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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

RIN 0584-AC92

National School Lunch Program and School Breakfast Program: Identification of Blended Beef, Pork, Poultry or Seafood Products

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes the interim provisions addressing the use of products or dishes containing more than 30 parts fully hydrated vegetable protein to less than 70 parts beef, pork, poultry or seafood in the National School Lunch Program and the School Breakfast Program. To the extent that participating school food authorities identify foods in a menu, or on the serving line or through other available means of communicating with program participants, school food authorities must identify such blended products or dishes in a manner which does not characterize the product or dish solely as beef, pork, poultry or seafood. This provision is intended to ensure that program participants are not misinformed regarding the use of blended products and dishes.

EFFECTIVE DATE: This final rule will become effective August 24, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302; telephone 703-305-2620.

SUPPLEMENTARY INFORMATION:

Background

Why Was the Interim Rule Published?

The interim rule on identification of blended meat or seafood products served in the school meals programs was published on June 8, 2000 (65 FR 36315). The interim rule was issued in response to concerns about the possibility that blended beef, pork, poultry or seafood products or dishes containing more than 30 percent fully hydrated vegetable protein (of the hydrated soy and meat total) might be presented as beef, pork, poultry or seafood. (Readers will note that the term "vegetable protein product or VPP" is used in the preamble since this term reflects common usage; however, for technical reasons, the term "alternate protein products" is used in the regulatory text.)

While these blended products and dishes fulfill an essential role in the programs, misrepresentation or misperception of the nature of those products serves neither industry nor program participants well. Children and their parents must be aware of what is in the foods offered in the lunch and breakfast programs if they are to make informed food choices. Thus, to the extent that school food authorities identify foods in the menu, on the serving line or through other available means of communicating with program participants, the interim rule required identification of beef, pork, poultry or seafood products and dishes containing more than 30 percent fully hydrated vegetable protein (of the hydrated soy and meat total) in a manner which does not characterize the products or dishes solely as beef, pork, poultry or seafood. The interim rule revised 7 CFR 210.10(h) and 7 CFR 220.8 (m).

What Comments Were Received on the Interim Rule?

We received six comment letters on the interim rule, all of which were from food industry representatives. The commentors generally supported the changes made by the interim rule. However, commentors expressed concerns about formulation of blended VPP products used in the Child Nutrition Programs. We have been and will continue to work with interested parties about their concerns.

Two commentors had a specific recommendation. They recommended that the level for identifying a product or dish as a blended product be 50 parts fully hydrated VPP, not 30 parts fully hydrated VPP. These commentors stated that at a 50-50 level, the product is predominantly VPP.

Identifying products as blended which contain 50 percent or more VPP would place only those products which are equally or predominantly made with VPP under the identification requirement. The 30-70 ratio has been the established ratio used to describe blended products. Maintaining the 30-70 standard will avoid unnecessary confusion and will provide notification when products vary from the traditional blend levels. Therefore, we are retaining the 30 parts fully hydrated VPP as the level products must be identified as a blended product or dish. Because we made no changes to the interim rule, it is adopted as final at 7 CFR 210.10(h) and 220.8(m).

Executive Order 12866

This final rule was determined to be non-significant and is not subject to review by the Office of Management and Budget under Executive Order 12866.

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, the Food and Nutrition Service (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.

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 Acting Administrator of FNS has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule makes no changes to the National School Lunch and School Breakfast Program meal patterns. However, when certain products are used, this rule would require schools to use existing methods of communication to advise children and their parents of the use of such products.

Executive Order 12372

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. Each is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and final rule related notice at 48 FR 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 **DATES** section of this preamble. Prior to any judicial challenge to the provisions of this final 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.

For 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 FNS findings as a result of an administrative review must follow FNS 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 FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the third party disclosure requirements included in this final rule were reviewed by the Office of Management and Budget. OMB has approved these requirements for part 210 under OMB #0584-0006. The requirements for part 220 are approved under OMB #0584-0012.

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.

PART 210—NATIONAL SCHOOL LUNCH PROGRAM AND PART 220—SCHOOL BREAKFAST PROGRAM

Accordingly, the interim rule amending 7 CFR Parts 210 and 220 which was published at 65 FR 36315 on June 8, 2000, is adopted as a final rule without change.

Dated: July 18, 2001.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 01-18369 Filed 7-23-01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NM-309-AD; Amendment 39-12330; AD 2001-14-19]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes. For certain airplanes this AD requires rework of the bonding jumper assemblies on the drain tube assemblies of the slat track housing of the wings. For certain other airplanes, this AD requires repetitive inspections of the drain tube assemblies of the slat track housing of the wings to find discrepancies, and corrective actions, if necessary. This AD also provides for terminating action for the repetitive inspections. These actions are necessary to find and fix discrepancies of the bonding jumper assemblies, which could result in an in-tank ignition source due to electrostatic discharge or lightning. The actions also are necessary to find and fix discrepancies of the slat track drain tubes, which could result in fuel migrating into the tubes and leaking onto an engine or exhaust nozzle, and consequent risk of a fire when the airplane is stationary or during low speed taxiing. This action is intended to address the identified unsafe conditions.

DATES: Effective August 28, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 28, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis Kammers, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2956; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published in the **Federal Register** on December 22, 2000 (65 FR 80796). For certain airplanes that action proposed to require rework of the bonding jumper assemblies. For certain other airplanes, that action proposed to require repetitive inspections of the drain tube assemblies of the slat track housing of