Proposed Rules

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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 Consumer Service

7 CFR Part 226

RIN 0584-AB19

Child and Adult Care Food Program: Overclaim Authority

AGENCY: Food and Consumer Service,

USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes an amendment to the Child and Adult Care Food Program (CACFP) regulations which would explicitly authorize the Department and State agencies to assess overclaims against institutions that fail to abide by CACFP recordkeeping requirements. This authority has been successfully challenged in several judicial rulings on the grounds that such authority was not specifically established in program regulations. This rule serves to affirm the Department's authority to assess overclaims for recordkeeping infractions and to clarify any regulatory ambiguities or inconsistencies regarding overclaims authority.

DATES: To be assured of consideration, comments must be postmarked no later than February 5, 1996.

ADDRESSES: Comments should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302. Comments in response to this rule may be inspected at the address above during normal business hours, 8:30 a.m. to 5:00 p.m., Monday through Friday.

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

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Consumer Service has certified that this action will not have a significant economic impact on a substantial number of small entities. There will be no significant impact because this rule represents only a clarification of current procedures.

Executive Order 12372

This Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and 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 published in 48 FR 29114, June 24, 1983).

Information Collection

This proposed rule contains no new information collection requirements. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), current reporting and recordkeeping requirements for Part 226 were approved by the Office of Management and Budget under Control Number 0584–0055.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This 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 rule is not intended to have retroactive effect unless so specified in the 'Effective Date" section of the preamble of the final rule. All available administrative procedures must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions. In the Child and Adult Care Food Program, the administrative procedures are set

forth under the following regulations: (1) Institution appeal procedures in 7 CFR § 226.6(k); and (2) Disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR § 226.22 and 7 CFR Part 3015.

Background

The Child and Adult Care Food Program (CACFP) is authorized by section 17 of the National School Lunch Act, as amended (42 U.S.C. 1766). Section 17(n) of that Act stipulates that "States and institutions participating in the program shall keep accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with the requirements of this section." Furthermore, the CACFP regulations include a number of requirements relating to recordkeeping: Section 226.7(m) requires State agencies to establish standards for institutional recordkeeping; Section 226.15(e) prescribes the minimum recordkeeping requirements for institutions in the CACFP; Section 226.10(c) requires institutions to certify that records are available to support reimbursement claims; and Section 226.10(d) establishes a timeframe for record retention. Moreover, Section 226.6(f)(1)requires that the Program agreement between the State agency and each institution stipulate that each participating institution must agree to comply with all regulatory requirements including these recordkeeping requirements. Finally, the importance with which the Department views an institution's recordkeeping responsibilities is found in Section 226.6(c)(4), where failure to maintain adequate records is specifically listed as a serious deficiency for which termination of an institution's participation may be appropriate.

On numerous occasions, the Department and State agencies have used the authority in the regulatory provisions cited above to recover funds paid to institutions which did not have records necessary to support claims for reimbursement. However, this authority has been successfully challenged in court cases in Arkansas and California. In both cases, assessment of overclaims against institutions which were based on inadequate or missing records were