

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Consumer Service

#### 7 CFR Parts 210 and 225

RIN 0584-ACO4

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule seeks comment on the proposed elimination of specifications governing the use of "Cheese Alternate Products" in the National School Lunch Program. The removal of these specifications should enable cheese substitute manufacturers more freedom in the production of this type of product while maintaining program nutrition standards through reliance on existing Food and Drug Administration rules.

**DATES:** To be assured of consideration, comments must be postmarked on or before November 13, 1995.

**ADDRESSES:** Ms. Marion Hinners, Section Head, Food Science and Nutrition Section, Technical Assistance Branch, Nutrition and Technical Services Division, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marion Hinners, Section Head, Food Science and Nutrition Section, Technical Assistance Branch, Nutrition and Technical Services Division, USDA, (703) 305-2556.

#### SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed 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 proposed 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 proposed 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 of 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 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 proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect unless specified in the **DATES** 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.

#### Information Collection

This proposed 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 cheese substitutes that 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 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.

On August 29, 1974, cheese alternate requirements were added to Appendix A for both the NSLP (Part 210) and the Summer Food Service Program (SFSP) (Part 225) regulations. They set forth the specifications for use of cheese alternates to meet the meal pattern requirements for meat/meat alternate. Subsequent changes in SFSP regulations removed these specifications for using cheese alternates to meet the program's meal patterns. The remaining reference to cheese alternates in the SFSP regulations at 225.16(f)(3) was left in place as an oversight. This rule would delete any reference to cheese alternate products in the SFSP by removing the existing reference at 225.16(f)(3).

The cheese alternates were originally used in the NSLP and SFSP as a less expensive means of providing additional cheese type products which are nutritious and very popular with program participants. An additional factor in favor of using cheese alternates was the Department's belief that if natural cheese became scarce, or prohibitively expensive, the use of cheese alternates could significantly reduce program costs. By including specifications in the regulations governing the use of cheese alternates, the Department ensured that program nutritional requirements would be met.

The cheese alternate requirements restrict the protein in cheese alternates to animal protein and state how a cheese alternate may be used in the NSLP. Cheese alternates are required to be made from conventional ingredients and must be equivalent to natural cheese in all major nutrients found in natural and/or process cheese, including the quality and quantity of protein. The Department arrived at the nutrient specifications by averaging the known

nutrients found in a sampling of natural and process cheeses.

After the cheese alternate requirements were published in 1974, the Food and Drug Administration (FDA) added substitute and imitation products to its Food Labeling regulations (21 CFR 101.3(e)). In order for a product to be labeled a substitute, under current FDA regulations, a product must not be "nutritionally inferior to the food for which it substitutes. \* \* \*" This FDA rule has many of the same requirements for cheese substitutes as the current NSLP cheese alternate requirements. As previously stated, the nutritional profile in the cheese alternate requirements was determined by averaging known nutrients found in natural and process cheeses.

Because cheese substitutes are not nutritionally inferior to the cheese for which they substitute, the Food and Consumer Service (FCS) would add cheese substitutes to the Food Buying Guide for Child Nutrition Programs (FBG), Program Aid number 1331, if this rulemaking is finalized as proposed. The FBG is the reference employed by schools and FCS to determine if meal components are reimbursable. CNP nutritional standards would not be affected as the FDA rule for substitutes is actually more specific than current FCS cheese alternate standards in that each cheese substitute must meet the specific nutritional profile of the cheese for which it is substituting. It is the intention of FCS to add cheese substitutes to the FBG with a 1:1 credit. Thus, a cheese substitute could contribute to the meal pattern in the same way as natural or process cheese currently does.

As part of the nutrition labeling regulations, FDA has updated 21 CFR 101.3(e)(4)(i), "Identity labeling of foods in packaged form," to state that nutritional inferiority "does not include a reduction in the caloric or fat content. \* \* \*" The FDA regulation, then, allows for a food product, even a reduced or lowfat version, to be considered a substitute for another if it is not nutritionally inferior. The cheese alternate requirements do not allow for these reductions and in fact require a cheese alternate to contain a minimum of 21% fat. This minimum fat requirement is inconsistent with FCS objectives to assist food service professionals to offer menus consistent with the "Dietary Guidelines for Americans," jointly published by the Departments of Agriculture and Health and Human Services.

Two additional specifications for use of cheese alternate products as meat

alternate products in NSLP would be removed by eliminating the existing FCS requirements in Appendix A to Part 210. The first is the requirement that cheese alternate products be combined with at least 50% natural or process cheese. This requirement was originally incorporated to keep the use of alternate foods limited to a maximum of 50% of the meat/meat alternate component. Under this proposed rule, cheese substitutes may be used instead of the blend of cheese and cheese alternates currently required to satisfy the meat/meat alternate component of a reimbursable meal. FCS does not believe that cheese substitutes need to be limited to 50% of the meat alternate portion of the meal, since the "not nutritionally inferior" requirement contained in FDA's food substitute regulation will assure that cheese substitutes are equivalent to cheese in all major nutrients found in cheese. Accordingly, in order to conform the regulations to the deletion of the cheese alternate section of Appendix A to 7 CFR Part 210, the words "cheese alternate products" are proposed to be deleted from 7 CFR 210.10(k)(3)(i) and 7 CFR 210.10a(d)(2)(i).

Another change that would result from the proposed deletion of the "cheese alternate" section is removal of the requirement that cheese alternates utilize an animal protein source. FDA's cheese substitute rule does not specify the need for a specific protein source as do the cheese alternate requirements. If the FDA rule for substitute foods is allowed to replace the cheese alternate requirements, the protein used in the production of the substitute cheese would not be limited to animal origin. There is no reason to exclude plant proteins since protein from plant sources can be as high quality as animal protein. Studies conducted subsequent to the inclusion of the animal protein requirement have shown that isolated soy protein can actually have a protein quality equal to casein, the animal protein in cheese. Allowing plant protein sources to be used will provide greater flexibility for manufacturers and will provide for a wider variety of cheese substitute products.

The proposed removal of the cheese alternate portion of Appendix A to Part 210 would eliminate FCS specifications for use of cheese alternates as meat alternates. This change would allow the use of cheese substitutes that are consistent with FDA regulations and allow for fat and calorie reductions. This change will add to the choices of products available to food service managers while reducing processors' regulatory burdens. In addition, the

proposed removal of the cheese alternate requirements is consistent with the Department's ongoing efforts to promote school meals consistent with the "Dietary Guidelines for Americans".

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 proposed to be amended as follows:

#### **PART 210—NATIONAL SCHOOL LUNCH PROGRAM**

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

Authority: 42 U.S.C. 1751–1760, 1779.

##### **§ 210.10 [Amended]**

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

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

4. In Appendix A, 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: September 15, 1995.

Ellen Haas,

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

[FR Doc. 95–23910 Filed 9–26–95; 8:45 am]

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