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To: All Local Health Department & Other Affected Indiana Food Regulatory Agencies

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Subject: Guidance for Improving Inspections for Participants in USDA Nutrition Programs

Purpose

In cooperation with the Indiana Department of Education, School & Community Nutrition Program (IDOE), this document provides guidance to local health departments & other affected Indiana food regulatory agencies for improving inspection frequency for participants in the USDA Nutrition Programs: National School Lunch Program (NSLP), School Breakfast Program (SBP) and the Summer Food Service Program (SFSP).

Background

One of the requirements stated in Section 111 of the Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108-265) amended section 9(h) of the Richard B. Russell National School Lunch Act, that began July 1, 2005, is that **each site** participating in the National School Lunch (NSLP) and Breakfast Programs (SBP) must obtain **two** food safety inspections each school year, which is a reporting period of July 1- June 30. Other authorization requires participants in the Summer Food Service Program (SFSP) to obtain **one** food safety inspection per year per site. The National School Lunch Act states these inspections must be conducted by the State or local government agency responsible for food safety inspections. In Indiana, these agencies include all local health departments, some State agencies, including the Indiana State Department of Health Food Protection Program (ISDH FPP); and the Department of Correction (DOC) Contract Compliance Division.

Requirements of the Federal Act state that participants:

- 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.
- Must post in a publicly visible location a report of the most recent inspection conducted.
- Must provide a copy of the inspection report to a member of the public upon request.

Sites participating in more than one child nutrition program are only 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.

As stated in the Federal Act:

“School” means: (a) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; (b) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; or (c) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes.

Note that for purposes of these Nutrition Programs, a “school” can be:

a “residential child care institution” including, but not limited to, homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers;

or

a long term care facility in a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more.

Discussion

IDOE records indicate that some participants in the NSLP and SBP did not receive two required food safety inspections for school year 2011-2012. This data is based on self reported information from participants and may not always reflect accurate information.

Participants in the above named Nutrition Programs are required to request inspection of the agency acting as the food regulatory authority for the facility. Since 2005, many have done so and are now routinely receiving the required number of inspections per year. Due to insufficient regulatory agency inspection capacity, a participant not able to obtain the necessary inspections is required to notify IDOE of the fact.

The IDOE has implemented a procedure that when a regulatory authority cannot provide inspections according to the requirements in the Federal Act, the nutrition program participant is required to make a written request for inspection to the food safety regulating agency. If the regulating agency provides a letter of refusal in writing, this document can be used by the participant as acceptable documentation of the effort to obtain the food safety inspection. This in turn will allow the participating entity to receive reimbursement. In a spirit of cooperation, food safety regulating agencies are requested to comply with all requests for documentation when requested.

Inspections

Inspections conducted for participants should conform to standards provided by the Food & Drug Administration through ISDH FPP as recommended in the 2011 “Procedures for Standardization and Certification of Retail Inspection/Training Officers”. More information on the Standardization process is available at: <http://www.in.gov/isdh/21064.htm> or by contacting the ISDH FPP.

Inspectors should be aware that food safety HACCP plans are required by USDA for all participating sponsors. The Reauthorization Act of 2004 does not require inspectors to approve, evaluate, monitor or validate USDA mandatory HACCP plans, though food safety inspections already cover many HACCP related elements.

Method of payment for the meals or not-for-profit status does not negate the USDA inspection requirement. In addition, the requirements for foods served per meal by the school lunch and breakfast programs meets the standard for an “extensive menu” and therefore the LHD may at its’ choosing require a permit, see <http://www.in.gov/isdh/24884.htm>

A list of participants in the National School Lunch Program (NSLP), and School Breakfast Program (SBP) is provided at:

http://scnweb.doe.state.in.us/external_forms/2014_SchoolProgramInspectionSites.pdf

Each regulating agency should examine the list to assure that all inspection locations under their jurisdiction are being inspected with the correct frequency. The list shows program participants organized by county, and includes the name of the facility; the physical address; how many inspections are needed at each location; and private or public status. The Summer Food Service Program participants will contact each regulatory authority in writing to arrange inspection services.

Inspections should occur at reasonable times and be unannounced.

Many school corporations have multiple sites listed under their sponsorship with each site requiring inspection regardless of the size of the site. The sites requiring inspection under USDA requirements include sites where students are receiving their meals whether or not there is a kitchen on site. Other facilities providing food services utilized by the sponsors, such as satellite kitchens, catering production facilities, or central commissary kitchens, are not included in USDA inspection requirements, but should however be inspected as food establishments according to the county protocol.

In general terms, some sites will be serving students who could be considered a highly susceptible population. This means participants may be serving pre-school aged children in a custodial setting, immunocompromised students of any age, and kindergarten & elementary grade children. These sites **should be given priority** for inspections conducted by the regulating agency.

IDOE Pre-Opening Requirement

IDOE has a requirement that participating sites provide within two weeks of receiving notification of their approval, but prior to commencement of food service operations, that the LDH or ISDH is notified in writing of their intention to provide a food service operation during a specified period

of time. This may conflict with the 30 day requirement stated in section 107 of 410 IAC 7-24. Again, with this being a cooperative effort, agencies are requested to adjust their requirements for these sites as is sometimes necessary to do for temporary retail food establishments. If a LHD ordinance does not allow a participant to operate until the site has been inspected, it will be very important to efficiently coordinate this function since IDOE does not allow the participant to claim meal reimbursement until that inspection has been completed and the results are “satisfactory”. Participants are required to post the results of inspections.

Summer Food Service Programs (SFSP)

All participants of the SFSP (whether public or private schools or private non-profit institutions, such as a church), are required within two weeks of receiving notification of their IDOE approval, but prior to commencement of food handling, are required to submit to IDOE a copy of their letter advising the appropriate health department of their intention to provide a food service during a specific period at specific sites.” In Indiana, the food safety regulatory authority determines whether or not resources will be available to inspect the proposed sites. It is recommended higher priority sites would be those operating at private non-profit institutions, such as churches, community centers, etc, and those with highly susceptible populations. If a local ordinance/policy prevents a participant from operating until their site has been inspected (as is the case in some Indiana counties), IDOE does not allow the participant to claim meals until that inspection has been completed and the results are satisfactory.

Sampling

In the past, the SFSP required regulating agencies to collect and submit a specified number of laboratory samples for analysis. A pre-determined number of food samples will not be required, but if a regulator suspects a food to have become contaminated to the extent it may be a hazard to health, they are encouraged to intervene and then to collect & submit samples to the ISDH laboratory. Such samples should be coordinated with the ISDH FPP Consumer Specialist.

Certified Food Handler (CFH)

Some site participants may need a “certified food handler” if required under 410 IAC 7-22. This will depend on the exemption status of the participant. Under IC 16-43-5.2-3.5 and IC 6-2.5-5-21(b) (1) (D), all Indiana Public schools are exempt from 410 IAC 7-22, Food Handler Certification Rule. Private schools with 501(c)(3) status under federal tax laws are also exempt from having a certified food handler. Though exempt from having a certified food handler, the participant may still have to meet the “Retail Food Establishment Sanitation Requirements”, 410 IAC 7-24, Sections 117 through 119 related to “Supervision” and “Responsibility”. This means the participating organization must have a “person-in-charge” and someone who “demonstrates knowledge” by either having no critical violations during an inspection or by correctly responding to inspector’s questions. An organization not required to have a CFH may voluntarily employ a CFH as a matter of preference, or in order to meet the requirement to “demonstrate knowledge” under section 118 of the retail food establishment rule.

Exempt Entities

Some USDA Nutrition Program sites with 501(c)(3) status under federal tax laws are exempt from the definition of a regulated food establishment and will not be permitted or registered with a food safety regulatory agency. The exemption status will result in no inspection report or correspondence from regulatory agencies. If exempt, these entities can only be inspected by the LHD or ISDH FPP to verify the existence of or to investigate a documented foodborne illness outbreak associated with the facility.

Conclusion

The 2005 Federal Act authorizing USDA, and subsequently IDOE, to administer the NSLP, SBP, and the SFSP requires Program participants to obtain a specific number of inspections from a state or local food safety regulatory agency. According to the most recent IDOE data, improvement is needed to assure all sites get these inspections. The ISDH Food Protection Program and the IDOE School & Nutrition Program are cooperating to ask all food safety regulating agencies to review the noted list and conduct the appropriate number of inspections for participating sites under their jurisdiction.

ISDH FPP staff are available to assist with any questions you may have about this document or the programs/procedures discussed here. For further assistance contact the ISDH FPP office at 317-233-8478 or the IDOE office toll free at: 800-537-1142 (ext 20857).

References

Child Nutrition Programs (USDA) - 7 CFR Ch. II (1–1–12 Edition)

Health inspections –http://www.fns.usda.gov/cnd/governance/regulations/7cfr210_12.pdf (page 38, 210.13 Facilities Management)

IDOE

School Food Safety Inspections Reauthorization 2004 -
<http://www.doe.in.gov/sites/default/files/nutrition/sp-13-2004-policy-84.pdf>

SP 45-2011 Food Safety Inspections in Service-Only Sites Participating in the School Meals Programs - <http://www.doe.in.gov/sites/default/files/nutrition/sp-45-2011.pdf>

ISDH

IC 16-20-1-19 Local Health Department: Power and Duties of the Local Health Department Enforcement www.in.gov/legislative/ic/code/title16/ar20/ch1.html

IC 16 42-5 Food: Sanitary Requirements for Food Establishments Food: Sanitary Requirements <http://www.in.gov/legislative/ic/code/title16/ar42/ch5.html>

IC 16 42-5.2 Food Handlers <http://www.in.gov/legislative/ic/code/title16/ar42/ch5.2.html>