#### **DEPARTMENT OF AGRICULTURE**

#### **Food and Consumer Service**

7 CFR Parts 210 and 220 RIN 0584-AB94

National School Lunch Program and School Breakfast Program: Compliance With the Dietary Guidelines for Americans and Food-Based Menu Systems

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

**ACTIONS:** Proposed rule.

**SUMMARY:** The Healthy Meals for Healthy Americans Act of 1994 requires, for purposes of the National School Lunch and School Breakfast Programs, that a variety of meal planning approaches be made available to school food authorities, including "food-based menu systems." The food-based menu systems concept is intended to supplement the nutrient-based menu planning provisions previously proposed by the Department of Agriculture on June 10, 1994. In addition, the Act requires that school meals comply with the Dietary Guidelines for Americans, as the Department also proposed on that date. The proposal which follows implements the requirement for a food-based menu systems planning alternative. To ensure compliance with the requirements of the Dietary Guidelines, this proposal expands the monitoring procedures in the earlier proposal to provide a system appropriate for monitoring meals served by school food authorities that choose the food-based menu systems approach. **DATES:** To be assured of consideration. comments must be postmarked or transmitted on or before March 13, 1995.

ADDRESSES: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Comments may be sent via Email to: healthykids@esusda.gov. If comments are sent electronically, commenters should designate "receipt requested" to be notified by E-mail that the message has been received by USDA.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Eadie at the above address or by telephone at 703–305–2620.

# SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was

reviewed by the Office of Management and Budget under Executive Order 12866.

## 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 (FCS) has certified that this rule will not have a significant economic impact on a substantial number of small entities because of the variety of options available to schools to comply with the proposed requirements. The impacts of specific provisions have been considered by the Department as part of the required Regulatory Assessment. Interested parties should refer to this document which is published at the end of this proposal.

## Catalog of Federal Assistance

The National School Lunch Program and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.553, 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 which would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect unless so specified in the Effective Date section of this preamble. Prior to any judicial challenge to the provisions of this proposed rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program and School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) school food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of FCS findings as a result of an administrative review must follow FCS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions

(7 CFR 235.11(b)) must follow the FCS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

### **Information Collection**

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

#### Background

Section 106(b) of Pub. L. 103-448, the Healthy Meals for Healthy Americans Act of 1994, signed into law on November 2, 1994, amended section 9 of the National School Lunch Act (NSLA), 42 U.S.C. 1758(b)(2)(C), to require meals that are served under the National School Lunch Program (NSLP) and School Breakfast Program (SBP) meet the Dietary Guidelines for Americans by July 1, 1996, unless the State agency grants a waiver under criteria established by the State agency. Section 106(b) provides that a State agency waiver cannot delay compliance with the Dietary Guidelines beyond July 1, 1998. Further, section 112(c) of Pub. L. 103-448 amended section 12(k) of the NSLA, 42 U.S.C. 1760(k), to require that the Department develop "food-based" systems for school food authorities to follow when planning and preparing meals. Food-based menu planning systems would provide local food services with a third option, supplementing the Nutrient Standard Menu Planning (NuMenus) and Assisted Nutrient Standard Menu Planning (Assisted NuMenus) systems originally included in the Department's June 10, 1994, proposal. This proposed rulemaking would implement these statutory provisions. Other provisions of Pub. L. 103–448 will be incorporated into later rulemakings, as appropriate. One such provision requires disclosure of information about the nutritional content of school meals and the consistency of the meals with the Dietary Guidelines. The Department will consider a number of options for implementing this provision. Of paramount concern is the development of an approach that provides flexibility and alternatives for school food authorities. In addition, the Department wants to ensure that any recordkeeping or reporting requirements that are associated with the requirement for nutrition disclosure are kept to a minimum.

#### Current Provisions

The NSLP was designed in 1946 to offer meals that provide foods which, over time, are sufficient to approximate