

Service, has certified that, because this rule is technical in nature, it will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

The National School Lunch Program is listed in the Catalog of Federal Domestic Assistance under No. 10.555. This program 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 29115, June 24, 1983).

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It 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 impede its full implementation. This rule is not intended to have retroactive effect unless that is specified in the Effective Date section of the preamble of the final rule. Before any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

Under USDA Regulation 4300-4, Civil Rights Impact Analysis, FNS has reviewed this final rule to identify and address any major civil rights impacts the final rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this final rule will not in any way limit or reduce participants ability to

participate in the Child Nutrition Programs on the basis of an individual's or group's race, color, national origin, sex, age, or disability. FNS found no factors that would negatively and disproportionately affect any group of individuals.

Paperwork Reduction Act

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

Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. This final rule contains no paperwork burdens or information collection requirements, and is thus in compliance with the GPEA.

Public Participation

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). The amendments contained in this final rule are nondiscretionary in nature, and therefore do not necessitate the opportunity for the public to offer comment. Thus, the Department has determined in accordance with 5 U.S.C. 553(b) that Notice of Proposed Rulemaking and Opportunity for Public Comment is unnecessary and contrary to the public interest and, in accordance with 5 U.S.C. 553(d), finds that good cause exists for making this action effective without prior public comment.

List of Subjects in 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.

■ Accordingly, 7 CFR part 210 is 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, paragraph (m)(1)(i) is revised to read as follows:

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

* * * * *

(m) * * *

(1) * * *

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

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Dated: November 24, 2004.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 04-26934 Filed 12-7-04; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

RIN 0584-AD63

Waiver of the Requirement To Use Weighted Averages in the National School Lunch and School Breakfast Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule makes a technical change to the regulations governing the nutrient analysis of meals served under the National School Lunch Program and School Breakfast Program. Program regulations require school food authorities to use "weighted averages" for nutrient analysis of their school meals. Under this method, the nutrient content of school meals is measured (weighted) according to the quantity of food items chosen by students. This final rule extends, until September 30, 2009, the waiver for conducting a weighted nutrient analysis. This rule responds to changes made under the Child Nutrition and WIC Reauthorization Act of 2004 and is intended to provide school food authorities with additional time to gain operational experience with nutrient analysis.

DATES: Effective January 7, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary O'Connell, Section Chief, School Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service at 703-305-2635.

SUPPLEMENTARY INFORMATION: Section 110 of the Child Nutrition and WIC

Reauthorization Act of 2004 (Pub. L. 108–265) amended section 9(f)(5) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1758(f)(5), by waiving, until September 30, 2009, the requirement that school food authorities (SFAs) planning menus using nutrient standard menu planning conduct a weighted analysis of all foods offered to children as part of their reimbursable meals. A weighted nutrient analysis is based on the nutrient and calorie levels that each menu item selected contributes to the reimbursable meal. This requirement derives from the School Meal Initiative for Healthy Children, a comprehensive plan that focuses on the nutrient content of the school meals to ensure that children get the key nutrients and calories needed for their well-being. In the lunch program, this requirement is set forth at 7 CFR 210.10(i)(5)(i); in the breakfast program it is located at 7 CFR 220.8(e)(5)(i).

Prior to Public Law 108–265, the National School Lunch Program regulations under 7 CFR 210.10 and 7 CFR 220.8 waived compliance with the weighted averaging requirement until September 30, 2003. The ending date for the waiver was extended through Food and Nutrition Service (FNS) guidance in response to several Continuing Resolutions prior to enactment of Public Law 108–265.

Through Public Law 108–265, Congress re-instated the waiver until September 30, 2009 in response to concerns about costs and complexity from program sponsors. However, weighted analysis is still considered a more accurate method for doing nutrient analysis of school meals because it is based on the actual number of each menu item selected by children, rather than simply being an average of the nutrients in an equal number of items included in the school menu.

The waiver extension applies to all SFAs using nutrient analysis, as well as to State agencies conducting independent analysis as part of their ongoing review of schools' compliance with the Federal nutrition standards. The provision does not prohibit State agencies from requiring schools to use weighted averages when doing nutrient analysis, nor does it prohibit State agencies from using weighted averages when doing nutrient analyses as a part of nutrition reviews of schools using food-based menu planning systems. Weighted analysis enables State agencies to provide well-targeted guidance on any nutrition improvements needed in a school menu.

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 rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Roberto Salazar, Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. Additionally, the Department of Agriculture does not anticipate any adverse fiscal impact on local schools.

Public Law 104–4

Title II of the Unfunded Mandate 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 must generally prepare 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 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.

Executive Order 12372

The National School Lunch Program (NSLP) and the School Breakfast Program (SBP) are listed in the Catalog of Federal Domestic Assistance under No. 10.555 and No. 10.553, respectively. These programs are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. State agencies, local program sponsors, and NSLP and SBP advocates had the opportunity to provide input during reauthorization of the child nutrition programs.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not 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 rule is not intended to have retroactive effect unless so specified in the Effective Date paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act.

Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The waiver extension implemented through this regulation does not require compliance with the GPEA.

Public Participation

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B) to quickly implement the waiver extension granted by the Child Nutrition and WIC Reauthorization Act of 2004. Thus, the Department of Agriculture has determined in accordance with 5 U.S.C. 553(b) that Notice of Proposed Rulemaking and Opportunity for Public Comments is unnecessary and contrary to the public interest and, in accordance with 5 U.S.C. 553(d), finds that good cause exists for making this action effective without prior public participation.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on children on the basis of race, color, national origin, sex, religion, or disability. After a careful review of the rule's intent and provisions, FNS has determined that it does not affect the participation of protected individuals in the National School Lunch Program.

List of Subjects

7 CFR Part 210

Food and Nutrition Service, Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and record keeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 220

Food and Nutrition Service, Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and record keeping requirements, School breakfast and lunch programs.

■ 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.

§ 210.10 [Amended]

■ 2. In § 210.10:

■ a. The last sentence of paragraph (i)(5)(i) is amended by removing the year "2003" and adding in its place the year "2009".

■ b. The last sentence of paragraph (l)(4)(viii) is amended by removing the year "2003" and adding in its place the year "2009".

PART 220—SCHOOL BREAKFAST PROGRAM

■ 1. The authority citation for 7 CFR part 220 continues to read as follows:

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

§ 220.8 [Amended]

■ 2. In § 220.8:

■ a. The last sentence of paragraph (e)(5)(i) is amended by removing the year "2003" and adding in its place the year "2009".

■ b. The last sentence of paragraph (h)(3)(viii) is amended by removing the year "2003" and adding in its place the year "2009".

Dated: November 24, 2004.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 04-26933 Filed 12-7-04; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV04-905-5 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Modification of the Procedures Used To Limit the Volume of Small Red Seedless Grapefruit Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that changed the procedures used to limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The order is administered locally by the Citrus Administrative Committee (Committee). This rule continues in effect changes in the way a handler's average week is calculated when quantities of small red seedless grapefruit are regulated and changes the provisions governing overshipments. This action makes the regulation more responsive to industry needs and better allocates base quantities.

DATES: Effective January 7, 2005.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799

Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone: (863) 324-3375, Fax: (863) 325-8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect changes in the procedures used to limit the volume of sizes 48 and 56 red seedless