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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 220, and 226

RIN 0584-AD26

Amendments to the Child Nutrition Infant Meal Pattern

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service is issuing final regulations amending the meal pattern for infants less than 12 months of age in the National School Lunch Program, the School Breakfast Program, and the Child and Adult Care Food Program. These regulations finalize provisions of an interim rule, published on November 15, 1999, which eliminated the option of serving whole cow's milk to infants less than one year of age, allowed reimbursement for meals containing only breastmilk, and amended the Child and Adult Care Food Program's definition of infant formula.

This final rule also incorporates revisions to reflect the comments we received to the interim rule, clarifies when an optional food component is required under the infant meal pattern, and clarifies information in the meal pattern tables that have appeared in two previous rulemakings. We have made these changes to ensure that the infant meal pattern used in the Child Nutrition Programs conforms to current scientific evidence about infant feeding practices, and to ensure that all of the information about meal requirements is correct.

EFFECTIVE DATE: June 27, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rothstein, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302; or (703) 305-2590; or CNDINTERNET@fns.usda.gov. A regulatory impact analysis was

completed for this rule. Single copies may be requested from Ms. Rothstein.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1999, the Food and Nutrition Service (FNS) published an interim rule for comment (64 FR 61770), to update the meal requirements for infants less than 12 months of age in the National School Lunch Program, the School Breakfast Program, and the Child and Adult Care Food Program. The rule recognized well-established scientific evidence demonstrating that breastmilk is the optimal source of nutrition for infants during the entire first year of life, and that the only appropriate alternative to breastmilk is iron-fortified infant formula.

The interim rule eliminated the option of serving whole cow's milk to infants less than 12 months of age, so that reimbursable infant meals must include either breastmilk or iron-fortified infant formula. It allowed reimbursement for meals containing only breastmilk, and addressed those situations when some breastfed infants may consume less than the minimum serving of breastmilk for their age group. The rule also amended the Child and Adult Care Food Program's definition of "infant formula" so that it would conform to the definition used in the school meal programs' regulations. These amendments became effective on December 15, 1999.

Technical corrections to the infant meal pattern were published in a final rule on December 27, 1999 (64 FR 72257). FNS is now issuing a final regulation, based on the evidence described in the interim rule, a review of written comments submitted by the public in response to that rule, and our operational experience in implementing these changes. This final rule discusses the comments we received, and codifies the small number of revisions and corrections into 7 CFR 210.10 of the National School Lunch Program regulations, 7 CFR 220.8 of the School Breakfast Program regulations, and 7 CFR 226.20 of the regulations for the Child and Adult Care Food Program.

The infant meal pattern is used in schools, residential child care institutions, child care centers, family day care homes, and homeless shelters participating in the (C Programs. Through

the term "caregiver" refers to the different types of facilities that provide meal services to infants through these programs. The term "Child Nutrition Programs" refers collectively to the National School Lunch Program, the School Breakfast Program, and the Child and Adult Care Food Program (CACFP).

This rule does not directly change the regulations for the Summer Food Service Program at 7 CFR part 225. However, § (section) 225.16(f)(2) of the regulations requires sponsors, approved by their State agencies to serve summer meals to infants, to follow the infant meal pattern requirements in CACFP regulations.

What Did Commenters Have To Say About the Interim Rule?

We received a total of 16 written comments, during the 180-day comment period which ended on May 15, 2000. The commenters included three registered dietitians, two CACFP State directors, two sponsoring organization representatives, one independent child care center director, and one day care home provider. The majority of them wrote that they agreed with the amendments and with the scientific evidence described in the interim rule about currently accepted infant feeding practices. Some of them raised questions related to eliminating whole cow's milk from the infant meal pattern, while others were concerned about the decisions we made on allowing reimbursement for breastmilk-only meals.

What Did Commenters Say About Eliminating Whole Cow's Milk From the Infant Meal Pattern?

The interim rule amended the regulations to eliminate the option of serving whole cow's milk to infants less than 12 months of age, so that all reimbursable infant meals must include either breastmilk or iron-fortified infant formula. Five commenters agreed that the rule was an appropriate response to studies demonstrating that consumption of cow's milk during the first year of life prevents optimal nutrient intake and could adversely affect an infant's health.

One commenter questioned how we could mandate breastmilk or infant formula for the entire first year of life, stating that eliminating cow's milk as an option interferes with the choices

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

breastmilk or formula is based on scientific evidence that shows that whole cow's milk does not provide the appropriate level of nutrients needed by very young children. The rule eliminated whole cow's milk from the infant meal pattern because it can be detrimental to an infant's health and development.

Do We Allow Exceptions for Infants Who Are No Longer Receiving Breastmilk or Infant Formula?

Two commenters wanted us to acknowledge the exceptions that exist when doctors recommend whole cow's milk for some infants. We recognize that infants have unique dietary needs, and that decisions concerning diet, during this first year of life, are for the infant's health care provider and parents or guardians to make together.

For those reasons, program regulations have traditionally allowed substitutions to accommodate disabilities and other special dietary needs. Thus, a meal containing whole fluid cow's milk and served to an infant less than 12 months of age is eligible for reimbursement if the substitution is authorized, in writing, by a recognized medical authority (physician, physician assistant, nurse practitioner, or other professionals specified by the State agency).

Similarly, if a doctor or other recognized medical authority prescribes a formula, such as low-iron formula, which is not currently listed as an acceptable formula for the Child Nutrition Programs, the meal is eligible for reimbursement. In all cases, a medical statement, which explains what substitution of foods is needed, must be completed and given to the caregiver to keep on file.

We also recognize the special circumstances that exist when a one year old child is weaning from breastmilk or from infant formula to whole cow's milk. When a child is weaned to cow's milk, it is a common practice to provide the infant with both foods at the same meal service, to gradually ease the infant to accept some of the new food.

Unlike breastmilk, infant formula is not an alternative type of milk which can be substituted to meet the fluid milk requirement for the meal pattern or the food-based menu planning alternative for children over the age of one year (source: FNS Instruction 783-7, Revision 1, "Milk Requirement-Child Nutrition Programs"). However, for a reasonable period of transition—of up to one month—meals that contain infant formula may be reimbursable. Thus, for a child older than 13 months, a

statement from a recognized medical authority is needed for a meal containing infant formula to be eligible for reimbursement.

The regulations at §§ 210.10(g)(1), 220.8(d)(1), and 226.20(h) specify requirements regarding individual substitutions and exceptions for medical or special dietary needs. Because an infant's dietary needs are more individualized than those of older children, we have added a sentence to the regulations to remind caregivers of the requirements when there are exceptions to the meal pattern. Accordingly, this final rule amends §§ 210.10(n)(3), 210.10(o)(2), 220.8(j)(1), and 226.20(b)(1) to refer caregivers to the procedures that must be followed whenever meal pattern exceptions or substitutions are needed.

What Did Commenters Say About Allowing Reimbursement for Meals Containing Only Breastmilk?

The interim rule amended the infant meal pattern to allow reimbursement for meals served to infants that contain breastmilk, even when breastmilk is the only required food component. Eight commenters praised FNS for making breastmilk an integral part of the infant meal pattern.

Because breastmilk is easier for infants to digest and is processed faster than infant formula, one commenter requested that the number of reimbursable meals served to breastfed infants be increased. Although we recognize that the number of feedings to expect for an exclusively breastfed infant may be more than for a formula-fed infant, we do not have statutory authority to change the maximum number of meals reimbursed in any of the Child Nutrition Programs.

Two commenters objected to reimbursing a caregiver for meals containing only breastmilk when the facility does not incur any food costs. While supporting our efforts to promote breastfeeding, and recognizing how breastfeeding improves the nutritional health of infants, they argued that a meal should not be reimbursable unless the caregiver also offers the infant an additional meal component.

We disagree. Although there may not be a food cost, a caregiver incurs allowable costs related to preparing each bottle of breastmilk for feeding, serving it to the infant, and cleaning up after the feeding. As long as the caregiver promotes the infant's consumption of breastmilk and provides a direct service to the infant during the meal service, the regulations allow reimbursement for meals containing only breastmilk.

Why Don't We Offer Reimbursement for All Breastmilk Meals, Not Only Those Fed From a Bottle?

The interim rule authorized reimbursement for meals containing breastmilk that is bottle-fed by the caregiver. Six of the commenters stated that the interim rule created a disincentive for caregivers to support mother-child breastfeeding, because it does not allow reimbursement for meals fed directly to an infant by the infant's nursing mother, unless the nursing mother is the caregiver.

Again, it is important to remember that the Child Nutrition Programs reimburse caregivers for the costs of serving nutritious meals—including the costs of preparation and clean up—to infants and children enrolled in the food service. We recognize that caregivers provide services when they accommodate mothers who come to their facilities to nurse their infants. However, we believe that the caregiver must not only promote the consumption of breastmilk by the infant, but also provide some type of service directly to the infant, in order to be reimbursed for the infant's meal.

When a mother comes to a facility to nurse her breastfed infant, the service is performed by the infant's mother. The meal is not eligible for reimbursement, because the infant has not received a meal component or any direct service from the caregiver. For this reason, reimbursable meals that include breastmilk fed directly to an infant by the infant's nursing mother must also include at least one component supplied by the caregiver. The caregiver must provide all of the food components in the meal pattern that are not provided by the parent, to receive reimbursement.

In CACFP, meals are also reimbursable when a family day care home provider, who is eligible to claim reimbursement for her own children's meals, nurses her own infant. In this example, the provider physically serves the meal to a child who receives care in her day care home.

Accordingly, this final rule amends §§ 210.10(n)(3), 210.10(o)(2), 220.8(j)(1), and 226.20(b)(1) regarding the reimbursement of meals containing breastmilk or iron-fortified infant formula. It clarifies that breastmilk fed directly by the infant's mother, during a visit to the facility, contributes to a reimbursable meal only when the caregiver supplies at least one component of the infant's meal. It also indicates conditions that affect whether or not a meal containing infant formula would qualify for reimbursement.

Is the Meal Reimbursable When an Infant Receives Both Breastmilk and Formula at the Same Meal Service?

Two commenters were concerned about reimbursement of meals that include both breastmilk and infant formula. One of the commenters recommended that if the parent or guardian supplies less than the minimum amount of breastmilk needed for one feeding, all of the breastmilk should be offered at the first meal service, and subsequent meals during the day would contain only infant formula. This final rule permits reimbursement for meals which contain a portion of breastmilk and a complementary feeding of formula, as long as the total number of ounces offered to the infant meets, or exceeds, the minimum amount for the milk component specified in the infant meal pattern.

Under the infant meal pattern, breastmilk and iron-fortified infant formula are interchangeable. We will continue to emphasize the desirability of feeding breastmilk in place of infant formula for the entire first year of life, in the regulations. However, we have amended the infant meal patterns to show that a meal containing both breastmilk and infant formula to fulfill the milk component requirement may qualify for reimbursement. Accordingly, the meal patterns in §§ 210.10(n), 210.10(o), 220.8(j), and 226.20(b) are amended in this final rule to clarify that a serving of the milk component may contain breastmilk or iron-fortified infant formula, or portions of both.

Do We Need To Update the CACFP Definition of "Milk?"

The definition of "milk" in § 226.2 of the CACFP regulations contains a list of acceptable types of fluid milk that may be served to children or adults who receive meals through the Child Nutrition Programs. One commenter believed that some varieties, such as flavored milk, skim milk, and buttermilk, would not be acceptable under the WIC program (Special Supplemental Nutrition Program for Women, Infants and Children) and should not be included.

Some of the varieties of fluid milk may be more appropriate for certain age groups, and less appropriate for others. However, our definition is consistent with the types of fluid milk currently approved as supplemental foods for WIC participants in 7 CFR 246.10, the Food and Drug Administration's standard of identity for milk in 21 CFR part 131, and food labeling guidelines in 21 CFR part 101, Subpart A. Therefore,

we do not believe any change in the list of fluid milk varieties, or in the terms used to describe them, is necessary.

Do We Need To Make Changes in the Definition of "Infant Cereal?"

In §§ 210.10(o)(1)(i), 220.2(k), and 226.2, we define "infant cereal" as an iron-fortified dry cereal that is "routinely mixed with breastmilk or iron-fortified infant formula prior to consumption." One commenter felt that caregivers may interpret this definition to mean that infant cereal is only reimbursable if it is mixed with breastmilk or iron-fortified infant formula.

The definition that appears in the regulations was not intended to limit caregivers to adding only breastmilk or infant formula to infant cereal. Fruit juice or water can also be added to give infant cereal an appropriate consistency. We are not making any changes in the definition of "infant cereal," because we believe it is flexible enough to accommodate those variations. However, infant cereal mixed with fruit juice should not be served to infants until after the infant has tried the juice and has not had any reactions to it. Caregivers should be aware that the American Academy of Pediatrics recommends waiting until infants are 6 months of age before introducing fruit juice into their diet (source: Pediatrics, Vol. 107, No. 5, pp. 1210–1213).

When Is an Optional Food Component Under the Infant Meal Pattern Required as Part of a Reimbursable Meal?

An issue that generated questions from program participants concerned optional components in the infant meal pattern, and how we ensure that infants always receive reimbursable meals that are appropriate for their stage of development. The introductory text found in §§ 210.10(o)(2), 220.8(j), and 226.20(b) of the regulations advises that, " * * For infants 4 through 7 months of age, solid foods are optional and should be introduced only if the infant is developmentally ready * * *."

An infant's development does not always match the infant's chronological age. By offering a range of portion sizes and optional foods, the infant meal pattern acknowledges that infants grow at different rates, and that some infants will be developmentally ready for solid foods earlier, or later, than others. Some food items, such as fruits, vegetables, and cereal, are listed as options in the infant meal pattern to take into account an infant's readiness to accept these foods. Optional components are included in the breakfast and lunch/supper meal patterns for infants 4

through 7 months of age, and for the supplement (snack) meal pattern for infants 8 through 11 months of age.

If an infant is developmentally ready for solid foods, and the parent or guardian requests that they be served, the solid food components must be served to provide the infant with a reimbursable meal. Because solid foods serve an important purpose in an infant's daily diet, they are required as part of a reimbursable meal for infants who are developmentally ready for them. The decision to feed specific foods should always be made in consultation with an infant's parent or guardian.

Accordingly, this final rule amends §§ 210.10(n), 210.10(o), 220.8(j), and 226.20(b), to clarify that a serving of a component is required when the infant is developmentally ready. References to "whenever possible" are removed from the text to emphasize the importance of consulting with the infant's parent or guardian on decisions to feed specific foods.

What Else Did Commenters Have To Say?

One commenter asked about the types of approved infant formulas which can be served without medical statements in the Child Nutrition Programs. FNS periodically updates a list of acceptable iron-fortified infant formulas. Caregivers can request copies of the list from their State administering agencies.

Although a medical statement is not required for iron-fortified infant formulas, caregivers should only provide an infant with the formula recommended to the infant's parent or guardian by the infant's health care provider. If the formula offered by the caregiver is not the same as the formula recommended by an infant's health care provider, the infant's parent or guardian may choose to decline that one and supply another formula.

Readers are reminded that a meal containing only infant formula supplied by a parent or a guardian, and no other component, is not reimbursable. We recognize that, as with breastmilk-only meals, the formula feeding is fed from a bottle and requires a direct service by the caregiver. However, breastmilk-only meals are eligible for reimbursement because the meal promotes the infant's consumption of breastmilk.

One commenter also wanted to know what we recommend regarding the use of powdered versus ready to feed formula, or of bottled versus tap water, or of table versus commercial baby foods, in the Child Nutrition Programs. In the near future, FNS intends to publish a new edition of Feeding

Infants' A Guide for Use in the Child Nutrition Programs. This handbook will provide guidance to caregivers, with recommendations about good infant feeding practices.

What Technical Changes Does This Rule Make?

The proposed rule entitled, "Reimbursement for Snacks in Afterschool Programs," published in the **Federal Register** on October 11, 2000 (65 FR 60502), proposed replacing the terms "supplement," "meal supplement," and "supplemental food" with more commonly used terms. An earlier rulemaking, the final rule entitled, "Additional Menu Planning Approaches," published on May 9, 2000 (65 FR 26904), had already incorporated the term "afterschool snack" into § 210.10(o).

A separate rulemaking will finalize provisions addressing afterschool snacks. However, as we revised §§ 210.10(n)(3) and 226.20(b), we adopted the new terminology to simplify and add clarity to the infant meal pattern. Accordingly, this final rule incorporates the term "afterschool snack" into § 210.10(n)(3), and incorporates the term "snack" into § 226.20(b).

We have also clarified information in the infant and child care meal patterns. In §§ 210.10(o)(2)(iii)(B) and 226.20(b)(3)(ii) the meal pattern for infants age 8 through 11 months includes 1 to 4 ounces of cottage cheese, cheese food, and cheese spread. This rule specifies that cottage cheese is measured by volume, and that cheese food and cheese spread are measured by weight. The rule also adds a footnote to the supplement meal pattern in § 226.20(c)(4) to make it clearer that one-half egg meets the required minimum amount of meat alternate, even when the minimum amount is less than one ounce.

Finally, we redesignated and reworded the paragraphs in §§ 210.10(n), 210.10(o), 220.8(j), and 226.20(b). The reader should keep in mind that we rewrote those paragraphs to conform our regulations to the plain language guidelines and the formatting requirements of the Office of the Federal Register. With the exception of the amendments described in this preamble, we did not intentionally revise the content of the interim rule or of existing regulations.

Executive Order 12866

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

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.

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 regulation describing the agency's considerations in the three categories under section (6)(a)(B) of Executive Order 13132.

Prior Consultation With State Officials

Prior to drafting this final rule, we received input from State and local agencies at various times. Since the Child Nutrition Programs are State administered, federally funded programs, our regional offices have informal and formal discussions with State and local officials on an ongoing basis regarding program implementation and performance. This arrangement allows State and local agencies to provide feedback that forms the basis for any discretionary decisions in this and other program rules. Additionally, the Food and Nutrition Service (FNS) published an interim rule on this rulemaking on November 15, 1999 (64 FR 61770) which solicited additional public comment.

Nature of Concerns and the Need To Issue This Rule

State and local agencies are generally supportive of the provisions in the interim rule. The majority of them agreed with the amendments and with the scientific evidence described in the interim rule about currently accepted infant feeding practices. Some of them raised questions related to eliminating whole cow's milk from the infant meal pattern, while others were concerned about the decisions we made on allowing reimbursement for breastmilk-only meals.

FNS is now issuing a final regulation, based on the evidence described in the interim rule, a review of written comments submitted by the public in response to that rule, and our operational experience in implementing these changes. This final rule discusses the comments we received, and codifies the small number of revisions and corrections into 7 CFR 210.10 of the National School Lunch Program regulations, 7 CFR 220.8 of the School Breakfast Program regulations, and 7 CFR 226.20 of the regulations for the Child and Adult Care Food Program.

Extent To Which We Meet These Concerns

We have considered all of the comments we received on the interim rule. Since commenters addressed numerous operational issues, we made every effort to address their concerns, within the constraints of statutory authority and concerns for program integrity.

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 Under Secretary for Food, Nutrition and Consumer Services, Eric M. Bost, has certified that this rule will not have a significant economic impact on a substantial number of small entities because the number of infants who would be affected constitutes a tiny portion of the total participation in these programs. The principal effect of this rule will be to enhance the nutritional benefit of meals served to infants under these programs.

Overall Regulatory Impact

This rule will improve nutrition for some older infants who formerly were served whole cow's milk. The rule also removes a previous disincentive to serving breastmilk and reduces the waste of breastmilk. The rule may also encourage exclusive breastfeeding and increased duration of breastfeeding, consistent with recommended

nutritional practice. Finally, this rule will help ensure that infants who are developmentally ready for solid foods will receive them at an appropriate age. Because this regulation largely reflects current policy from interim final rules published in November and December of 1999, it is not a major rule (economic impact of \$100 million or more in any one year.)

Executive Order 12372

The National School Lunch Program, the School Breakfast Program, and the Child and Adult Care Food Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555, 10.553 and 10.558, respectively. Each is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR 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 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.

In the National School Lunch Program and the 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 in § 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 in § 210.29(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (§ 235.11(b)) must follow the FNS Administrative Review process as established in § 235.11(f).

In the Child and Adult Care Food Program, the administrative procedures are set forth under the following

regulations: (1) Institution appeal procedures are established in § 226.6(k); and (2) disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by § 226.22 and 7 CFR part 3015.

Paperwork Reduction Act of 1995

The information collection burden for this rule is approved under OMB Numbers 0584-0006, 0584-0012, and 0584-0055. 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 220

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

7 CFR Part 226

Accounting, Aged, Day care, 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, the interim rule amending 7 CFR parts 210, 220, and 226 which was published at 64 FR 61770 on November 15, 1999, is adopted as a final rule with the following changes:

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. Paragraph (n)(3) and the Supplements for Infants chart in paragraph (n)(4) are revised; and

b. Paragraph (o)(2) is revised and paragraphs (o)(3) through (o)(6) are added.

The revisions and additions read as follows:

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

* * * * *

(n) * * *

(3) Snacks served to infants ages birth through 11 months must meet the requirements described in paragraph (n)(3)(iv) of this section. Foods included in the snack must be of a texture and a consistency that are appropriate for the age of the infant being served. The foods must be served during a span of time consistent with the infant's eating habits. For those infants whose dietary needs are more individualized, exceptions to the meal pattern must be made in accordance with the requirements found in paragraph (g)(1) of this section.

(i) *Breastmilk and iron-fortified formula.* Either breastmilk or iron-fortified infant formula, or portions of both, must be served for the entire first year. Snacks containing breastmilk and snacks containing iron-fortified infant formula supplied by the school are eligible for reimbursement. However, infant formula provided by a parent (or guardian) and breastmilk fed directly by the infant's mother, during a visit to the school, contribute to a reimbursable snack only when the school supplies at least one component of the infant's snack.

(ii) *Fruit juice.* Juice should not be offered to infants until they are 6 months of age and ready to drink from a cup. Feeding fruit juice only from a cup will help develop behaviors that may prevent early childhood caries. Fruit juice served as part of the meal pattern for infants 8 through 11 months must be full-strength.

(iii) *Solid foods.* Solid foods of an appropriate texture and consistency are required only when the infant is developmentally ready to accept them. The school should consult with the infant's parent (or guardian) in making the decision to introduce solid foods. Solid foods should be introduced one at a time, on a gradual basis, with the intent of ensuring the infant's health and nutritional well-being.

(iv) *Infant meal pattern.* Infant snacks must have, at a minimum, breastmilk or iron-fortified infant formula, or portions of both, in the appropriate amount indicated for the infant's age. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered. In these situations, additional breastmilk must be offered if the infant is still hungry. Some infants may be developmentally ready to accept

an additional food component. Snacks are reimbursable when schools provide all of the components in the meal pattern that the infant is developmentally ready to accept.

(A) *Birth through 3 months.* 4 to 6 fluid ounces of breastmilk or iron-fortified infant formula—only breastmilk or iron-fortified formula is

required to meet the infant's nutritional needs.

(B) *4 through 7 months.* 4 to 6 fluid ounces of breastmilk or iron-fortified infant formula—only breastmilk or iron-fortified formula is required to meet the infant's nutritional needs.

(C) *8 through 11 months.* 2 to 4 fluid ounces of breastmilk, iron-fortified

infant formula, or full strength fruit juice; and 0 to 1/2 slice of crusty bread (if developmentally ready) or 0 to 2 cracker type products (if developmentally ready), which are made from whole-grain or enriched meal or flour, and suitable as a finger food for an infant.

(4) * * *

SNACK PATTERN FOR INFANTS

Birth through 3 months	4 through through 7 months	8 through 11 months
4–6 fluid ounces of formula ¹ or breastmilk ^{2,3} ..	4–6 fluid ounces of formula ¹ or breastmilk ^{2,3}	2–4 fluid ounces of formula ¹ , breastmilk ^{2,3} , or fruit juice ⁴ ; and 0–1/2 slice of bread ⁵ or 0–2 crackers ⁵ .

¹ Infant formula must be iron-fortified.

² Breastmilk or iron-fortified formula, or portions of both, may be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months.

³ For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered if the infant is still hungry.

⁴ Fruit juice must be full-strength.

⁵ A serving of this component must be made from whole-grain or enriched meal or flour. It is required only when the infant is developmentally ready to accept it.

(o) * * *

(2) *Feeding lunches to infants.*

Lunches served to infants ages birth through 11 months must meet the requirements described in paragraph (o)(5) of this section. Foods included in the lunch must be of a texture and a consistency that are appropriate for the age of the infant being served. The foods must be served during a span of time consistent with the infant's eating habits. For those infants whose dietary needs are more individualized, exceptions to the meal pattern must be made in accordance with the requirements found in paragraph (g)(1) of this section.

(3) *Breastmilk and iron-fortified formula.* Either breastmilk or iron-fortified infant formula, or portions of both, must be served for the entire first year. Meals containing breastmilk and meals containing iron-fortified infant formula supplied by the school are eligible for reimbursement. However, infant formula provided by a parent (or guardian) and breastmilk fed directly by the infant's mother, during a visit to the school, contribute to a reimbursable lunch only when the school supplies at least one component of the infant's meal.

(4) *Solid foods.* For infants ages 4 through 7 months, solid foods of an appropriate texture and consistency are

required only when the infant is developmentally ready to accept them. The school should consult with the infant's parent (or guardian) in making the decision to introduce solid foods. Solid foods should be introduced one at a time, on a gradual basis, with the intent of ensuring the infant's health and nutritional well-being.

(5) *Infant meal pattern.* Infant lunches must have, at a minimum, each of the food components indicated, in the amount that is appropriate for the infant's age. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered. In these situations, additional breastmilk must be offered if the infant is still hungry. Lunches may include portions of breastmilk and iron-fortified infant formula as long as the total number of ounces meets, or exceeds, the minimum amount required of this food component. Similarly, to meet the component requirements for vegetables and fruit, portions of both may be served.

(i) *Birth through 3 months.* 4 to 6 fluid ounces of breastmilk or iron-fortified infant formula—only breastmilk or iron-fortified formula is required to meet the infant's nutritional needs.

(ii) *4 through 7 months.* Breastmilk or iron-fortified formula is required. Some infants may be developmentally ready for solid foods of an appropriate texture and consistency. Lunches are reimbursable when schools provide all of the components in the meal pattern that the infant is developmentally ready to accept.

(A) 4 to 8 fluid ounces of breastmilk or iron-fortified infant formula; and
(B) 0 to 3 tablespoons of iron-fortified dry infant cereal; and

(C) 0 to 3 tablespoons of fruit or vegetable.

(iii) *8 through 11 months.* Breastmilk or iron-fortified formula and solid foods of an appropriate texture and consistency are required.

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

(B) 2 to 4 tablespoons of iron-fortified dry infant cereal; and/or 1 to 4 tablespoons of meat, fish, poultry, egg yolk, or cooked dry beans or peas; or 1/2 to 2 ounces (weight) of cheese; or 1 to 4 ounces (volume) of cottage cheese; or 1 to 4 ounces (weight) of cheese food or cheese spread; and

(C) 1 to 4 tablespoons of fruit or vegetable.

(6) *Infant meal pattern table.* The minimum amounts of food components to serve to infants, as described in paragraph (o)(5) of this section, are:

LUNCH PATTERN FOR INFANTS

Birth through 3 months	4 through 7 months	8 through 11 months
4–6 fluid ounces of formula ¹ or breastmilk ^{2,3} ...	4–8 fluid ounces of formula ¹ or breastmilk ^{2,3} ; and 0–3 tablespoons of infant cereal ^{1,4} ; and 0–3 tablespoons of fruit or vegetable or both ⁴	6–8 fluid ounces of formula ¹ or breastmilk ^{2,3} ; and 2–4 tablespoons of infant cereal ¹ ; and/or 1–4 tablespoons of meat, fish, poultry, egg yolk, cooked dry beans or peas; or 1/2–2 ounces of cheese; or 1–4 ounces (volume) of cottage cheese; or 1–4 ounces (weight) of cheese food or cheese spread; and 1–4 tablespoons of fruit or vegetable or both.

¹ Infant formula and dry infant cereal must be iron-fortified.

² Breastmilk or formula, or portions of both, may be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months.

³ For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered if the infant is still hungry.

⁴ A serving of this component is required only when the infant is developmentally ready to accept it.

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.

2. In § 220.8, paragraph (j) is revised to read as follows:

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

* * * * *

(j) *What are the requirements for the infant breakfast pattern?*

(1) *Feeding breakfasts to infants.*

Breakfasts served to infants ages birth through 11 months must meet the requirements described in paragraph (j)(4) of this section. Foods included in the breakfast must be of a texture and a consistency that are appropriate for the age of the infant being served. The foods must be served during a span of time consistent with the infant's eating habits. For those infants whose dietary needs are more individualized, exceptions to the meal pattern must be made in accordance with the requirements found in paragraph (d)(1) of this section.

(2) *Breastmilk and iron-fortified formula.* Either breastmilk or iron-fortified infant formula, or portions of both, must be served for the entire first year. Meals containing breastmilk and

meals containing iron-fortified infant formula supplied by the school are eligible for reimbursement. However, infant formula provided by a parent (or guardian) and breastmilk fed directly by the infant's mother, during a visit to the school, contribute to a reimbursable breakfast only when the school supplies at least one component of the infant's meal.

(3) *Solid foods.* For infants ages 4 through 7 months, solid foods of an appropriate texture and consistency are required only when the infant is developmentally ready to accept them. The school should consult with the infant's parent (or guardian) in making the decision to introduce solid foods. Solid foods should be introduced one at a time, on a gradual basis, with the intent of ensuring the infant's health and nutritional well-being.

(4) *Infant meal pattern.* Infant breakfasts must have, at a minimum, each of the food components indicated, in the amount that is appropriate for the infant's age. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered. In these situations, additional breastmilk must be offered if the infant is still hungry. Breakfasts may include portions of breastmilk and iron-fortified infant formula as long as the total number of ounces meets, or exceeds, the

minimum amount required of this food component. Similarly, to meet the component requirement for vegetables and fruit, portions of both may be served.

(i) *Birth through 3 months.* 4 to 6 fluid ounces of breastmilk or iron-fortified infant formula—only breastmilk or iron-fortified formula is required to meet the infant's nutritional needs.

(ii) *4 through 7 months.* Breastmilk or iron-fortified formula is required. Some infants may be developmentally ready for solid foods of an appropriate texture and consistency. Breakfasts are reimbursable when schools provide all of the components in the meal pattern that the infant is developmentally ready to accept.

- (A) 4 to 8 fluid ounces of breastmilk or iron-fortified infant formula; and
- (B) 0 to 3 tablespoons of iron-fortified dry infant cereal.

(iii) *8 through 11 months.* Breastmilk or iron-fortified formula and solid foods of an appropriate texture and consistency are required.

- (A) 6 to 8 fluid ounces of breastmilk or iron-fortified infant formula; and
- (B) 2 to 4 tablespoons of iron-fortified dry infant cereal; and
- (C) 1 to 4 tablespoons of fruit or vegetable.

(5) *Infant meal pattern table.* The minimum amounts of food components to serve to infants, as described in paragraph (j)(4) of this section, are:

BREAKFAST PATTERN FOR INFANTS

Birth through 3 months	4 through 7 months	8 through 11 months
4–6 fluid ounces of formula ¹ or breastmilk ^{2,3} ...	4–8 fluid ounces of formula ¹ or breastmilk ^{2,3} ; and 0–3 tablespoons of infant cereal ^{1,4}	6–8 fluid ounces of formula ¹ or breastmilk ^{2,3} ; and 2–4 tablespoons of infant cereal ¹ ; and 1–4 tablespoons of fruit or vegetable or both.

¹ Infant formula and dry infant cereal must be iron-fortified.

²Breastmilk or formula, or portions of both, may be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months.

³For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered if the infant is still hungry.

⁴A serving of this component is required only when the infant is developmentally ready to accept it.

* * * * *

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for 7 CFR part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765, and 1766).

2. In § 226.20, paragraphs (b) and (c)(4) are revised to read as follows:

§ 226.20 Requirements for meals.

* * * * *

(b) *What are the requirements for the infant meal pattern?*

(1) *Feeding meals to infants.* Meals served to infants ages birth through 11 months must meet the requirements described in paragraph (b)(6) of this section. Foods included in the infant meal must be of a texture and a consistency that are appropriate for the age of the infant being served. The foods must be served during a span of time consistent with the infant's eating habits. For those infants whose dietary needs are more individualized, exceptions to the meal pattern must be made in accordance with the requirements found in paragraph (h) of this section.

(2) *Breastmilk and iron-fortified formula.* Either breastmilk or iron-fortified infant formula, or portions of both, must be served for the entire first year. Meals containing breastmilk and meals containing iron-fortified infant formula supplied by the facility are eligible for reimbursement. However, infant formula provided by a parent (or guardian) and breastmilk fed directly by the infant's mother, during a visit to the facility, contribute to a reimbursable meal only when the facility supplies at least one component of the infant's meal.

(3) *Fruit juice.* Juice should not be offered to infants until they are 6 months of age and ready to drink from a cup. Feeding fruit juice only from a cup will help develop behaviors that

may prevent early childhood caries.

Fruit juice served as part of the meal pattern for infants 8 through 11 months must be full-strength.

(4) *Solid foods.* Solid foods of an appropriate texture and consistency are required only when the infant is developmentally ready to accept them. The facility should consult with the infant's parent (or guardian) in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring the infant's health and nutritional well-being.

(5) *Infant meal pattern.* Infant meals must have, at a minimum, each of the food components indicated, in the amount that is appropriate for the infant's age. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered. In these situations, additional breastmilk must be offered if the infant is still hungry. Meals may include portions of breastmilk and iron-fortified infant formula as long as the total number of ounces meets, or exceeds, the minimum amount required of this food component. Similarly, to meet the component requirements for vegetables and fruit, portions of both may be served.

(i) *Birth through 3 months.* Only breastmilk or iron-fortified formula is required to meet the infant's nutritional needs.

(A) Breakfast—4 to 6 fluid ounces of breastmilk or iron-fortified infant formula.

(B) Lunch or supper—4 to 6 fluid ounces of breastmilk or iron-fortified infant formula.

(C) Snack—4 to 6 fluid ounces of breastmilk or iron-fortified infant formula.

(ii) *4 through 7 months.* Breastmilk or iron-fortified formula is required. Some infants may be developmentally ready for solid foods of an appropriate texture and consistency. Meals are reimbursable when facilities provide all of the

components in the meal pattern that the infant is developmentally ready to accept.

(A) Breakfast—4 to 8 fluid ounces of breastmilk or iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified dry infant cereal.

(B) Lunch or supper—4 to 8 fluid ounces of breastmilk or iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified dry infant cereal; and 0 to 3 tablespoons of fruit or vegetable.

(C) Snack—4 to 6 fluid ounces of breastmilk or iron-fortified infant formula.

(iii) *8 through 11 months.* Breastmilk or iron-fortified formula and solid foods of an appropriate texture and consistency are required. Meals are reimbursable when facilities provide all of the components in the meal pattern that the infant is developmentally ready to accept.

(A) Breakfast—6 to 8 fluid ounces of breastmilk or iron-fortified infant formula; 2 to 4 tablespoons of iron-fortified dry infant cereal; and 1 to 4 tablespoons of fruit or vegetable.

(B) Lunch or supper—6 to 8 fluid ounces of breastmilk or iron-fortified infant formula; 2 to 4 tablespoons of iron-fortified dry infant cereal; and/or 1 to 4 tablespoons of meat, fish, poultry, egg yolk, or cooked dry beans or peas; or ½ to 2 ounces (weight) of cheese; or 1 to 4 ounces (volume) of cottage cheese; or 1 to 4 ounces (weight) of cheese food or cheese spread; and 1 to 4 tablespoons of fruit or vegetable.

(C) Snack—2 to 4 fluid ounces of breastmilk, iron-fortified infant formula, or full strength fruit juice; and 0 to ½ slice of crusty bread (if developmentally ready) or 0 to 2 cracker type products (if developmentally ready), which are made from whole-grain or enriched meal or flour, and suitable as a finger food for an infant.

(6) *Infant meal pattern table.* The minimum amounts of food components to serve to infants, as described in paragraph (b)(5) of this section, are:

CHILD CARE INFANT MEAL PATTERN

Type of meal service	Birth through 3 months	4 through 7 months	8 through 11 months
Breakfast	4–6 fluid ounces of formula ¹ or breastmilk ^{2,3} .	4–8 fluid ounces of formula ¹ or breastmilk ^{2,3} ; and 0–3 tablespoons of infant cereal ^{1,4}	6–8 fluid ounces of formula ¹ or breastmilk ^{2,3} ; and 2–4 tablespoons of infant cereal ¹ ; and 1–4 tablespoons of fruit or vegetable or both.
Lunch or Supper	4–6 fluid ounces of formula ¹ or breastmilk ^{2,3} .	4–8 fluid ounces of formula ¹ or breastmilk ^{2,3} ; and 0–3 tablespoons of infant cereal ^{1,4} ; and 0–3 tablespoons of fruit or vegetable or both ⁴ .	6–8 fluid ounces of formula ¹ or breastmilk ^{2,3} ; and 2–4 tablespoons of infant cereal ¹ ; and/or 1–4 tablespoons of meat, fish, poultry, egg yolk, cooked dry beans or peas; or 1/2–2 ounces of cheese; or 1–4 ounces (volume) of cottage cheese; or 1–4 ounces (weight) of cheese food or cheese spread; and 1–4 tablespoons of fruit or vegetable or both.
Snack	4–6 fluid ounces of formula ¹ or breastmilk ^{2,3} .	4–6 fluid ounces of formula ¹ or breastmilk ^{2,3} .	2–4 fluid ounces of formula ¹ , breastmilk ^{2,3} , or fruit juice ⁵ ; and 0–1/2 slice of bread ^{4,6} or 0–2 crackers ^{4,6} .

¹ Infant formula and dry infant cereal must be iron-fortified.

² Breastmilk or formula, or portions of both, may be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months.

³ For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered if the infant is still hungry.

⁴ A serving of this component is required only when the infant is developmentally ready to accept it.

⁵ Fruit juice must be full-strength.

⁶ A serving of this component must be made from whole-grain or enriched meal or flour.

* * * * *

(c) * * *

(4) *Snack*. The minimum amounts of food components to be served as snack

as set forth in paragraph (a)(4) of this section are as follow. Select two of the following four components. (For

children, juice may not be served when milk is served as the only other component.)

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 ¹	Adult participants ¹
MILK				
Milk, fluid	1/2 cup ²	1/2 cup	1 cup	1 cup.
VEGETABLES AND FRUIT				
Vegetable(s) and/or fruit(s) or	1/2 cup	1/2 cup	3/4 cup	1/2 cup.
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	1/2 cup	1/2 cup	3/4 cup	1/2 cup.
BREAD AND BREAD ALTERNATES³				
Bread or	1/2 slice	1/2 slice	1 slice	1 slice (serving).
Cornbread, biscuits, rolls, muffins, etc. ⁴ or	1/2 serving	1/2 serving	1 serving	1 serving.
Cold dry cereal ⁵	1/4 cup or	1/3 cup or	3/4 cup or	3/4 cup or.
	1/3 ounce	1/2 ounce	1 ounce	1 ounce.
Cooked pasta or noodle products or	1/4 cup	1/4 cup	1/2 cup	1/2 cup.
Cooked cereal or grains or an equivalent quantity of any combination of bread/bread alternates.	1/4 cup	1/4 cup	1/2 cup	1/2 cup.
MEAT AND MEAT ALTERNATES				
Lean meat or poultry or fish ⁶ or	1/2 ounce	1/2 ounce	1 ounce	1 ounce.
Alternate protein products ⁷ or	1/2 ounce	1/2 ounce	1 ounce	1 ounce.
Cheese or	1/2 ounce	1/2 ounce	1 ounce	1ounce.
Egg (large) ⁸ or	1/2 egg	1/2 egg	1/2 egg	1/2 egg.
Cooked dry beans or peas or	1/8 cup	1/8 cup	1/4 cup	1/4 cup.
Peanut butter or soynut butter or other nut or seed butters or.	1 tablespoon	1 tablespoon	2 tablespoons	2 tablespoons.

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 ¹	Adult participants ¹
Peanuts or soynuts or tree nuts or seeds ⁹ or Yogurt, plain or flavored, unsweetened or sweetened, or an equivalent quantity of any combination of meat/meat alternates.	1/2 ounce 2 ounces or 1/4 cup	1/2 ounce 2 ounces or 1/4 cup	1 ounce 4 ounces or 1/2 cup	1 ounce. 4 ounces or 1/2 cup.

¹ Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.

² For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

³ Bread, pasta or noodle products, and cereal grains shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc. shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain or enriched or fortified.

⁴ Serving size and equivalents to be published in guidance materials by FNS.

⁵ Either volume (cup) or weight (ounce), whichever is less.

⁶ Edible portion as served.

⁷ Must meet the requirements in Appendix A of this part.

⁸ One-half egg meets the required minimum amount (one ounce or less) of meat alternate.

⁹ Tree nuts and seeds that may be used as meat alternates are listed in program guidance.

* * * * *

Dated: May 17, 2002.

Eric M. Bost,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 02-13145 Filed 5-24-02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV01-945-610 REVIEW]

Idaho-Eastern Oregon Potato Marketing Order; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This action summarizes the results of an Agricultural Marketing Service (AMS) review of Marketing Order 945, which regulates the handling of Irish potatoes grown in certain designated counties in Idaho and Malheur County, Oregon, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA). Based upon its review, AMS has determined that the marketing order should be continued without change.

DATES: Effective: May 28, 2002.

ADDRESSES: Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, PO Box 96456, Washington, DC 20090-6456; Fax: (202) 720-8938; or E-mail: *moab.docketclerk@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204; telephone: (503) 326-

2724; Fax: (503) 326-7440; E-mail: *GaryD.Olson@usda.gov*; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491; Fax: (202) 720-8938; E-mail: *George.Kelhart@usda.gov*.

SUPPLEMENTARY INFORMATION: Marketing Order No. 945, as amended (7 CFR part 945), regulates the handling of Irish potatoes grown in certain designated counties in Idaho and Malheur County, Oregon. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601-674).

Marketing Order 945, originally established in 1941, authorizes grade, size, quality, pack, and container regulations, as well as inspection. Under section 8e of the Act, the grade, size, quality, and maturity regulations are also applied to imported potatoes. The marketing order establishes the Idaho-Eastern Oregon Potato Committee (Committee), consisting of five producers and three handlers and their respective alternates. Members serve two-year terms and are nominated by the Idaho-Eastern Oregon potato industry, currently consisting of approximately 1,200 producers and 63 handlers.

AMS published in the **Federal Register** (63 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Order No. 945, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612). An updated plan was published in the **Federal Register** on January 4, 2002 (67 FR 525). AMS published a notice of review and request for written comments on the Idaho-Eastern Oregon potato marketing order in the May 31, 2001, issue of the **Federal Register** (66 FR 24095). During the comment period, one written comment in support of the

marketing order was received. This comment, received from the Committee, supported continuation of the marketing order.

The AMS review was undertaken to determine whether the Idaho-Eastern Oregon potato marketing order should be continued without change, amended, or rescinded to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the marketing order; (2) the nature of complaints or comments received from the public concerning the marketing order; (3) the complexity of the marketing order; (4) the extent to which the marketing order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

In its written comment, the Committee stated that the marketing order has contributed significantly to the name recognition the "Idaho Potato" currently enjoys nationally and internationally. The Committee believes that, since its inception, the marketing order has been a significant factor in the successful marketing of Idaho-Eastern Oregon potatoes and that it remains an important and viable tool for area producers.

Based on its review, AMS has determined that the marketing order should be continued without change. The marketing order was established to help the Idaho-Eastern Oregon potato industry work with AMS to solve marketing problems. The marketing order regulations on grade, size, quality, maturity, pack, container, and inspection requirements continue to be beneficial to producers, handlers, and consumers. Potatoes produced within this region are widely recognized by