programs. Lastly, menu planners would have greater flexibility to incorporate alternate protein products into their menus along with the traditional protein sources of meat, poultry and seafood.

#### **Executive Order 12372**

The National School Lunch Program, Special Milk Program for Children, and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under No. 10.555, 10.556 and 10.553, respectively. The Child and Adult Care Food Program and the Summer Food Service Program are listed under No. 10.558 and No. 10.559, respectively. Each is 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 was 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 proposed rule or the application of the provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by State or local governments and, for disputes involving procurements by State agencies and sponsors, any administrative appeal procedures to the extent required by 7 CFR Part 3016.

For the National School Lunch Program and School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR § 210.18(q); (2) school food authority appeals of 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 FNS Administrative Review Process as established pursuant to 7 CFR § 235.11(f).

For the Summer Food Service Program, the administrative procedures are set forth under the following regulations: (1) Program sponsors and food service management companies must follow State agency hearing procedures issued pursuant to 7 CFR § 225.13; and (2) disputes involving procurement by State agencies and sponsors must follow administrative appeal procedures to the extent required by 7 CFR § 225.17 and 7 CFR Part 3015.

For the Child and Adult Care Food Program, the administrative procedures are set forth under the following regulations: (1) institution appeal procedures in 7 CFR § 226.6(k); and (2) disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR § 226.22 and 7 CFR 3015.

#### **Paperwork Reduction Act**

This final rule contains no new paperwork burdens or information collection requirements which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

#### **List of Subjects**

##### *7 CFR Part 210*

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

##### *7 CFR Part 215*

Food and nutrition, Food assistance programs, Grants programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping.

##### *7 CFR Part 220*

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

##### *7 CFR Part 225*

Food and nutrition, Food assistance programs, Grant programs—health, Infants and children, Labeling,

Reporting and recordkeeping requirements.

7 CFR Part 226

Accounting, Aged, Day care, Food and Nutrition, Food assistance programs, Grant programs, Grant programs—health, Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 210, 215, 220, 225 and 226 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 § 210.10:

- a. Revise paragraph (k)(2); and
- b. Revise the first sentence in paragraph (k)(3)(i).

The revisions read as follows:

**§ 210.10 Nutrition standards for lunches and menu planning methods.**

\* \* \* \* \*

(k) *Food-based menu planning.* \* \* \*

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

**ENHANCED FOOD-BASED MENU PLANNING-MEAL PATTERN FOR LUNCHES**

Food Components and Food Items	Minimum requirements				Option for Grades K–3
	Ages 1–2	Preschool	Grades K–6	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 .....	1½ ounces .....	2 ounces .....	2 ounces .....	1½ ounces.
Alternate protein products <sup>1</sup> .....	1 ounce .....	1½ ounces .....	2 ounces .....	2 ounces .....	1½ ounces.
Cheese .....	1 ounce .....	1½ ounces .....	2 ounces .....	2 ounces .....	1½ ounces.
Large egg .....	½ .....	¾ .....	1 .....	1 .....	¾.
Cooked dry beans or peas .....	¼ cup .....	⅜ cup .....	½ cup .....	½ cup .....	⅜ 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.	8 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 or fruits or both.	½ cup .....	½ cup .....	¾ cup plus an extra ½ cup over a week <sup>2</sup> .	1 cup .....	¾ cup.
Grains/Breads: 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 <sup>2</sup> —minimum of 1/2 day.	8 servings per week <sup>2</sup> —minimum of 1 per day.	12 servings per week <sup>2</sup> —minimum of 1 per day <sup>3</sup> .	15 servings per week <sup>2</sup> —minimum of 1 per day <sup>3</sup> .	10 servings per week <sup>2</sup> —minimum of 1 per day <sup>3</sup> .

<sup>1</sup> Must meet the requirements in appendix A of this part.

<sup>2</sup> For the purposes of this chart, a week equals five days.

<sup>3</sup> Up to one grains/breads serving per day may be a dessert.

(3) *Meat or meat alternate component.* \* \* \*

(i) Enriched macaroni with fortified protein as defined in appendix A of this part may be used to meet part of the meat or meat alternate requirement

when used as specified in appendix A of this part. \* \* \*

\* \* \* \* \*

3. In § 210.10a:

- A. Revise the table in paragraph (c); and
- b. Revise the first sentence in paragraph (d)(2)(i).

The revisions read as follows:

**§ 210.10a Lunch components and quantities for the meal pattern.**

\* \* \* \* \*

(c) Minimum required lunch quantities.\* \* \*

## TRADITIONAL FOOD-BASED MENU PLANNING—MEAL PATTERN FOR LUNCHES

Food Components and Food Items	Minimum Quantities				Recommended Quantities
	Group I, ages 1–2 (preschool)	Group II, ages 3–4 (preschool)	Group III, ages 5–8 (K–3)	Group IV, age 9 and older (4–12)	Group V, age 12 and older (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 .....	1½ ounces .....	1½ ounces .....	2 ounces .....	3 ounces.
Alternate protein products <sup>1</sup> .....	1 ounce .....	1½ ounces .....	1½ ounces .....	2 ounces .....	3 ounces.
Cheese .....	1 ounce .....	1½ ounces .....	1½ ounces .....	2 ounces .....	3 ounces.
Large egg .....	½ .....	1¾ ounces .....	1¾ ounces .....	1 ounces .....	1½.
Cooked dry beans or peas .....	¼ cup .....	¾ cup .....	¾ cup .....	½ cup .....	¾ cup.
Peanut butter or other nut or seed butters ....	2 tablespoons ...	3 tablespoons ...	3 telephones ....	4 tablespoons ...	6 tablespoons.
Yogurt, plain or flavored, unsweetened or sweetened.	4 ounces or ½ cup.	6 ounces or ¾ cups.	6 ounces or ¾ cup.	8 ounces or 1 cup.	12 ounces or 1½.
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%	1½ ounce = 50%.
Vegetable or Fruit: 2 or more servings of vegetables or fruits or both.	½ cup .....	½ cup .....	½ cup .....	¾ cup .....	¾ cup.
Bread or Bread Alternate: (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 <sup>2</sup> —minimum of ½ day.	8 servings per week <sup>2</sup> —minimum of 1 per day.	8 servings per week <sup>2</sup> —minimum of 1 per day.	8 servings per week <sup>2</sup> —minimum of 1 per day.	10 servings per week <sup>2</sup> —minimum of 1 per day.

<sup>1</sup> Must meet the requirements in appendix A of this part.

<sup>2</sup> For the purposes of this chart, a week equals five days.

(d) *Lunch components.* \* \* \*

(2) *Meat or meat alternate.* \* \* \*

(i) Enriched macaroni with fortified protein as defined in appendix A of this part may be used to meet part of the meat or meat alternate requirement when used as specified in appendix A of this part. \* \* \*

\* \* \* \* \*

4. In § 210.30, revise paragraphs (b), (c), and (f) to read as follows:

**§ 210.30 Regional office addresses.**

\* \* \* \* \*

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

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

\* \* \* \* \*

(f) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-

Atlantic Regional Office, FNS, U.S. Department of Agriculture, 300 Corporate Boulevard, Robbinsville, New Jersey 08691–1598.

\* \* \* \* \*

5. In Appendix A to Part 210, entitled Alternate Foods for Meals, revise the undesignated center heading “Enriched Macaroni Products with Fortified Protein” to read “I. Enriched Macaroni Products with Fortified Protein.”

6. In Appendix A to Part 210, entitled Alternate Foods for Meals, revise the section entitled “Vegetable Protein Products” to read as follows:

**Appendix A to Part 210—Alternate Foods for Meals**

\* \* \* \* \*

**II. Alternate Protein Products**

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

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

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

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

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

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

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

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

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

- (1) the amount by weight of dry alternate protein product in the package;
- (2) hydration instructions; and
- (3) instructions on how to combine the mix with meat or other meat alternates.