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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 220 and 226

RIN 0584-AD68

Disregard of Overpayments in the Child and Adult Care Food Program, National School Lunch Program and School Breakfast Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a provision of the Child Nutrition and WIC Reauthorization Act of 2004 by creating uniform regulations related to the disregard of overpayments in the National School Lunch Program (NSLP), School Breakfast Program (SBP), and Child and Adult Care Food Program (CACFP). As a result, this rule codifies longstanding policy related to the disregard of overpayments in the NSLP and SBP, and revises CACFP regulations by increasing the threshold for the disregard of overpayments determined in management evaluations, reviews or audits in a fiscal year to be consistent with the NSLP and SBP.

DATES: The effective date for this rule is June 29, 2006.

FOR FURTHER INFORMATION CONTACT: Keith Churchill, Section Chief, Child and Adult Care and Summer Section, Policy and Program Development Branch, by telephone at (703) 305-2590.

SUPPLEMENTARY INFORMATION:

Background

Section 119(c) of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108-265) amended section 17(i) of the Richard B. Russell National School Lunch Act by allowing the Food and Nutrition Service (FNS) and State agencies, when conducting management

evaluations, reviews, or audits in the CACFP, to disregard an overpayment to an institution if it does not exceed an amount that is consistent with the disregards allowed in the NSLP and the SBP. The law also required FNS and State agencies to recognize the cost of collecting small overpayments. As these amendments were effective on October 1, 2004, FNS issued guidance informing State agencies of the law's changes on September 17, 2004, "Overpayment in the Child and Adult Care Food Program (CACFP)".

Current regulations governing the NSLP and SBP allow the State agency, FNS, or the Office of the Inspector General (OIG), when conducting management evaluations, reviews, or audits, to disregard any overpayment if the total overpayment does not exceed \$600 in any fiscal year. In addition, the current regulations also permit the State agency to establish an alternate minimum amount in the case of State agency claims in State administered Programs under State law, regulations or procedure, not to exceed \$600, for which an overpayment may be disregarded. These provisions were adopted to relieve FNS and State agencies of the financial and administrative burden associated with collecting small overpayments. Regardless of the disregard threshold, if there is substantial evidence of a violation of criminal law or civil fraud statutes, the disregard of an overpayment is prohibited.

On January 27, 1995, FNS issued "Clarification of \$600 Disregard in Coordinated Review Effort and FNS-640 Reporting," a policy memorandum to NSLP State agencies that clarified questions related to the disregard of overpayments when conducting a review. This policy memorandum established that disregards may be granted on a per review basis; that there is only one disregard per school food authority, per fiscal year, per program; that fiscal action must be combined from the administrative review and follow-up review(s) conducted in the same fiscal year to determine if a disregard is available; and that a review is considered to be all the review activity conducted in a school food authority in a given fiscal year (including administrative and follow-up reviews). For example, under this policy, if an overpayment of \$400 is

discovered during an administrative review and an overpayment of \$201 is discovered as part of a related follow-up review during the same fiscal year, then the State agency must collect the \$601 overpayment because it exceeds the \$600 threshold. Conversely, if an overpayment of \$300 is discovered during an administrative review and an overpayment of \$100 is discovered in each of two related follow-up reviews during the same fiscal year, the State agency would not be required to collect the \$500 overpayment, unless required by State law, regulation, or procedure. In addition, the policy memorandum established that the fiscal year is the year in which the review activity was conducted, and not the year for which fiscal action was calculated. For instance, if a review of the activity in August 2005 (FY 2005) was conducted during the month of October 2006 (FY 2007), a disregard may be granted for fiscal year 2005. This rule amends NSLP and SBP regulations by codifying these longstanding policies and amends CACFP regulations to create a uniform requirement for the three programs.

The intent of the provisions outlined in this rule is to create an efficient, cost-effective process in collecting overpayments; therefore, this rule applies independently to management evaluations, reviews and audits, i.e., an overpayment discovered during an administrative review would be treated separate and unique from an overpayment discovered through an audit during the same fiscal year. Overpayments assessed in a management evaluation, review or audit shall not be combined but assessed separately and; therefore, the disregard is considered for each individual occurrence.

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

Need for Action

A regulatory impact analysis was conducted to determine the administrative and economic impacts of the rule. Because data on the current level of overclaims and disregards in the CACFP is limited, data on overclaims

and disregards in the school meal programs were used as a proxy for estimating the cost of the rule. If disregard patterns for the CACFP follow those of the NSLP and the SBP, it is expected that claims totaling between \$66,000 and \$300,000 over a five-year period will no longer be collected.

Benefits

No change in costs for State and local agencies are anticipated due to this rule. Federal and State administrative burdens are estimated to be minimal, due in part to the fact that this level of disregard is already policy for the school meals programs and because of the familiarity with the provision by Federal, State and local operators.

Costs

Based on an assumption that total wages and benefits that may be associated with collecting overclaims could total approximately \$130 per hour, five hours spent in processing an overclaim would exceed the \$600 disregard threshold. Given that the final rule does not change the way a State agency assesses or collects claims, it is assumed that the increase in the disregard threshold, from \$100 to \$600, would provide useful but modest relief in the cost incurred collecting claims.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services has certified that this final rule will not have a significant economic impact on a substantial number of small entities. The requirements implemented in this rule will create a consistent standard for the disregard of overpayments in the child nutrition programs administered by State agencies, while maintaining Program integrity. In short, there will be no adverse impact on small entities operating one or more of FNS' child nutrition programs as a result of this rule.

Unfunded Mandates Reform

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 Department generally must 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 the Department 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) that impose costs on State, local, or tribal governments or to the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Child and Adult Care Food Program, the National School Lunch Program, and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.558, 10.555, and 10.553, respectively. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice published at 48 FR 29114, June 24, 1983, 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. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, 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 **DATES** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the CACFP, the administrative procedures are set forth at 7 CFR 226.6(k). In the NSLP and SBP, the administrative procedures are set forth at 7 CFR 210.18(q) and 7 CFR 235.11(f).

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with the Department Regulation 4300–4, “Civil Rights Impact Analysis,” to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this final rule will not in any way limit or reduce participants' ability to participate in the CACFP, NSLP and SBP on the basis of race, color, national origin, sex, age, or disability. FNS found no factors that would negatively and disproportionately affect any group of individuals.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency 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 rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

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.

Public Participation

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). 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. The provisions of this final rule reflect mandatory statutory requirements which are non-discretionary. See sec. 119(c), Public Law 108-265, 118 stat. 753, June 30, 2004. Moreover, by law these provisions became effective on October 1, 2004. Id., sec. 502(b)(2).

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.

7 CFR part 226

Accounting, Aged, Day care, Food Assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

■ Accordingly, 7 CFR parts 210, 220, and 226 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

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

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.19, paragraph (d) is amended by removing the fourth and fifth sentences and adding in their place four new sentences to read as follows:

§ 210.19 Additional responsibilities.

* * * * *

(d) * * * In conducting management evaluations, reviews, or audits in a fiscal year, the State agency, FNS, or OIG may disregard an overpayment if the overpayment does not exceed \$600. A State agency may establish, through State law, regulation or procedure, an alternate disregard threshold that does not exceed \$600. This disregard may be made once per each management evaluation, review, or audit per Program within a fiscal year. However, no overpayment is to be disregarded where there is substantial evidence of violations of criminal law or civil fraud statutes.

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PART 220—SCHOOL BREAKFAST PROGRAM

■ 1. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 2. In § 220.15, paragraph (d) is revised to read as follows:

§ 220.15 Management evaluations and audits.

* * * * *

(d) In conducting management evaluations, reviews, or audits in a fiscal year, the State agency, FNS, or OIG may disregard an overpayment if the overpayment does not exceed \$600. A State agency may establish, through State law, regulation or procedure, an alternate disregard threshold that does not exceed \$600. This disregard may be made once per each management evaluation, review, or audit per Program within a fiscal year. However, no overpayment is to be disregarded where there is substantial evidence of violations of criminal law or civil fraud statutes.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 1. The authority citation for part 226 continues to read as follows:

Authority: Secs 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 2. In § 226.8, paragraph (e) is revised to read as follows:

§ 226.8 Audits.

* * * * *

(e) In conducting management evaluations, reviews, or audits in a fiscal year, the State agency, FNS, or OIG may disregard an overpayment if the overpayment does not exceed \$600. A State agency may establish, through State law, regulation or procedure, an alternate disregard threshold that does not exceed \$600. This disregard may be made once per each management evaluation, review, or audit per Program within a fiscal year. However, no overpayment is to be disregarded where there is substantial evidence of violations of criminal law or civil fraud statutes.

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Dated: May 18, 2006.

Kate Coler,
Deputy Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. E6-8201 Filed 5-26-06; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02-132-2]

RIN 0579-AB83

Requirements for Requests To Amend Import Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are establishing regulations governing the submission of requests for changes in our regulations that restrict the importation of plants, plant parts, and plant products. We are taking this action because, despite existing non-regulatory guidance on the submission of requests, few applicants provide the basic information we require to properly consider their requests. The new regulations will help ensure that we are provided with the information we need to prepare a risk analysis and/or other analyses that evaluate the risks and other effects associated with a proposed change to the regulations. This information is needed for us to effectively consider the request, and submission of the information at the time the request is made allows us to proceed with our consideration of the request in a timely manner.

DATES: *Effective Date:* June 29, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Griffin, Director, Plant Epidemiology and Risk Analysis Laboratory, Center for Plant Health, Science, and Technology, PPQ, APHIS, 1730 Varsity Drive, Suite 300, Raleigh, NC 27606; (919) 855-7400.

SUPPLEMENTARY INFORMATION:

Background

The regulations contained in 7 CFR part 319 (referred to below as the regulations) prohibit or restrict the importation of plants, plant parts, and plant products into the United States in accordance with the authority conferred on the Secretary of Agriculture by the Plant Protection Act (7 U.S.C. 7701 *et seq.*). The Animal and Plant Health Inspection Service (APHIS) is the United States Department of Agriculture (USDA) agency responsible for (1) enforcing the part 319 regulations and (2) considering requests to amend the part 319 regulations to allow the importation of plants, plant parts, or plant products that are not currently