§ 52.2329 Sample size.

The sample size used to determine whether the requirements of these standards are met shall be as specified in the sampling plans and procedures contained in §§ 52.1 through 52.83.

§ 52.2330 Quality requirement criteria.

(a) *Lot inspection.* A lot of frozen beans is considered as meeting the requirements for quality if:

(1) The prerequisite requirements specified in § 52.2326 and § 52.2328, Table I, are met; and

(2) None of the allowances for the individual quality factors specified in Tables II, IIa, IIb, III, IIIa, IIIb, IV, IVa, and IVb of § 52.2328, as applicable for the style, are exceeded.

(b) *Single sample unit.* Each unofficial sample unit submitted for quality evaluation will be treated individually and is considered as meeting the requirements for quality if:

(1) The prerequisites requirements specified in § 52.2326 and § 52.2328, Table I, are met; and

(2) The Acceptable Quality Levels in Tables II, IIa, IIb, III, IIIa, IIIb, IV, IVa, and IVb of § 52.2328, as applicable for the style, are not exceeded.

Dated: July 11, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–18176 Filed 7–18–96; 8:45 am]

BILLING CODE 3410–02–P

Food and Consumer Service

7 CFR Parts 210 and 225

RIN 0584–AC04

Removal of the ''Cheese Alternate Products'' Specifications From the National School Lunch Program

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule eliminates the specifications governing the use of ''Cheese Alternate Products'' in the National School Lunch Program (NSLP). The removal of these specifications should enable the food industry more freedom to produce cheese substitute products for use in the NSLP while maintaining program nutrition standards through reliance on existing Food and Drug Administration rules.

EFFECTIVE DATE: July 19, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Marion Hinners, (703) 305–2556.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

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 Administrator of the Food and Consumer Service has determined that this final rule will not have a significant economic impact on a substantial number of small entities. There are currently fewer than ten companies participating in the Child Nutrition Programs (CNPs) affected by this regulation. In addition, the removal of this regulation is expected to reduce the regulatory burden on all companies producing a cheese alternate type product and allow the use of a wider variety of products than currently can be used in the CNPs.

Category of Federal Domestic Assistance

The National School Lunch Program and the Summer Food Service Program for Children are listed in the Catalog of Federal Domestic Assistance under No. 10.555 and 10.559, 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 12778

This final rule has been reviewed under Executive Order 12778, 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 would otherwise impede its full implementation. This final rule is not intended to have retroactive effect unless 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.

Information Collection

This final rule contains no new information collection requirements which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Background

Cheese alternates are used primarily as economical replacements for natural or processed cheese in the National School Lunch Program (NSLP). Cheese alternates are a class of products currently required to be made from conventional ingredients which must meet nutritional and physical specifications set forth in the NSLP regulations in 7 CFR part 210, Appendix A—Alternate Foods for Meals (appendix A to part 210) in order to be used as a food component contributing to the NSLP meal patterns.

The Department published a proposed rule to remove the ''Cheese Alternate Products'' specifications from the NSLP in the Federal Register on September 27, 1995 (60 FR 49807). The Department accepted comments on the proposal until November 13, 1995. One commenter requested an extension of the comment period. A subsequent Federal Register publication on November 27, 1995 (60 FR 58252) reopened the comment period until December 27, 1995.

FCS received a total of 25 comments on the proposed rule. Five comments were from the state or federal government agencies, five were from School Food Authorities, six were from private companies and nine were from trade associations. Eighteen commenters were generally supportive of FCS proposals: five of those were from private industry and six from trade organizations. Seven commenters opposed or advocated major changes to the proposal. Of these seven, two were trade organizations for dairy interests and one was a private manufacturer.

Commenters who supported the proposal cited positive changes including that the proposal would: (1) Allow use of alternate protein sources, (2) provide more flexibility in meeting the Dietary Guidelines for Americans, (3) reduce food costs, (4) increase the number of products available, (5) allow for more consistency between the food-based and nutrient-based menu planning systems used in the NSLP, (6) increase availability of lower fat and lower saturated fat products, (7) reduce regulatory burden, (8) eliminate costly, lengthy product evaluations on the part of industry, (9) increase products for vegetarians and individuals with dairy product allergies, (10) allow for reduction in cholesterol and calories and, (11) allow for the protein digestibility-corrected amino acid score for assessing protein quality.

The negative comments were varied. One of the government commenters was concerned about the nutritional impact

of this change, particularly the reduced zinc adsorption if more phytate-containing foods (e.g. soy-based cheese substitutes) were used. FCS does not anticipate that removal of the cheese alternate specifications will cause use of cheese substitutes to increase to the extent that the bioavailability of nutrients such as zinc will be compromised.

A School Food Authority commented that the nutritional quality and physical characteristics of substitute cheese would be inferior to natural cheese and that a sodium level should be specified because cheese substitutes generally have a higher sodium level. Food and Drug Administration (FDA) labeling regulations (21 CFR 101.3) require products labeled as ''substitutes'' (e.g., cheese substitutes) to be ''not nutritionally inferior'' to the product for which they substitute (e.g., cheese). As noted in the proposed rule, FCS is adding ''cheese substitutes'' to the Food Buying Guide for Child Nutrition Programs (FBG), Program Aid Number 1331. Schools and FCS use the FBG to determine what meal components are reimbursable for schools using food based menu planning. Thus the inclusion in the FBG of cheese substitutes should help insure that nutritional quality is maintained, since items labeled as cheese substitutes must be ''not nutritionally inferior'' to cheese. Moreover, section 9(f) of the National School Lunch Act (42 U.S.C. 1758(f)) requires that school meals meet the Dietary Guidelines for Americans (Dietary Guidelines), jointly published by the Department of Agriculture and the Department of Health and Human Services. The Dietary Guidelines provide for moderating salt and sodium intake, and schools are expected to comply. As has always been true, schools must make the final decision on what to buy based on good menu planning practices as well as flavor, functional characteristics, and student acceptance. Schools electing to use a higher sodium cheese substitute can, and should, reduce the sodium contributed to the meal from other sources.

Trade association and private industry commenters generally agreed that FCS should eliminate the current requirement that cheese alternates must be used in combination with at least 50 percent natural cheese because there was no nutritional basis to keep the requirement. One School Food Authority thought this requirement should be retained to help maintain the nutritional integrity and physical properties of cheese substitutes. FCS believes that nutritional quality will be maintained by the FDA standard and that the physical properties will not vary appreciably from current cheese substitutes, since their marketplace acceptability is partly a function of these properties.

One private industry commenter was against the proposal because of the possibility for abuse by manufacturers to supply inferior cheese products. FCS believes manufacturers will have no increased opportunity for abuse beyond their opportunity in the current approval system. As stated above, the nutritional integrity of a cheese substitute is maintained through compliance with FDA requirements and by inclusion of FDA labeled cheese substitutes in the FBG. Further, FCS believes that the functionality of cheese substitutes will also be maintained through marketplace pressures, because their acceptability is dependent upon their functional characteristics.

Both trade association and private industry commenters thought that a protein quality requirement should be retained because FDA regulations prohibits a substitute from containing a lesser amount of protein while making no direct provisions for protein quality. Because of this concern, FCS contacted FDA early in the regulatory process for clarification of their regulation. In a letter to William E. Ludwig, the Administrator of FCS, Dr. F. Edward Scarbrough, the Director of the FDA's Office of Food Labeling, stated that: ''a substitute food must be able to support the same nutrition claims as the reference food, and since the protein claim for the reference food must include protein quality, the substitute food must also account for protein quality.'' Referring to FDA regulations, he went on to say ''the (FDA) believes that (21 CFR) 101.3(e)(4) maintains its long standing policy that protein quality is a factor in determining if a substitute food is nutritionally inferior to a reference food.'' Because FDA considers protein quality when determining whether a substitute food is ''nutritionally inferior'', FCS believes that protein quality standards will be maintained when products labeled as ''cheese substitutes'' are used. Therefore, FCS does not need to define an independent protein quality requirement for cheese substitutes.

Accordingly, this final rule is being published without changes from FCS' proposed rulemaking. Upon publication this final rule removes the section entitled ''Cheese Alternate Products'' Appendix A to part 210—Alternate Foods for Meals. The removal of the cheese alternate products section from appendix A to part 210 eliminates FCS specifications for use of cheese alternates as meat alternates. This change allows the use of cheese substitutes that are consistent with FDA regulations which allow for fat and calorie reductions. This change adds to the choice of products available to food service managers while reducing processors' regulatory burdens. In addition, the removal of the cheese alternate products specifications is consistent with the Department's ongoing efforts to promote school meals that meet the Dietary Guidelines and is consistent with National Performance Review goals of reducing unnecessary federal regulations. Note that the removal of this specification also means that the cheese alternate label statements currently required by the FCS specification will no longer be required. FCS expects that companies that have currently approved labels with these statements will discontinue use of these statements as soon as it is reasonably possible but no longer than one year from the effective date of this regulation.

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 225

Food Assistance Programs, Grant programs—Health, Infants and Children.

For the reasons set forth in the preamble, 7 CFR parts 210 and 225 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.

§ 210.10 [Amended]

2. In § 210.10, the first sentence of paragraph (k)(3)(i) is amended by removing the words ''cheese alternate products''.

§ 210.10a [Amended]

3. In § 210.10a, the first sentence of paragraph (d)(2)(i) is amended by removing the words ''cheese alternate products,''.

Appendix A to Part 210 [Amended]

4. In Appendix A to Part 210—Alternate Foods for Meals, the section entitled ''Cheese Alternate Products'' is removed.

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for 7 CFR part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

§ 225.16 [Amended]

2. In § 225.16, the first sentence of paragraph (f)(3) is amended by removing the words ''cheese alternate products,''.

Dated: July 12, 1996.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 96–18404 Filed 7–18–96; 8:45 am]

BILLING CODE 3410–30–M

Farm Service Agency

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AE48

1996 Marketing Quota and Price Support for Flue-Cured Tobacco

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1996 crop of flue-cured tobacco. In accordance with the Agricultural Adjustment Act of 1938, as amended, (1938 Act), the Secretary determined the 1996 marketing quota for flue-cured tobacco to be 873.6 million pounds. In accordance with the Agricultural Act of 1949, as amended, (1949 Act), the Secretary determined the 1996 price support level to be 160.1 cents per pound.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Tarczy, FSA, USDA, room 5726 South Building, PO. Box 2415, STOP 0514, Washington, DC 20013–2415, telephone 202–720–5346.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by OMB under Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since FSA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act

The amendments to 7 CFR parts 723 and 1464 set forth in this final rule do not contain any information collection requirements that require clearance through the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995.

Statutory Background

This rule is issued pursuant to the provisions of the 1938 Act and the 1949 Act. Section 1108(c) of P.L. 99–272 provides that the determinations made in this rule are not subject to the provisions for public participation in rule making contained in 5 U.S.C. 553 or in any directive of the Secretary.

On December 15, 1995, the Secretary announced the national marketing quota and the price support level for the 1996 crop of flue-cured tobacco. A number of related determinations were made at the same time, which this final rule also affirms.

Marketing Quota

Section 317(a)(1)(b) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for flue-cured tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of flue-cured tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the 3 marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, that the Secretary, in the Secretary's discretion, determines necessary to adjust loan stocks to the reserve stock level.

Section 317(a)(1)(c) further provides that, with respect to the 1995 and 1996 marketing years, any reduction in the national marketing quota being determined shall not exceed 10 percent of the previous year's national marketing quota. However, if actual loan stocks exceed the prescribed reserve stock level by 50 percent the reduction limit could be waived and the Secretary could then set the quota according to the 3-component formula (plus or minus 3 percent). The reserve stock level is defined in section 301(b)(14)(C) of the 1938 Act as the greater of 100 million pounds or 15 percent of the national marketing quota for flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1996 crop of flue-cured tobacco by December 1, 1995. Five such manufacturers were required to submit such a statement for the 1996 crop and the total of their intended purchases for the 1996 crop is 475.5 million pounds. The 3-year average of exports is 344.8 million pounds.

The national marketing quota for the 1995 crop year was 934.8 million pounds (60 FR 22458). Thus, in accordance with section 301(b)(14)(C), the reserve stock level for use in determining the 1996 marketing quota for flue-cured tobacco is 140.2 million pounds.

As of December 8, 1995, the Flue-Cured Tobacco Cooperative Stabilization Corporation had in its inventory 59.9 million pounds of flue-cured tobacco (excluding pre-1994 stocks committed to be purchased by manufacturers and covered by deferred sales). Accordingly, the adjustment to maintain loan stocks at the reserve supply level is an increase of 80.3 million pounds.

The total of the three marketing quota components for the 1996–97 marketing year is 900.6 million pounds. In addition, the discretionary authority to reduce the three-component total by 3 percent was used because it was determined that the 1996/97 supply would be more than ample. Accordingly, the national marketing quota for the marketing year beginning July 1, 1996, for flue-cured tobacco is 873.6 million pounds.

Section 317(a)(2) of the 1938 Act provides that the national average yield goal be set at a level that the Secretary determines will improve or ensure the useability of the tobacco and increase the net return per pound to the producers. Yields in crop year 1995 were down substantially from the previous year, but this was a result of exceptionally poor growing conditions.