

# Proposed Rules

Federal Register

Vol. 73, No. 151

Tuesday, August 5, 2008

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

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 210 and 220

[FNS-2007-0007]

RIN 0584-AD65

#### School Food Safety Program Based on Hazard Analysis and Critical Control Point Principles

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Child Nutrition and WIC Reauthorization Act of 2004 requires school food authorities participating in the National School Lunch Program (NSLP) or the School Breakfast Program (SBP) to implement a school food safety program for the preparation and service of school meals served to children. The school food safety program must comply with the hazard analysis and critical control point (HACCP) system established by the Secretary of Agriculture. This proposal would enable schools to take systematic action to prevent or minimize the risk of foodborne illness in the NSLP and SBP.

**DATES:** Comments must be received on or before September 19, 2008 to be assured of consideration.

**ADDRESSES:** The Food and Nutrition Service, USDA, invites interested persons to submit comments on this proposed rule. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Preferred method; follow the online instructions for submitting comments on docket FNS-2007-0007.

- *Fax:* Submit comments by facsimile transmission to: (703) 305-2879, attention Robert Eadie.

- *Mail:* Comments should be addressed to Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of

Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302-1594.

- *Hand Delivery or Courier:* Deliver comments to the Food and Nutrition Service, Child Nutrition Division, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302-1594, during normal business hours of 8:30 a.m.-5 p.m.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via <http://www.regulations.gov>.

All submissions will be available for public inspection at the address above during regular business hours (8:30 a.m. to 5:30 p.m.) Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** William Wagoner or Marisol Benesch at the above address or by telephone at 703-305-2590.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 111 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 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 adding the requirement that school food authorities (SFAs) implement a food safety program at each food preparation and service facility participating in the NSLP or the SBP. The food safety program, which became a requirement in the school year beginning July 1, 2005, must be based on the HACCP system established by the Secretary of Agriculture.

HACCP is a food safety management system that focuses on the control of biological, chemical and physical hazards in food and food preparation practices. Through a HACCP-based food safety program, schools can identify potential food hazards, identify critical points where hazards can be controlled or minimized using control measures, and develop monitoring procedures to determine if the hazards identified are being effectively controlled.

This proposed rule is consistent with the seven HACCP principles that were updated by the 1997 National Advisory

Committee for Microbiological Criteria for Foods. The HACCP principles are:

1. Perform a hazard analysis.
2. Decide on critical control points (CCPs).
3. Determine critical limits.
4. Establish procedures to monitor CCPs.
5. Establish corrective actions.
6. Establish verification procedures.
7. Establish a record keeping system.

In 2003, the Food and Drug Administration (FDA) developed the Process Approach to HACCP principles for use in retail food establishments. The Process Approach simplified the traditional HACCP procedures by grouping foods according to preparation process and using the same safety procedures for each menu item within a group, instead of developing a HACCP plan for each item.

This proposed rule seeks to formally establish the requirements for a school food safety program based on HACCP principles. Implementation of this proposal would codify the requirements in the "Guidance for School Food Authorities: Developing a School Food Safety Program Based on the Process Approach to HACCP Principles." The Guidance was issued in June 2005, pursuant to authority in section 501(a) of Public Law 108-265, to provide school food authorities immediate and practical help to implement a HACCP-based food safety program in the school year beginning July 1, 2005. The Guidance continues in effect during this rulemaking and we expect that the HACCP-based food safety programs established will remain in place, based on the requirements of Public Law 108-265.

The Guidance was developed with input from representatives from the Food Safety and Inspection Service, FDA, National Food Service Management Institute (NFSMI), Centers for Disease Control and Prevention, School Nutrition Association, National Environmental Health Association, State and local public health agencies, and State education agencies, including school food service directors. It is available at the FNS Web site, <http://www.fns.usda.gov/cnd>, under the headings "Guidance" and "School Food Safety."

Prior to the amendment to section 9(h) of the NSLA by section 111 of Public Law 108-265, there was no

specific requirement for a food safety program of this kind in the NSLP or SBP. Schools have maintained a good food safety record by monitoring food temperatures during refrigeration, cooking, and other operational steps as required by State and local laws public health standards. In recent years, however, the public, media, and Congress have placed more emphasis on protecting children from foodborne illnesses. The school meal programs are the first segment of retail food service operations required by Federal law to implement a food safety program based on HACCP principles.

## II. The Importance of HACCP in Schools

More than 100,000 schools participate in the NSLP and SBP and serve over 36 million breakfasts and lunches daily. Most of these schools follow basic food safety procedures and reports of foodborne illness in the school meal programs are few compared to the millions of school meals served daily. Although schools are generally safe places for children to eat, it is important that all schools follow food safety practices consistently and systematically. Reports issued by FDA in 2000<sup>1</sup> and 2004<sup>2</sup> showed that improper holding/time and temperatures and inadequate personal hygiene are foodborne illness risk factors in a number of elementary schools.

As recognized by the 2005 "Dietary Guidelines for Americans," food safety is a vital aspect of healthy eating. There is concern for school food safety because large numbers of children could be affected if foodborne illness occurs in schools. Schools also feed many young children, a population group that is at a higher risk of becoming seriously ill or dying from foodborne illnesses. Furthermore, foodborne illness outbreaks have an effect on families and communities in terms of medical costs and losses in productivity.<sup>3</sup> Obviously, public confidence and student

participation in the school meal programs also would be affected.

Congress demonstrated its concern regarding food safety in the school meal programs in two ways in Public Law 108-265. First, it increased the number of inspections by State or local food safety agencies that SFAs must obtain, required public notification of the reports of such inspections, and required State and Federal audits to assure that the inspections are obtained. These requirements were implemented in an interim rule published in the **Federal Register** on June 15, 2005. Second, the legislation mandates that SFAs implement HACCP-based food safety programs and establishes technical assistance and training related to HACCP to help SFAs in these efforts. The legislation strikes a balance which recognizes and supports the traditional role of State and local food safety agencies in assuring compliance with food safety standards, while encouraging SFAs to maintain highly effective food safety practices through HACCP-based programs with technical assistance and training from the Federal level.

It is important to note that the legislation does not create new food safety responsibilities for State educational agencies or for FNS. The role of the State educational agencies and FNS is to ensure that SFAs obtain the required State or local food safety inspections, that SFAs implement HACCP-based food safety programs, and that SFAs have technical assistance and training available. None of these roles is intended to duplicate or interfere in any way with the responsibilities of the State and local food public health agencies.

HACCP focuses school food safety efforts on prevention, since it is designed to avoid problems and detect and correct unsafe conditions before a meal is served. The HACCP requirement complements current NSLP efforts, such as the School Meals Initiative, aimed at improving the quality of meals served to millions of school children daily.

## III. The "Process Approach" to HACCP

This proposal and the Guidance issued by FNS to help SFAs develop a school food safety program are based on the Process Approach to HACCP, a modified version of traditional HACCP. The Process Approach was developed by FDA for retail food service settings such as restaurants. FNS further adapted FDA's Process Approach specifically for school food service operations.

The Process Approach to HACCP classifies menu items into three broad categories. These categories, listed

below, are based on whether or not a menu item takes a complete trip through the temperature danger zone (41 °F to 135 °F) during preparation and service and how many times it does so. The way that a particular menu item is handled at each food preparation or service facility will determine the category for the menu item.

- *Process I: No Cook Step*—No cooking is involved, so the menu item does not make a complete trip through the temperature danger zone.

- *Process II: Same Day Service*—The menu item takes one complete trip through the temperature danger zone (during cooking) and is served.

- *Process III: Complex Food Preparation*—The menu item goes through both cooking and cooling, and possibly reheating, taking two or more complete trips through the temperature danger zone.

The Process Approach makes it easier to apply HACCP principles in school food service operations. Under the Process Approach, it is not necessary to conduct a hazard analysis for each menu item. All menu items in a process category share similar types of hazards and require the same control measures. In addition, the critical control points for all the menu items in a category are easily identified. For example, all menu items in Process 2 require proper cooking and hot holding to prevent or eliminate biological hazards.

Another advantage of the Process Approach is that it meets the needs of the individual food service operations. The Process Approach works in central kitchens, satellite sites, service-only sites, and on-site preparation facilities.

The Process Approach to HACCP is a simpler method for school food service operations than traditional HACCP. However, this proposal would allow SFAs that currently have a food safety program based on traditional HACCP to retain their program after consultation with the State Agency (SA) to ensure that the program meets all the elements described in this proposal.

## IV. Resources for Schools

FNS recognizes while most SFAs already follow HACCP principles, others require assistance to implement this type of food safety management system. One resource for SFAs and SAs is the Guidance we distributed in June 2005 to help each SFA develop a practical food safety program that meets the needs and capabilities of sites under its jurisdiction. The Guidance provides simple instructions for developing a HACCP-based food safety program, and includes many examples of Standard Operating Procedures (SOPs) and

<sup>1</sup> "FDA Retail Food Program Database of Foodborne Illness Risk Factors", U.S. Food and Drug Administration, Center for Food Safety and Applied Nutrition, August 10, 2000.

<sup>2</sup> "FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types (2004)", U.S. Food and Drug Administration, Center for Food Safety and Applied Nutrition, September 14, 2004.

<sup>3</sup> In 2000, the Economic Research Service estimated human illness costs for five bacterial pathogens: *Campylobacter*, *Salmonella* (nontyphoidal serotypes only), *E. coli* 0157 and non-0157 STEC, and *Listeria monocytogenes*. <http://www.ers.usda.gov/Emphases/SafeFood/>.

prototype recordkeeping forms. SFAs can consult the Guidance for ideas on SOPs and recordkeeping forms for their operation and may use the sample forms provided in the Guidance, create new forms or modify existing ones, if necessary.

We expect that as SFAs and food service workers gain experience and become comfortable with their food safety program, obstacles to accomplishing monitoring and recordkeeping tasks will gradually diminish. We encourage SAs and SFAs to take advantage of the training and educational resources available from NFSMI. Section 125 of Public Law 108–265 amended section 21(c)(2)(B) of the NSLA (42 U.S.C. 1769b(c)(2)(B)), adding to the duties of the NFSMI the responsibility to provide training and technical assistance to SAs and SFAs on HACCP, among other food safety issues. The NFSMI Help Desk is also available to provide general information on food safety and HACCP (800–321–3054, 8 a.m.–5 p.m., central time).

#### V. Roles and Responsibilities

Section 9(h) of the NSLA requires each SFA to implement a food safety program that complies with the Secretary's HACCP principles for each meal served as part of the NSLP or SBP. This proposal would require each SFA to develop a program for each food preparation and service facility under its jurisdiction. As stated in § 210.13(c) of this proposal, the food safety program would include SOPs and be based on HACCP principles, which can be applied more easily by following the Process Approach. Since hazard analysis and control measures are built into the Process Approach, an SFA would primarily have to establish procedures (if none currently exist) to monitor and record time and temperature at operational steps designated as critical control points (refrigeration, cooking, cooling, reheating, and holding).

Because each school food service operation is unique and they vary widely in complexity, the SFA would have to determine what critical control points need to be monitored and recorded, how to document them, who will do so and how frequently. Records such as temperature logs and written SOPs would be necessary to demonstrate that a food safety program is in place.

We would strongly encourage food service operations to use existing records to document control measures and corrective actions. While records must be accurate, they need not be elaborate. Prototype forms provided in

the Guidance are optional and may be used or adapted at the discretion of the SFA.

Section 210.15(b)(5) of this proposal would require that documentation be kept for two years, the current one and the prior school year. As stated in § 210.18(h)(6) of this proposal, food safety records would be examined during program reviews, such as the Coordinated Review Effort.

In addition, § 210.18(h)(6) of this proposal would require an SFA to conduct periodic reviews at each food preparation and service facility to verify that control measures, corrective action, and recordkeeping are being performed regularly and in accordance with the SFA's written program. This review could be done in conjunction with the annual on-site review conducted under § 210.8(a)(1).

This proposal would not require SFAs to seek outside sources to conduct periodic reviews or to assess the validity of the food safety program. SFAs have discretion to seek help from any State or local food safety professional (e.g., health inspector) who has a thorough understanding of HACCP to assist with the reviews or assessments and other activities such as staff training. Neither section 111 of Public Law 108–265 nor this proposal require State or local public health agencies to develop, monitor, or validate the school food safety programs. However, FNS anticipates that those agencies will be available, as their resources permit, to assist SFAs and schools with their food safety efforts.

Primary responsibility for the implementation of the food safety program at each school would rest on the food service or cafeteria manager; however, the success of the program is largely determined by the employees. Therefore, it is important that employees, including temporary help, be aware of the importance of following the complete food safety program.

As with any program question, SFAs should go to their SA for clarification or assistance with food safety.

SAs would be expected to provide technical assistance and training to their SFAs to facilitate compliance with this requirement, in accordance with existing §§ 210.19(a)(4) and 220.13(f)(1) and new § 210.18(h)(6) of this proposal. This could be accomplished through collaboration with various sources, including NFSMI and contractors. SAs would confirm implementation of the food safety program through administrative reviews, SMI evaluations and other means. If an SFA only participates in the SBP, the SA would still be required to confirm compliance

with this rule as stated in current § 220.13(k) and § 220.7(a)(3) of this proposal.

It is important to note that satisfactory implementation of the HACCP-based food safety program would not exempt schools from obtaining two food safety inspections per school year, which is a requirement in § 210.13(b) established through another amendment to section 9(h) of the NSLA by section 111 of Public Law 108–265 and its implementing interim rule (70 FR 34627) published on June 15, 2005. These two independent, but related, requirements work together to help ensure the delivery of safe foods to children in the school meal programs.

#### VI. Procedural Matters

##### *Executive Order 12866*

This proposed rule has been determined to be significant and was reviewed by the Office Management and Budget in conformance with Executive Order 12866.

##### *Regulatory Impact Analysis*

##### Need for Action

This proposal is needed to codify the statutory requirement that SFAs participating in the NSLP and the SBP develop HACCP-based food safety programs for the preparation and service of school meals.

##### Benefits

Implementing HACCP-based food safety programs in schools would enable schools to take a systematic approach to food safety and reduce the risk of foodborne illnesses in the school meals programs serving over 30 million children nationwide.

##### Costs

The Regulatory Impact Analysis estimates the total cost associated with implementing a HACCP-based food safety program at \$42.5 million in the first year of implementation. FNS expects that the subsequent annual costs associated with this proposal would decline as one-time program development efforts are completed, with 5-year costs totaling \$99.3 million (in 2006 dollars, discounted at a 7% rate).

##### *Regulatory Flexibility Act*

This proposal has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). This proposed rule would require SFAs to implement a HACCP-based food safety program in each of the food preparation and service facilities under their jurisdiction. Existing program regulations under § 210.13(a)

require that SFAs follow proper sanitation and health standards established under State and local law. Some SFAs already follow HACCP principles or have SOPs, which are elements of the proposed school food safety program. FNS and NFSMI provide technical assistance and training programs which would help SFAs implement the proposed food safety program. For these reasons, this proposal does not impose 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 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. Although the food safety program in this proposal entails training and recordkeeping costs, 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 proposed rule is not subject to the requirements of UMRA.

#### *Executive Order 12372*

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 Child Nutrition and WIC Reauthorization Act of 2004, FNS met with officials from State education agencies to discuss the new school food safety requirements and to hear their concerns. FNS also solicited input from the Food Safety and Inspection Service, Food and Drug Administration, National Food Service Management Institute, Centers for Disease Control and Prevention, School Nutrition Association, National Environmental Health Association, State and local public health agencies, and State education agencies, including school food service directors, to develop the HACCP guidance as authorized by Title V of the Child Nutrition and WIC Reauthorization Act of 2004. This proposal takes into account the stakeholders' concerns.

#### *Nature of Concerns and Need To Issue This Rule*

Some State and local officials raised concerns that school food service personnel may lack the expertise and time to properly implement a HACCP-based food safety program. Others expressed concern that the proposed requirement will increase the workload of school foodservice personnel. The HACCP-based food safety program is a non-discretionary requirement established by the Child Nutrition and WIC Reauthorization Act of 2004 that requires the use of procedures that are generally regarded as essential in institutional food service operations. To address the stakeholders' concerns, FNS offered schools the Process Approach to HACCP, which is an easier method to apply HACCP principles than those normally used in a retail food service operation. FNS adapted the Process Approach to HACCP to specifically fit the school food service operation.

#### *Extent to Which FNS Meets Those Concerns*

FNS issued a guidance document on June 10, 2005 to help SFAs implement a school food safety program based on HACCP principles. The guidance document provides step-by-step instructions for implementing the food safety program, and includes a sample plan and prototype recordkeeping forms. In addition, the National Food Service Management Institute, which was statutorily established as a resource

for SFAs and others, developed a nationwide training programs and technical assistance materials to help State agencies assist their SFAs in implementing the HACCP-based food safety program. FNS will assess the need for additional training and technical assistance resources as we learn about program experience at the State and local levels.

#### *Executive Order 12988*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule, when published final, 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 rule is not intended to have retroactive effect unless so specified in the Dates paragraph of the final rule when published. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures under § 210.18(q) or § 235.11(f) must be exhausted.

#### *Civil Rights Impact Analysis*

FNS has reviewed this proposed 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 age, 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 NSLP and SBP.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency 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. This proposed rule contains information collections that are subject to review and approval by OMB; therefore, FNS is submitting for public comment the changes in the information collection burden that would result from adoption of the proposals in the rule.

Comments must be received by October 6, 2008.

Comments may be sent to Office of Information and Regulatory Affairs, OMB, Attention—Desk Officer for FNS,

either by fax to 202-395-6974 or by e-mail to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Please also send a copy of your comments or requests for information to: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 636, Alexandria, Virginia 22302. FNS may make the comments publicly available by posting them on <http://www.regulations.gov>.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

*Title:* 7 CFR 210, National School Lunch Program.

*OMB Number:* 0584-0006.

*Expiration Date:* 03/31/2009.

*Type of Request:* Revision of currently approved information collection.

*Abstract:* 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 adding the requirement that school food authorities (SFAs) implement a food safety program at each food preparation and service facility participating in the National School Lunch Program (NSLP) or School Breakfast Program (SBP). The food safety program must be based on the Hazard Analysis Critical Control Point (HACCP) system established by the Secretary of Agriculture and implemented in the school year 2005-2006. Through a HACCP-based food safety program, schools can identify potential food hazards, identify critical points where hazards can be controlled or minimized using control measures, and develop monitoring procedures to determine if the hazards identified are being effectively controlled.

ESTIMATED ANNUAL BURDEN

Reporting	Section	Number of respondents	Annual frequency	Average burden per response	Annual burden hours
State agency confirms that each school food authority has a food safety program based on HACCP principles. New Burden.	7 CFR 210.18(h)(6) ...	57	61	1	3,477
SFA implements a food safety program based on HACCP principles for each food preparation and service facility under its jurisdiction. New burden.	7 CFR 210.13(c) .....	20,710	1	76	1,573,960
Total New Reporting .....	.....	.....	.....	.....	1,577,437
Recordkeeping	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hour
Schools maintain records from food safety program. New Burden.	7 CFR 210.15(b)(5) ...	100,398	180	.02	361,433
Total New Recordkeeping .....	.....	.....	.....	.....	361,433
Total Burden Requested .....	.....	.....	.....	.....	1,938,870

Those respondents participating in the School Breakfast Program also participate in the National School Lunch Program, thus the burden associated with the School Breakfast Program will be carried in the National School Lunch Program.

*Estimated Number of Respondents:* 121,165.

*Estimated Number of Responses per Respondent:* 149.

*Estimated Hours per Response:* .1.

*Estimated Total Annual Burden:* 1,938,870.

*E-Government Act*

FNS is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen

access to Government information and services, and for other purposes.

**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 proposed to be amended as follows:

**PART 210—NATIONAL SCHOOL LUNCH PROGRAM**

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

**Authority:** 42 U.S.C. 1751-1760, 1779.

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 requirements of § 210.13;

\* \* \* \* \*

3. In § 210.13, redesignate paragraph (c) as paragraph (d), and add a new paragraph (c) to read as follows:

**§ 210.13 Facilities management.**

\* \* \* \* \*

(c) *Food safety program.* The school food authority must develop a written food safety program for each of its food preparation and service facilities that meets the requirements in paragraph (c)(1) or paragraph (c)(2) of this section.

(1) A school food authority with a food safety program based on traditional hazard analysis and critical control point (HACCP) principles must:

- (i) Perform a hazard analysis;
- (ii) Decide on critical control points;
- (iii) Determine the critical limits;
- (iv) Establish procedures to monitor critical control points;
- (v) Establish corrective actions;
- (vi) Establish verification procedures; and
- (vii) Establish a recordkeeping system.

(2) A school food authority with a food safety program based on the process approach to HACCP must ensure that its program includes:

- (i) Standard operating procedures to provide a food safety foundation;
- (ii) Menu items grouped according to process categories;
- (iii) Critical control points and critical limits;
- (iv) Monitoring procedures;
- (v) Corrective action procedures;
- (vi) Recordkeeping procedures; and
- (vii) Periodic program review and revision.

\* \* \* \* \*

4. In § 210.15, a. Revise the introductory text in paragraph (b); and b. Revise paragraph (b)(5). The revisions read as follows:

**§ 210.15 Reporting and recordkeeping.**

\* \* \* \* \*

(b) *Recordkeeping summary.* In order to participate in the Program, a school food authority or a school, as applicable, must maintain records to demonstrate compliance with Program requirements. These records include but are not limited to:

\* \* \* \* \*

(5) Records from the food safety program for the current and prior school year to demonstrate compliance with § 210.13(c), and records from the most recent food safety inspection to demonstrate compliance with § 210.13(b).

5. In § 210.18, add a new paragraph (h)(6) to read as follows:

**§ 210.18 Administrative reviews.**

\* \* \* \* \*

(h) \* \* \*

(6) *Food safety.* The State Agency must examine records to confirm that each school food authority under its jurisdiction meets the food safety requirements of § 210.13.

\* \* \* \* \*

**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. Add a new paragraph (a)(3); and
- b. Revise paragraph (e)(8).

The addition and revision read as follows:

**§ 220.7 Requirements for participation.**

(a) \* \* \*

(3) A school food authority must implement a food safety program meeting the requirements of part 210 of this chapter at each of the food preparation and service facilities under its jurisdiction.

\* \* \* \* \*

(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 requirements in paragraph (a)(2) and paragraph (a)(3) of this section;

\* \* \* \* \*

Dated: July 28, 2008.

**Kate Houston,**

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

[FR Doc. E8-17941 Filed 8-4-08; 8:45 am]

**BILLING CODE 3410-30-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Bureau of Customs and Border Protection**

**DEPARTMENT OF THE TREASURY**

**19 CFR Part 24**

[Docket No. USCBP 2007-0111]

**RIN 1505-AB97**

**Electronic Payment and Refund of Quarterly Harbor Maintenance Fees**

**AGENCIES:** Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend title 19 of the Code of Federal Regulations by prescribing alternative procedures by which payers of the quarterly harbor maintenance fee (HMF) may submit their payments or refund requests to Customs and Border Protection (CBP) electronically via an Internet account established by the payer and located at <http://www.pay.gov>. CBP will continue to accept quarterly HMF payments or refund requests via mail. It is also proposed to clarify the regulations to state that each HMF quarterly payment, whether paper or electronic, must be accompanied by a CBP Form 349 (HMF Quarterly Summary Report). The changes proposed in this document are intended to provide the trade with expanded electronic payment/refund options for quarterly HMFs and to modernize and enhance CBP's port use fee collection efforts.

**DATES:** Comments must be received on or before October 6, 2008.

**ADDRESSES:** You may submit comments, identified by *docket number*, by one of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP 2007-0111.

• *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., (Mint Annex), Washington, DC 20229.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.