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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

RIN 0584-AD64

School Food Safety Inspections

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule reflects amendments made by section 111 of the Child Nutrition and WIC Reauthorization Act of 2004 which require schools participating in the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) to increase the number of food safety inspections from the one inspection currently required to two inspections per year; to post the most recent inspection report in a visible location; and to release a copy of the report to members of the public upon request. This interim rule also reflects the statutory amendment which requires State agencies to annually monitor schools' compliance with the inspection requirement (through a consolidated report from the school food authority), and to submit a report on the results of the review to the Food and Nutrition Service (FNS).

As a result of the statutory amendments, schools will be able to identify and correct food safety problems in a more timely and consistent manner, thereby enhancing the quality of school meals. State monitoring of the inspection requirement will allow the State agency to target their technical assistance efforts to those school food authorities (SFAs) experiencing difficulties in meeting the requirement. Collecting the number of inspections completed by schools will help the State become aware of the level of compliance with

this requirement and problems associated with it.

DATES: *Effective Date:* The amendments to §§ 210.9, 210.13 and 220.7 are effective July 15, 2005. The amendments to §§ 210.15, 210.20 and 220.13 contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Food and Nutrition Service will publish a document in the **Federal Register** announcing the effective date of these provisions once this approval has been obtained.

Compliance Date: Compliance with §§ 210.9, 210.13 and 220.7 must begin July 1, 2005. Compliance with the reporting and recordkeeping requirements in §§ 210.15, 210.20 and 220.13 will be announced in a separate document once these requirements have been approved by OMB.

Comment Date: Comments on this rule must be received on or before June 15, 2006.

ADDRESSES: The Food and Nutrition Service invites interested persons to submit comments on this interim rule. Comments may be submitted by any of the following methods:

- E-Mail: Send comments to CNDPROPOSAL@FNS.USDA.GOV. The subject line must include the words "School Food Safety Inspections".
- Fax: Submit comments by facsimile transmission to: (703) 305-2879, attention Robert Eadie.
- Mail: Comments should be addressed to Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 634, Alexandria, Virginia 22302-1594. All written submissions will be available for public inspection at this location Monday through Friday, 8:30 a.m.-5 p.m.
- Hand Delivery or Courier: Deliver comments to 3101 Park Center Drive, Room 634, Alexandria, Virginia 22302-1594, during normal business hours of 8:30 a.m.-5 p.m.
- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Todd J. Barrett, Acting Section Chief, or Marisol Benesch, School Programs Section, Policy and Program Development Branch, Child Nutrition

Division, Food and Nutrition Service at 703-305-2590.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108-265; June 30, 2004) amended section 9(h) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1758(h)) by increasing the number of mandatory food safety inspections for schools participating in the NSLP and SBP from one to two per year, and by requiring schools to post the most recent inspection report in a visible location and to release a copy of the report to the public upon request. Section 111 also requires State agencies to annually monitor the number of food safety inspections obtained by schools and to submit the results to FNS for each of fiscal years 2006 through 2009. (While Public Law 108-265 uses the term "audit", this rule uses the word "monitor" because it more appropriately describes the State agency's review of the number of inspections completed.) Compliance with these requirements is required to begin on July 1, 2005.

Prior to Public Law 108-265, the NSLA and NSLP regulations at 7 CFR 210.13(b) required schools to obtain at least one school food safety inspection per year, except when a food safety inspection of the school was mandated by a State or local governmental agency responsible for food safety inspections. No audit or reporting requirements existed.

Section 111 further adds a requirement that SFAs implement a school food safety program for the preparation and service of meals that complies with any hazard analysis and critical control point (HACCP) system established by the Secretary. This rule does not address the HACCP requirement. It will be addressed in a separate rulemaking.

II. Need for More Inspections

Food safety has always been a priority for the school meal programs. Thanks to the efforts of thousands of school foodservice workers, school meals are among the safest food available to children nationwide. Government data suggest that employee food safety practices at elementary schools are

superior to those at fast food and full-service restaurants.¹

However, increasing public concern over reports of food safety violations in foodservice establishments nationwide and in some school districts led Congress to increase the number of required food safety inspections for schools. Congress has determined that it is necessary for all schools to adopt a more vigilant approach to guarding the safety of the program meals consumed by over 28 million children each day, as well as the several million children that purchase a la carte food items every day. Increasing the number of required inspections is expected to encourage more stringent food safety practices and further protect children from foodborne illness. This Congressional mandate is consistent with the NSLP's overall goal to protect the health and well-being of school children.

Two food safety inspections annually will give schools additional opportunities to identify and correct immediate and/or persistent food safety problems. Schools will also be better able to assess where they need to make changes to achieve food safety.

III. Implementation

FNS has no discretion in implementing the inspection requirement established by Public Law 108-265. However, we will work with our State cooperators, within the parameters of the law, to help facilitate compliance with the inspection requirement.

Schools

Many schools participate in both the NSLP and the SBP and use the same facilities for the production and service of meals. Schools participating in more than one school meal program will not be required to obtain separate food inspections for each meal program if production and service of meals take place in the same facility. This rule also allows food safety inspections conducted under the Summer Food Service Program (SFSP) or the Child and Adult Care Food Program (CACFP) at sites participating in these programs and in the NSLP and/or SBP to be counted toward meeting the annual requirement as long as the inspections cover the same food service facility. The requirements of Public Law 108-265 do not apply to schools that only offer the Special Milk Program.

Where there are indications that schools have difficulty complying with the inspection requirement, State agencies should work with State and local health officials to achieve compliance. In all cases, schools should fully document their efforts to comply with the food safety inspection requirement.

State and Local agencies

FNS expects State agencies to take a leading role in ensuring that schools meet the food safety provision. Prompt discussion and cooperation among the State agency, local educational agencies, and State and local public health agencies is essential to minimize obstacles that may hinder school compliance with the inspection requirement. This is necessary because the law requires that school food safety inspections be conducted by a State or local governmental agency responsible for food safety inspections.

State Reporting

The law requires the State agencies to monitor school compliance with the inspection requirement and to report the results to FNS for each of fiscal years 2006 through 2009. The reports by the State agencies will document the number of annual inspections obtained by local schools per school year and indicate nationwide compliance. The reports will be due to FNS by November 15 following each school year, which allows State agencies sufficient time to collect the inspection data from SFAs.

FNS will develop a form for the States to report the aggregate data on inspections. A 60-day notice was published in the **Federal Register** at 70 FR 25014 on May 12, 2005 announcing the information collection requirement.

IV. Concerns

This provision of the Reauthorization Act establishes a new and critical requirement for the school food service and for the school meal programs. This change in the Federal law removes the flexibility that existed in the previous health inspection requirement, and now requires that every participating school have at least two food safety inspections each school year. However, schools must depend on the specific action of another public agency, such as a local health department, to comply with the new inspection requirement.

Consequently, compliance will require a commitment from Federal, State, and local government agencies to work cooperatively to fulfill their mutual responsibility to protect the health and welfare of school children. FNS will do everything it can to inform all parties at

the Federal level of this important task, and expects State agencies to do the same across State government. School districts will need to work with local health authorities to construct procedures to accomplish the required inspections where no mechanism currently exists.

Schools may use school food service funds to pay associated costs that are directly attributable to compliance with the inspection requirement and that are otherwise permissible as allowable costs.

V. Food Safety Resources

FNS will continue to offer guidance and resources to strengthen food safety practices in schools. Because education of the food program staff is essential, we provide schools with material to help employees learn and practice food safety. FNS currently provides schools with publications and posters emphasizing proper food handling, employee personal hygiene, appropriate food temperature, cross-contamination prevention and other food safety topics. We will continue to work closely with the National Food Service Management Institute to develop additional technical assistance materials and training programs related to school food safety. "Serving It Safe—A Manager's Tool Kit" (second edition), one of the materials developed through this collaboration, was sent to State agencies in 2003 for distribution to SFAs.

VI. Procedural Matters

Regulatory Planning and Review

This interim rule has been determined to be not significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). This rule increases the number of food safety inspections required for schools participating in the school meal programs. While this requirement imposes a reporting burden, it does not constitute a significant economic impact on small entities.

Unfunded Mandates Reform Act

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 must generally prepare a written

¹ "FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Type (2004)", U.S. Food and Drug Administration, Center for Food Safety and Applied Nutrition, Sept. 14, 2004.

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 interim rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Intergovernmental Review of Federal Programs

The National School Lunch Program is listed in the Catalog of Federal Domestic Assistance under No. 10.555, and the School Breakfast Program is listed under No. 10.553. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115), these programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

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.

Prior Consultation With State and Local Officials

Shortly after passage of the Reauthorization Act, FNS held discussions with State education agencies that administer child nutrition programs and with organizations representing State and local public health agencies. These discussions provided FNS an opportunity to inform State and local officials about the new inspection requirement and to hear their concerns. However, the pre-emptive status of the law and the requirement to implement the provision by July 1, 2005, has precluded any need of, or opportunity for, formal consultation. The interim nature of this rule will,

however, allow for changes based on local experience, provided they are consistent with the law.

Nature of Concerns and Need To Issue This Rule

Several State and local officials are concerned that the increased inspection requirement may result in additional expenses and workload for schools, and for the State and local health agencies responsible for conducting the inspections. Although FNS is aware of the potential impact of this rule, it is our responsibility to carry out this statutory requirement aimed at improving the safety of school meals.

Extent to Which FNS Meets Those Concerns

FNS understands the concerns of school officials and State and local health agencies. We provided timely information to the groups that will be affected by this rule and encouraged them to work together to remove barriers that may hinder school compliance with the inspection requirement.

FNS has attempted to minimize the impact of this rule by applying the inspection requirement to sites rather than individual school meal programs, and by allowing inspections performed for purposes of the SFSP and CACFP to meet the requirement if they use the same food service facility.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule has a 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 this or 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.

Civil Rights Impact Analysis

FNS has reviewed this interim 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 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 and School Breakfast Programs.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35, see 5 CFR Part 1320) requires that OMB approve all collections of information by a Federal agency from the public 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. Information collections in this interim rule have been previously submitted to OMB for approval under OMB #0584-0006. A 60-day notice was published in the **Federal Register** at 70 FR 25014 on May 12, 2005, which provided the public an opportunity to submit comments on the information collection burden resulting from this rule. This information collection burden has not yet been approved by OMB. FNS will publish a document in the **Federal Register** once these requirements have been approved.

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. FNS will examine ways to collect electronically the information required by this rule.

Public Participation

FNS 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 comment. In Section 501(b) of Public Law 108-265, Congress specifically afforded the Secretary the option of implementing this rulemaking without prior notice and comment. In addition, the provisions of this interim rule reflect mandatory statutory requirements which are non-discretionary. The Department is, however, anxious to receive comments that might improve the administration of these mandatory requirements.

List of Subjects

7 CFR Part 210

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

7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping 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.

■ 2. In § 210.9, revise paragraph (b)(14) to read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) * * *

(14) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations, and comply with the food safety inspection requirement of § 210.13(b);

* * * * *

■ 3. In § 210.13, revise paragraph (b) to read as follows:

§ 210.13 Facilities management.

* * * * *

(b) Food safety inspections. Schools shall obtain a minimum of two food safety inspections during each school year conducted by a State or local governmental agency responsible for food safety inspections. They shall post in a publicly visible location a report of the most recent inspection conducted, and provide a copy of the inspection report to a member of the public upon request. Sites participating in more than one child nutrition program shall only be required to obtain two food safety inspections per school year if the nutrition programs offered use the same facilities for the production and service of meals.

* * * * *

■ 4. In § 210.15,

■ a. Amend paragraph (a)(5) by removing the word “and” after the semicolon;

■ b. Amend paragraph (a)(6) by removing the period at the end and adding in its place a semicolon followed by the word “and”;

■ c. Add a new paragraph (a)(7);

■ d. Amend paragraph (b)(4) by removing the period at the end and adding in its place a semicolon followed by the word “and”;

■ e. Add a new paragraph (b)(5).

The additions read as follows:

§ 210.15 Reporting and recordkeeping.

(a) * * *

(7) The number of food safety inspections obtained per school year by each school under its jurisdiction.

(b) * * *

(5) Food safety inspection records to demonstrate compliance with § 210.13(b).

■ 5. In § 210.20:

■ a. Amend paragraph (a)(6) by removing the word “and” after the semicolon;

■ b. Amend paragraph (a)(7) by removing the period at the end and adding in its place a semicolon followed by the word “and”;

■ c. Add a new paragraph (a)(8);

■ d. Amend paragraph (b)(10) by removing the word “and” after the semicolon;

■ e. Amend paragraph (b)(11) by removing the period at the end and adding in its place a semicolon followed by the word “and”;

■ f. Add a new paragraph (b)(12).

The additions read as follows:

§ 210.20 Reporting and recordkeeping.

(a) * * *

(8) Results of the State agency’s review of schools’ compliance with the food safety inspection requirement in § 210.13(b) by November 15 following each of school years 2005–2006 through 2008–2009, beginning November 15, 2006. The report will be based on data supplied by the school food authorities in accordance with § 210.15(a)(7).

(b) * * *

(12) Records supplied by the school food authorities showing the number of food safety inspections obtained by schools for each of school years 2005–2006 through 2008–2009.

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.

■ 2. In § 220.7:

■ a. Redesignate paragraphs (a-1) and (a-2) as paragraphs (a)(1) and (a)(2);

■ b. Revise the newly designated paragraph (a)(2); and

■ c. Revise paragraph (e)(8).

The revisions read as follows:

§ 220.7 Requirements for participation.

(a) * * *

(2) Schools shall obtain a minimum of two food safety inspections per school year conducted by a State or local governmental agency responsible for food safety inspections. Schools participating in more than one child nutrition program shall only be required

to obtain a minimum of two food safety inspections per school year if the food preparation and service for all meal programs take place at the same facility. Schools shall post in a publicly visible location a report of the most recent inspection conducted, and provide a copy of the inspection report to a member of the public upon request.

* * * * *

(e) * * *

(8) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations, and comply with the food safety inspection requirement in paragraph (a)(2) of this section;

* * * * *

■ 3. In § 220.13, add paragraph (b)(3) to read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(b) * * *

(3) For each of school years 2005–2006 through 2008–2009, each State agency shall monitor school food authority compliance with the food safety inspection requirement in § 220.7(a)(2) and submit an annual report to FNS documenting school compliance based on data supplied by the school food authorities. The report must be filed by November 15 following each of school years 2005–2006 through 2008–2009, beginning November 15, 2006. The State agency shall keep the records supplied by the school food authorities showing the number of food safety inspections obtained by schools for each of school years 2005–2006 through 2008–2009.

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Dated: May 25, 2005.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 05–11805 Filed 6–14–05; 8:45 am]

BILLING CODE 3410–30–P