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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 210, 215, 220, 225, 226, and 245

RIN 0584-AC95

#### Disclosure of Children's Free and Reduced Price Meals and Free Milk Eligibility Information in the Child Nutrition Programs

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes requirements for the disclosure of children's free and reduced price meals or free milk eligibility information under the Child Nutrition Programs. The Child Nutrition Programs include the National School Lunch Program, School Breakfast Program, Special Milk Program, Summer Food Service Program, and Child and Adult Care Food Program. Within certain limitations, children's free and reduced price meal or free milk eligibility information may be disclosed, without parental/guardian consent, to persons directly connected to certain education programs, health programs, means-tested nutrition programs, the Comptroller General of the United States, and some law enforcement officials. Additionally, officials also may disclose children's free and reduced price meal or free milk eligibility information to persons directly connected with State Medicaid (Medicaid) and the State Children's Health Insurance Program (SCHIP) when parents/guardians do not decline to have their information disclosed. These regulations affect State agencies and local program operators that administer the Child Nutrition Programs and households which apply for and/or are approved for free and reduced price

meals or free milk. The final rule reflects the disclosure provisions of the Healthy Meals for Healthy Americans Act of 1994 and comments received on the proposed rule published in anticipation of implementing those provisions. Additionally, this final rule includes the regulatory disclosure provisions implementing the Agricultural Risk Protection Act of 2000 and comments received on the interim rule issued to implement those provisions. This final rule also implements nondiscretionary provisions of the Child Nutrition and WIC Reauthorization Act of 2004, allowing certain third party contractors access to children's eligibility status and will allow school officials to communicate with Medicaid and SCHIP officials to verify that children are eligible for free and reduced price school meals or free milk. The disclosure provisions are intended to reduce paperwork for administrators of certain programs that target low-income households and for low-income households which may benefit from those programs by allowing some sharing of household's free and reduced price meal eligibility information. This rule also includes several technical amendments.

**DATES:** This rule is effective April 11, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Address any questions to Robert Eadie, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302 or by telephone at 703-305-2590.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Chronological History of Legislation and Regulations Concerning the Confidentiality of Children's Free and Reduced Price Eligibility Information*

November 2, 1994—Public Law 103-448, the Healthy Meals for Healthy Americans Act of 1994, amended Section 9 of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1758, to statutorily provide for the first time, some disclosure of children's eligibility information, without parental consent, to specified programs, such as Federal and State education programs and to certain individuals. The provisions of Public

Law 103-448 specifically exclude disclosures of children's eligibility information to Medicaid but did not address disclosures to the State Children's Health Insurance Program (SCHIP), which was nonexistent at that time.

June 20, 2000—Public Law 106-224, the Agricultural Risk Protection Act of 2000, amended the NSLA to allow disclosure of children's eligibility information to Medicaid and SCHIP, provided that parents/guardians not decline to have their information disclosed to those health insurance programs. Congress directed the Secretary to promulgate regulations without regard to the provisions of Administrative Procedure Act, the Statement of Policy of the Secretary of Agriculture, effective July 24, 1971 (36 FR 13804) and the Paperwork Reduction Act.

July 25, 2000—A proposed rule, with a request for comments, was published in the **Federal Register** (65 FR 45725).

January 11, 2001—An interim rule, with a request for comments, amended a number of program regulations to implement the Medicaid and SCHIP disclosure provisions of Public Law 106-224. The regulatory provisions were effective October 1, 2000, in accordance with Public Law 106-224.

June 30, 2004—Public Law 108-265, Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108-265) further amended the NSLA to specify that Medicaid and SCHIP officials may request that determining officials for the Child Nutrition Programs verify children's eligibility for free and reduced price meal and free milk benefits.

This final rule—Finalizes the current regulations codified by the interim rule, which only addressed disclosures to Medicaid and SCHIP, and amends the current regulations to add the provisions from the July 25, 2000 proposed rule and the confidentiality provision from Public Law 108-265.

A detailed discussion of the confidentiality provisions of the public laws and the actions taken to address the provisions follows.

*Public Law 103-448*

The Healthy Meals for Healthy Americans Act of 1994, Public Law 103-448, enacted on November 2, 1994, amended section 9(b)(2)(C) of the Richard B. Russell National School

Lunch Act (NSLA) (42 U.S.C. 1758(b)(2)(C)) to allow limited access to children's free and reduced price meal information, without parental/guardian consent. In general, the statute included the following provisions:

1. Authorized disclosure of children's eligibility status only (whether children are eligible for free meals or reduced price meals) to:

- Persons who are directly connected with the administration or enforcement of programs under the NSLA or the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1771 *et seq.*) or a regulation issued under either of those Acts;
- Persons who are directly connected with the administration or enforcement of a Federal education program;
- Persons who are directly connected with the administration or enforcement of a State health or education program (other than Medicaid) administered by the State or local education agency; and
- Persons who are directly connected with the administration or enforcement of a Federal, State or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (NSLP).

2. Authorized disclosure of all eligibility information for children that is obtained through the free and reduced price meal application process or through the direct certification process (determining children eligible based on information obtained from certain other agencies) to:

- The Comptroller General of the United States for audit and examination; and
- Certain law enforcement officials investigating alleged program violations.

3. Specified penalties for unauthorized disclosure or misuse of children's eligibility information of a fine of not more than \$1000 or imprisonment of not more than 1 year, or both.

Public Law 103-448 specifically excluded disclosure of children's eligibility information, without consent, to a program under title XIX of the Social Security Act, *i.e.*, Medicaid (42 U.S.C. 1396 *et seq.*), and did not address disclosure of children's eligibility information to SCHIP, which was established in later Federal legislation. The Department issued a proposed rule, which would have extended the provisions to all the Child Nutrition Programs, (65 FR 45725, July 25, 2000) with a 90-day public comment period to implement the disclosure provisions of Public Law 103-448.

#### *Public Law 106-224*

The Agricultural Risk Protection Act of 2000, Public Law 106-224, enacted

on June 20, 2000, further amended the disclosure provisions in section 9(b)(2)(C) of the NSLA (42 U.S.C. 1758(b)(2)(C)). In general, Public Law 106-224 included the following provisions:

1. Authorized disclosure of children's eligibility information to Medicaid and SCHIP provided that the following conditions are met:

- Both the State agency and school food authority must elect to disclose eligibility information to these health insurance programs;
- School and health insurance program officials must have a written agreement that requires the health insurance program to use the information to seek to enroll children in Medicaid and SCHIP; and
- Parents/guardians must be notified that their eligibility information may be disclosed to Medicaid or SCHIP and given an opportunity to decline to have their children's eligibility information disclosed.

2. Directed the Department to promptly promulgate regulations to implement the disclosure provisions of Public Law 106-224 without regard to the Administrative Procedure Act's notice and comment provisions, the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) or the Paperwork Reduction Act facilitated making health insurance benefits available to low-income children as quickly as possible.

In implementing the provisions of Public Law 106-224, the Department issued an interim rule with a request for comments (66 FR 2195, January 11, 2001). The Department sought comments on the disclosure of eligibility information to Medicaid and SCHIP due to the sensitivity of household privacy issues and also to gain insights on operational experience prior to issuing a final regulation.

Additionally, at the time, the Department was reviewing comments received on its proposed rule to implement the disclosure provisions of Public Law 103-448 (discussed above) which would allow the disclosure of eligibility information to education and several other programs and individuals. The interim rule became effective on October 1, 2000, and amended 7 CFR Parts 215, 225, 226, and 245 to allow determining agencies (agencies responsible for the determination of free and reduced price meals or free milk) to disclose children's eligibility information to Medicaid and SCHIP under the conditions mandated by Public Law 106-224, as listed above. Issuance of an interim rule allowed the Department to comply with the

Congressional mandate to promulgate regulations regarding disclosures to Medicaid and SCHIP, and to collect public comment on these important requirements. As stated in the Preamble to the interim rule, it was our clear intent to then publish a final rule, incorporating the comments received.

#### *Public Law 108-265*

The Child Nutrition and WIC Reauthorization Act of 2004, enacted June 30, 2004, (Pub. L. 108-265) amended the Richard B. Russell National School Lunch Act in a number of ways. First, it redesignated section 9(b)(2)(C)(iii), which contains the disclosure provisions, to section 9(b)(6) and second, titled the section "Use or Disclosure of Information." Third, Public Law 108-265 added a provision allowing school officials to provide third party contractors access to children's free and reduced price meal eligibility status when the contractors are assisting school food authorities with contacting households which do not respond to the school's verification efforts. The amendments were nondiscretionary and are codified in this final rule at 7 CFR 215.13a(g)(1), 225.15(g)(1), 226.23(i)(1) and 245.6(k)(1). Finally, the NSLA now allows Medicaid and SCHIP officials to use the eligibility information to verify children's eligibility for programs under the NSLA or CNA. Previously, determining officials could disclose children's eligibility information to Medicaid and SCHIP solely for the purpose of identifying and enrolling eligible children in a health insurance program. These statutory provisions were also non-discretionary and are codified in this final rule at 7 CFR 215.13a(h)(2), 225.15(h)(2), 226.23(j)(2), and 245.6(g)(2).

#### *Summary of Current Disclosure Regulations*

Regulations for the Child Nutrition Programs, as amended by the interim rule to implement Public Law 106-224, in general allow the disclosure of children's free and reduced price meal eligibility information to Medicaid and SCHIP officials when both the State agency and school food authority elect to disclose eligibility information to these health insurance programs; when determining agencies and health insurance program officials have a written agreement that requires the health insurance program agency to use the information to seek to enroll eligible children in Medicaid and SCHIP; and when parents/guardians are given an opportunity to decline to have their children's eligibility information

disclosed. Sections 215.2, 225.2, 226.2 and 245.2 include definitions for the terms “Disclosure,” “Medicaid” and “SCHIP.”

Current 7 CFR Part 215, as amended by the interim rule, requires that the free milk application used in child care centers include a Privacy Act notice/statement. Note that schools that participate in the SMP follow the provisions contained in 7 CFR Part 245, which includes requirements for a Privacy Act notice/statement. Section 215.13a provides a prototype Privacy Act notice/statement for the milk application and the prototype Privacy Act notices/statements provided in 7 CFR Parts 225, 226 and 245 were revised to be consistent with the simplified notice/statement added to 7 CFR Part 215.

#### *Summary of Disclosure Provisions Implemented Through Guidance*

Guidance was issued December 1998, to explain the disclosure provisions of Public Law 103–448 contained in the proposed rule. The proposed rule was published in 2000. Determining agencies are operating under that guidance for disclosures to education and certain other programs and activities specified in Public Law 103–448. Additionally, the Department issued guidance on disclosing eligibility information in cases when parents/guardians authorize the disclosure. Parents/guardians may provide consent for the disclosure of information that goes beyond that authorized by the statute.

#### *General Comments on the Proposed and Interim Rules*

We received twelve comments on the proposed rule and eight comments on the interim rule. Commenters generally were supportive of the proposed and interim rules in that they believe that the provisions are in accordance with the statute. Several commenters view the sharing of free and reduced price eligibility information as helpful in streamlining the enrollment process for other programs that also serve low-income individuals. Other commenters oppose any sharing of households’ free and reduced price meal or free milk eligibility information. They cite privacy concerns, the potential for deterring participation in the Child Nutrition Programs and additional burdens on school food service staff due to requests for children’s free and reduced price eligibility information. This preamble discusses the specific provisions and comments received.

#### *Changes Being Made to Current Regulations in This Final Rule*

In general, no major changes are being made to the current regulations relating to the disclosure of children’s eligibility information to Medicaid and SCHIP. However, Section 104 (b)(i) of Public Law 108–265 amended the disclosure provisions contained in the NSLA. As a result, Medicaid and SCHIP officials are now allowed to verify children’s eligibility for a program under the NSLA or Child Nutrition Act of 1966. An amendment to current regulations to accommodate this nondiscretionary provision is included in this rule.

Additionally, because this rule adds the disclosure provisions of Public Law 103–448 and Public Law 108–265 to the current disclosure provisions, the section numbers for many of the provisions are changed from the current or proposed designations and obsolete references are deleted. Further, several commenters did not like the section headings in question format. Because of their concerns, the section headings are revised to a statement format consistent with most of the sections headings currently in the regulations. For a detailed explanation of the provisions, the reader may refer to the interim and proposed rules published at 65 FR 45725 and 66 FR 2195, respectively. A discussion of the major provisions follows.

#### *Discussion of the Proposed Current Regulations and How the Major Provisions Are Being Addressed*

1. Applicability to all the Child Nutrition Programs—Although the NSLA addresses the disclosure of children’s free and reduced price school lunch eligibility information, the interim rule extended the provisions to all the Child Nutrition Programs to provide consistency among the programs. This was consistent with Food and Nutrition Service’s (FNS) practices and policies as discussed in the interim rule. The proposed rule also would have extended the disclosure provisions to all the Child Nutrition Programs. Commenters did not address this issue.

Final rule—The disclosure provisions continue to apply to all the Child Nutrition Programs.

2. Definitions—The interim rule added the terms, “disclosure,” “Medicaid” and “State Children’s Health Insurance Program (SCHIP)” to current §§ 215.2, 225.2, 226.2, and 245.2 in the alphabetical lists of definitions. One commenter addressed the definitions and that commenter concurred with the meanings ascribed

to the terms. The proposed rule did not include any definitions.

Final Rule—In §§ 215.2, 225.2, 226.2, and 245.2, the definitions “Medicaid” and “State Children’s Health Insurance Program (SCHIP)” are adopted without change. The definition “Disclosure” is revised in this final rule to improve readability. No substantial changes are made to the definition.

3. Prototype Privacy Act Notice/Statement—The interim rule revised the programs’ previous regulatory prototype Privacy Act notice/statement to make the notice/statement more understandable by simplifying the wording. The Privacy Act notice/statement must inform households whether the information being requested is mandatory or voluntary; the authority for the request; how the information may be used; and the consequence of not providing the information. Sections 215.13a(f), 225.15(f)(4)(iv), 226.23(e)(1)(ii)(F) and 245.6(a)(1) currently provide a prototype statement. Additionally, §§ 215.13a(g)(6), 225.15(g)(6), 226.23(i)(6), and 245.6(f)(6) require schools and institutions intending to disclose social security numbers to include additional information in their Privacy Act notices/statements that inform households of the potential disclosures and the planned uses of the numbers. The NSLA permits the disclosure of all eligibility information to some entities. This disclosure may include the social security number of the adult household member who signs the application. Social security numbers also may be disclosed with prior notice and parental/guardian consent.

One commenter addressed the Privacy Act notice/statement and expressed agreement with the Department that households should be made aware of potential uses of the information. The Department reminds readers that State agencies and school food authorities are responsible for ensuring that the Privacy Act notice/statement included on their applications comply with section 7(b) of the Privacy Act.

Final Rule—Sections 215.13a(f), 215.13a(i), 225.15(f)(4)(iv), 225.15(i)(1), 226.23(e)(1)(ii)(F), 226.23(k), and 245.6(a)(1) and 245.6(h) provide a prototype Privacy Act notice/statement and require that households be given adequate notice regarding the request for free and reduced price eligibility information and how the information, including social security numbers, will be used.

4. Responsibility for deciding whether to disclose eligibility information—Currently, §§ 215.13a(g)(1), 225.15(g)(1), 226.23(i)(1), and 245.6(f)(1) require that

both the State agency and local agency that determines free and reduced price meal or free milk eligibility must agree on whether to disclose eligibility information to Medicaid and SCHIP officials. This shared responsibility for determining whether to disclose information to Medicaid and SCHIP is mandated by the NSLA as amended by Public Law 106-224 and was included in the interim regulations.

Unlike with disclosures to Medicaid and SCHIP, the NSLA does not address who has the responsibility for deciding whether to disclose eligibility information to education and other programs authorized to receive eligibility information under Public Law 103-448. The proposed rule and this final rule place this responsibility on the determining agency. As noted in the preamble to the interim rule, the determining agency may be the State agency, when that agency makes the eligibility determination, or it may be a school within the school food authority, a child care institution, or a Summer Food Service Program sponsor who makes the free and reduced price meal or free milk eligibility determinations. No comments were received on this provision.

Two individuals commenting on the proposed rule expressed concern that it would be difficult to refuse requests for eligibility information. We agree that there often is pressure to disclose eligibility information. Determining agencies must evaluate each request for information to ensure that, at a minimum, the disclosure is in accordance with statutory and regulatory provisions. Additionally, determining agencies should consider, along with the agency requesting the information, whether aggregate data is sufficient.

Although currently the National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program (SMP), Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP) regulations do not address the disclosure of aggregate information, the disclosure of aggregate data is allowed because individuals cannot be personally identified. This is consistent with longstanding FNS policy and practices. As proposed at §§ 215.13a(g)(2), 225.15(g)(2), 226.23(i)(2), and 245.6(f)(2), we would codify this policy. A commenter stated that the disclosure of aggregate information could result in the disclosure of personal information. The Department acknowledges that it might be possible for a determining agency to improperly disclose information making

a person's identity recognizable. Determining officials should be aware of the possibility of inadvertently disclosing personally identifiable information when releasing aggregate information, carefully reviewing the data to ensure that the identities of children or their households are masked or cannot be identified by the combining of information or by deduction. This is essential in every disclosure.

Final Rule—Sections 215.13a(g), 225.15(g), 226.23(i), and 245.6(f) specify that determining agencies may release aggregate data, without parental/guardian consent, provided children cannot be identified through disclosure of the data or by deduction and that determining agencies are responsible for deciding whether to disclose eligibility information; and that, for disclosures to individuals and programs other than to Medicaid and SCHIP, determining agencies are responsible for deciding whether or not to disclose individual children's eligibility. Readers are reminded that State agencies may prohibit the disclosure of free and reduced price eligibility information in schools and institutions under their jurisdiction at their discretion. For disclosures to Medicaid and SCHIP, §§ 215.13a(h), 225.15(h), 226.23(j) and 245.6(g) of this final rule continue to require that both the State agency and local determining agency must agree to disclose eligibility information to Medicaid and SCHIP.

5. Notice to parents about potential disclosures—Currently, once the joint decision is made by State agencies and local determining agencies to release information to Medicaid and SCHIP, the regulations at §§ 215.13a(g)(5), 225.15(g)(5), 226.23(i)(5), and 245.6(f)(5) require that parents are notified of the upcoming disclosure and given opportunity to decline the disclosure, as mandated by the NSLA. For disclosures to education and other programs and individuals permitted access to eligibility information by the NSLA permits the disclosure without parental/guardian consent and does not include a requirement for parental/guardian notification prior to the disclosure. The proposed rule would not have required notification to parents/guardians of potential disclosures to education and other programs and individuals, as long as the disclosure was in accordance with the NSLA, *i.e.*, disclosure of names and eligibility status. However, the preamble to the proposed rule suggested that officials notify parents of how their information will be used. It was suggested that officials include the notification in the letter/notice to

parents that accompanies the free and reduced price meal and free milk application; on the application; or in the case of direct certification, on the document informing households of their eligibility. One commenter addressed this provision. The commenter believes that parents should be informed of all disclosures. The Department agrees.

Final Rule—Sections 215.13a(i), 225.15(i), 226.23(k) and 245.6(h) require determining agencies to notify parents/guardians of potential disclosure of their eligibility information at the time of application or when the household is directly certified.

6. Parental consent/declination to the disclosure of the household's eligibility information—As mentioned above, prior to any disclosure to Medicaid or SCHIP, parents/guardians must be given the opportunity to decline to have their information disclosed to those health insurance agencies; *i.e.*, opt out. This opt out provision was mandated by a provision in Public Law 106-224 amending the NSLA and is currently codified at §§ 215.13a(g)(5), 225.15(g)(5), 226.23(i)(5), and 245.6(f)(5). No specific timeframe for households to respond was specified in the NSLA or the rule. Rather the regulations require that households be informed that their information may be disclosed to Medicaid and SCHIP unless they notify the determining agency by a date, chosen by the determining agency, if they do not want their information disclosed to those health insurance agencies. No response from the parent/guardian by the date specified is considered consent, (*i.e.*, passive consent) and allows the determining agency to disclose children's eligibility information to Medicaid and SCHIP.

Previously, amendments to the NSLA by Public Law 103-448 authorized determining agencies to disclose certain limited information to educational and certain other programs and individuals without parental/guardian consent. Therefore, §§ 215.13a(g)(8) and (g)(9), 225.15(g)(8) and (g)(9), 226.23(i)(8) and (g)(9), and 245.6(f)(8) and (f)(9) of the proposed rule would have, without requiring parental/guardian consent, permitted determining agencies to make disclosure consistent with the NSLA.

An indication of parental/guardian consent, however, would be required when the disclosure would go beyond the scope of the statute, such as a disclosure to a program or individual not authorized by the statute to receive eligibility information or the disclosure of information goes beyond the information allowed by the statute to be disclosed to a particular entity. For example, a Federal education program is

authorized to have information regarding a student's eligibility status but no other information on the application. If an education program wanted names of household members, the determining agency must obtain parental/guardian consent prior to disclosing that information. Additionally, some determining agencies include on the free and reduced price meal application a list of other benefits, such as programs or services for which a household may be eligible; *i.e.*, free or reduced cost bus transportation, text books, eye exams, or other school related fees. In those cases, to obtain a listed benefit, the parent/guardian must take action, (*i.e.*, check a box to indicate consent (opt in)), before their information may be disclosed.

One individual commenting on the interim rule suggested that the parents be given, by regulation, a specified length of time to respond before consent to disclose information to Medicaid or SCHIP is assumed. Currently, §§ 215.13a(g)(5), 245.6(f)(5), 225.15(g)(5) and 226.23(i)(5) require that parents must be given adequate time to respond before information is disclosed, but leaves it to local agencies to determine how much time is adequate. The Department has determined that local officials are in a better position to assess what constitutes adequate time to respond.

Additionally, a commenter took the position that requiring the parent to actively provide consent is preferable to passive consent; *i.e.*, assuming consent when the parent/guardian does not notify/indicate that they do not want their information disclosed. The former is the case with disclosures to Medicaid and SCHIP. The commenter stated that most other disclosures require the parents to take action by providing a check mark, for example, to indicate that their information may be disclosed. The commenter believes that consistency would be less confusing for parents/guardians. Public Law 106-224 mandates that disclosures to Medicaid and SCHIP be allowed to occur unless parents/guardians decline to have their information disclosed to the health insurance programs, (*i.e.*, opt out). Also, it has been the Department's long-standing policy and practice to require that determining agencies provide parents/guardians the opportunity to opt in when the determining agency provides parents/guardians a choice on whether they want their free and reduced price eligibility information used for other purposes. Providing parents/guardians with the opportunity to agree to have their information used for purposes other than for the purpose

for which the information was originally provided, (*i.e.*, for determining eligibility for free and reduced price meals), gives parents/guardians greater control over their personal information than the opt out approach.

Final rule—For the reasons cited above, §§ 215.13a(i)(2), 225.15(i)(2), 226.23(k)(2) and 245.6(h)(2) continue to require that determining agencies which have decided to disclose information to Medicaid and SCHIP provide parents/guardians the opportunity to decline to have their information disclosed to those health insurance agencies (opt out). Sections 215.13a(j), 225.15(j), 226.23(l) and 245.6(i) require that determining agencies that want to use free and reduced price meal eligibility information for other purposes or that want to disclose the information to programs and individuals who are not authorized to have access to household information by the statute must provide parents/guardians with the opportunity to consent to having their information disclosed. Additionally, no consent is required for disclosure to education and other programs permitted access to children's eligibility status as provided in the statute.

7. Disclosure of information obtained through the verification of eligibility process—The proposed rule included a provision to allow, without parental/guardian consent, the disclosure of household information obtained from sources other than the free and reduced price application or through direct certification, such as information obtained through the verification process. The interim rule did not include a similar provision and, therefore, it is not included in current regulations. Five commenters to the proposed rule opposed the disclosure of information obtained through the verification process stating that this went beyond the disclosure provisions in the NSLA. The Department agrees that the disclosure of eligibility information should be limited to information provided by households on the application or obtained through direct certification, as specified in the statute and should not include information obtained through the verification process.

Final rule: For the reasons cited above, this final rule does not include authority for determining agencies to disclose information obtained through the verification of eligibility process.

8. Persons authorized to receive children's eligibility information and how the information must be used—The NSLA specifies that individuals authorized access to children's eligibility information for health

insurance purposes must be directly connected with the administration of the Medicaid Program or SCHIP. Additionally, the NSLA requires that, for education and the other specified programs or activities listed, the individuals must be either directly connected with administration of the specified program or activity or directly connected to its enforcement. The Department has also specified in guidance that these authorized individuals also must have a need to know children's eligibility information to carry out their duties, since the information must be used for program purposes.

As mandated by the statute, current regulations specify that persons directly connected to the administration of Medicaid or SCHIP are permitted access to children's eligibility information to identify children eligible for enrollment in Medicaid or SCHIP, provided that parents/guardians have not declined to have their information disclosed to those health insurance programs. Public Law 108-265 further allows determining agencies to communicate with Medicaid and SCHIP officials to verify children's eligibility for a Child Nutrition Program. This provision is nondiscretionary and is being added to this final rule. Currently, §§ 215.13a(g)(3), 225.15(g)(3), 226.23(i)(3), and 245.6(f)(3) define a person directly connected with Medicaid and SCHIP as State employees and persons authorized under Federal requirements to carry out initial processing of Medicaid or SCHIP applications or to make eligibility determinations. Please refer to the interim rule for a detailed discussion.

Persons directly connected with the administration or enforcement of Federal and State education programs and several of the other programs authorized access to children's eligibility information under Public Law 103-448 are not as clearly defined. Also, whereas Public Law 106-224 had mandated that children's free and reduced price meal information must be used specifically to identify and enroll eligible children in Medicaid or SCHIP, Public Law 103-448 did not include a clear directive that the information must be used for a specific purpose. The Department has specified the information must be used for a legitimate program purpose of the receiving program.

In 2002 and 2003, joint memoranda were issued by the Department of Education and the Department of Agriculture (USDA) regarding the use of free and reduced price meal eligibility in implementing the No Child Left

Behind provisions. The memorandum, Guidance on Implementing the No Child Left Behind Act (NCLB), December 17, 2002, can be found on the USDA Food and Nutrition Service Web site at <http://www.fns.usda.gov/cnd/lunch/> and then click on "Policy." A follow-up memorandum on implementing NCLB in Provision 2 and 3 schools was later issued on February 20, 2003. However, there remains some confusion regarding the Department of Education's requirements under the No Child Left Behind Act of 2001 (NCLB) and the relationship to children's free and reduced price eligibility information. (NCLB reauthorized Title I, Part A of the Elementary and Secondary Education Act.)

Title I, Part A, as amended by NCLB, requires schools to disaggregate information about children, such as by limited English proficiency, gender, socio-economic status, etc. Certain educational services, such as priority in school choice and remedial programs, are required under NCLB to be provided to disadvantaged students.

Schools tend to use certification for free and reduced price school meals to determine that children are economically disadvantaged. The question has arisen whether each teacher in a school, because they are providing educational services under NCLB, is considered directly connected to NCLB administration, a Federal education program. The disclosure of meal eligibility information must be limited to as few individuals as possible to protect the confidential nature of the information. All teachers in the school do not need to know the names of all children eligible for free and reduced price meals. Rather, most teachers only need to know which children need the additional services. A list of children needing services, without identifying the children as eligible for free or reduced price meals, may be provided to the teachers by someone who was associated with the free and reduced price meal eligibility process, such as a determining official.

Several commenters to the proposed rule requested that the final rule clearly define who are persons directly connected with program administration or enforcement. Additionally several other commenters believe that the need to know criteria are too broad. We acknowledge commenters concerns that often it is difficult to determine who are the persons directly connected with a program and whether they have a legitimate need to know. With that in mind, determining agencies will need to make careful and well informed judgments.

Public Law 108-265 added certain third party contractors as eligible recipients of children's free or reduced price eligibility status only. These contractors must be assisting in contacting households who have not responded to the schools' verification of eligibility efforts. Contracts providing for such assistance services must include confidentiality assurances, binding contractors to follow the provisions of the NSLA and program regulations.

Final rule—The description of persons directly connected to the administration of Medicaid and SCHIP remains as stated in current regulations. The description and how the information may be used are included in §§ 215.13a(h), 225.15(h), 226.23(j) and 245.6(g). For persons directly connected to education and other programs and activities authorized by Public Law 103-448, the proposed rule is adopted in this final rule. These descriptions and how children's eligibility information may be used are included at §§ 215.13a(g), 225.15(g), 226.23(i) and 245.6(f).

9. Agreement/Memorandum of Understanding—Sections 215.13a(g)(7), 225.15(g)(7), 226.23(i)(7), and 245.6(f)(7) currently require determining agencies that choose to disclose children's eligibility information to Medicaid and SCHIP to have an agreement or Memorandum of Understanding (MOU) with the receiving agency. In the case of disclosures to Medicaid or SCHIP, an agreement/MOU is mandated by the NSLA and is, therefore, nondiscretionary. The agreement/MOU would include such provisions as who will receive the information, how the information will be used, how it will be protected from unauthorized uses and third party disclosures, and acknowledgement of the penalties for misuse of the information. The NSLA does not require or address an agreement or MOU between the determining agency and other individuals or agencies to which children's eligibility status or other information is disclosed. However, in the preamble to the proposed rule, we strongly recommended that determining agencies consider using an agreement.

Two commenters advised that an agreement/MOU should be required for all disclosures of confidential information. The Department agrees and expects that the determining agency should have a written record of individuals and programs that are provided children's eligibility status and/or all eligibility information. An agreement/MOU or other type of written record would serve to advise recipients

of their responsibilities to maintain the confidential nature of the information, guard against its misuse, and put the recipient on notice of the penalties for misuse of the information. The Department will let determining agencies decide whether a formal or other type of agreement is necessary, such as a list of persons and programs granted access to eligibility information. Except for disclosure to Medicaid and SCHIP, the regulations will continue to recommend, rather than require, that determining agencies use an agreement/MOU when disclosing children's eligibility information to other individuals or agencies.

Final rule—Sections 215.13a(k), 225.15(k), 226.23(m), and 245.6 (j) require that determining agencies have an agreement/MOU for disclosures to Medicaid and SCHIP and recommend that the determining agency and other recipient agencies enter into an agreement/MOU prior to the disclosure of children's free and reduced price eligibility information for other purposes.

10. Penalties—The NSLA specifies a fine of not more than \$1000 and imprisonment for up to 1 year for unauthorized disclosures and misuse of children's eligibility information. This provision is nondiscretionary. The provision was included in both the proposed and interim rules.

Final rule—This final rule retains the penalties stated above at §§ 215.13a(l), 225.15(l), 226.23(n) and 245.6(k).

11. Technical Amendments—This rule also makes several technical amendments to correct or remove obsolete references or provisions. Section 210.19(c)(6)(ii) is revised to replace the acronym AFDC (Aid to Families with Dependent Children) with the acronym TANF (Temporary Assistance for Needy Families), the acronym for the program that replaced AFDC, and adding the words "other FDPIR identifier" in §§ 210.19(c)(6)(ii) and 245.2(a-4)(ii) to clarify that in some cases households participating in FDPIR do not have a case number, but instead are issued another type of identifier. Additionally, corrections are made to the definitions "School" in § 215.2 and "Children" in §§ 210.2 and 220.2 to remove incorrect citations or references.

## Procedural Matters

### *Executive Order 12866*

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

*Regulatory Impact Analysis*

## Need for Action

This final rule provides for the statutory limitations under which children's free and reduced price meal or free milk eligibility information may be disclosed, without parental/guardian consent. This final rule provides State agencies and local program operators that administer the Child Nutrition Programs, as well as households which apply for and/or are approved for free and reduced price meals or free milk the specifics on how and when information may be disclosed. This final rule reflects the disclosure provisions of the Healthy Meals for Healthy Americans Act of 1994 as well as the disclosure provisions of the Agricultural Risk Protection Act of 2000. Additionally, in accordance with the mandates of the Child Nutrition and WIC Reauthorization Act of 2004, this final rule will allow certain third party contractors access to children's eligibility status and will allow school officials to communicate with Medicaid and SCHIP officials to verify that children are eligible for free and reduced price school meals or free milk.

## Benefits

Potential benefits from the sharing of meal benefit eligibility data include reducing redundant means testing, increasing the number of needy families being reached by assistance programs, improving targeting of U.S. Department of Education's programs for needy children, and increasing the integrity of certain assistance programs. The disclosure provisions are intended to reduce paperwork for administrators of certain programs that target low-income households and for low-income households who may benefit from those programs by allowing some sharing of household's free and reduced price meal eligibility information.

## Costs

Potential costs include an additional administrative burden imposed on school food authorities, privacy infringement on some families, and an increase in program costs for programs that acquire meal benefit eligibility data through this rule. These costs are not expected to be significant. Based on the regulatory impact analysis as well as comments received on the proposed rule, the potential benefits of the final rule are expected to outweigh the potential costs.

*Regulatory Flexibility Act*

This final rule has been reviewed with regard to the requirements of the

Regulatory Flexibility Act (5 U.S.C. 601–612). Nancy Montanez Johner, Under Secretary for Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. While a regulatory impact analysis was conducted to determine the costs and benefits of the rule, the potential costs and benefits are too diverse and too uncertain to be quantified. The parents and guardians of children applying for free or reduced price meal benefits or free milk will be impacted by the disclosure provisions as well as school districts required to maintain confidentiality.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes a requirement 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 generally prepares a written statement, including a cost-benefit analysis. This is done for proposed and final rules that have "Federal mandates" which may result in expenditures of \$100 million or more in any one year by State, local, or tribal governments, in the aggregate, or by the private sector. When this statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives. It must then adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates of \$100 million or more in any one year (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

*Executive Order 12372*

The School Breakfast Program, National School Lunch Program, Special Milk Program, the Summer Food Service Program, and the Child and Adult Care Food Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.553, 10.555, 10.556, 10.559, and 10.558 respectively. These programs are 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 29115, June 24, 1983).

*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 regulation describing the agency's considerations in terms of the three categories called for under section (6)(a)(B) of Executive Order 13132:

## Prior Consultation With State Officials

Prior to drafting this final rule, we received input from State and local agencies at various times. The Child Nutrition Programs (CNP) are State administered, federally funded programs. Food and Nutrition Service headquarters and regional staff have informal and formal discussions with State and local officials on an ongoing basis regarding program implementation and performance. This arrangement allows State and local agencies to provide feedback that forms the basis for any discretionary decisions in this and other CNP rules. The provisions in this rule are primarily non-discretionary in response to Public Law 103–448, Public Law 106–224 and Public Law 108–265. However, we received comments to the proposed and interim rules from State agencies and school food authorities which were taken into consideration in developing this final rule.

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

State and local agencies are generally concerned about protecting the confidentiality of children's eligibility information. They are also concerned about the paperwork and financial burdens placed on food service to provide eligibility information to Medicaid and SCHIP officials and the numerous Federal and State education and other programs that request the information throughout the year.

The issuance of this regulation is required by amendments made to the Richard B. Russell National School Lunch Act by Public Law 103–448, Public Law 106–224 and Public Law 108–265. Prior to those amendments, program official could only disclose children's eligibility information with parental consent. This rule establishes and codifies the requirements for any disclosure of children's eligibility information.

## Extent to Which We Meet These Concerns

We believe that we adequately address the issue of State and local flexibility. We clarify (consistent with

the requirements of this rule) that the disclosures of children's eligibility information for use other than to determine and verify eligibility for free and reduced price meals or free milk is a State and local decision. Officials are not required to disclose children's eligibility information. When an exchange of information is agreed upon, we encourage State and local agencies to work with the receiving agency officials to make the exchange of eligibility information as streamlined as possible. Additionally, we have issued prototype materials, such as a prototype agreement between program operators and an agency receiving eligibility information and a prototype notification to parents/guardians a school may use to explain to parents that their children's eligibility information may be disclosed. Additionally, we have clarified through guidance that the school food service may require reimbursement for administrative costs of providing free and reduced price eligibility information to other programs.

Federal and State education programs are the most frequent users of children's free and reduced price meal eligibility information. We encourage food service and the education community to work together to minimize the burdens on food service to limit requests for free and reduced price meal eligibility information to the extent possible. In this regard, Department of Education and Food and Nutrition Service officials have issued joint memoranda on the issue of disclosure of children's free and reduced price eligibility information. These memoranda may be viewed at <http://www.fns.usda.gov/cnd/lunch/> and then click on "Policy."

#### *Executive Order 12988*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It 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 impede its full implementation. This rule is not intended to have retroactive effect unless that is specified in the Effective Date section of the preamble of the final rule. Before any judicial challenge to the provisions of this rule or the application of its provisions, all administrative procedures that apply must be followed. The only administrative appeal procedures relevant to this rule are the hearings that FNS must provide for decisions relating to eligibility for free and reduced price meals and free milk (§ 245.7 for the NSLP, SBP, and SMP in schools; § 225.13 for the SFSP, and § 226.23(e)(5) for the CACFP).

#### *Civil Rights Impact Analysis*

FNS has reviewed this final 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 race, color, national origin, sex, age 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 Child Nutrition Programs.

#### *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. Information collections in this final rule have been approved by OMB under OMB control numbers 0584-0005, 0584-0280, 0584-0055, and 0584-0026.

#### *E-Government Act Compliance*

FNS is committed to compliance 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*

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 215*

Food assistance programs, Grant programs-education, Grant programs-health, Infants and children, Milk, Reporting and recordkeeping requirements.

##### *7 CFR Part 220*

Children, Food assistance programs, Grants programs-social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

##### *7 CFR Part 225*

Food assistance programs, Grant programs-health, Infants and children, Labeling, Reporting and recordkeeping requirements.

##### *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.

##### *7 CFR Part 245*

Civil rights, Food assistance programs, Grant programs-education, Grant programs-health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

■ Accordingly, 7 CFR Parts 210, 215, 220, 225, 226, and 245 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.

##### **§ 210.2 [Amended]**

■ 2. In § 210.2, remove the phrase "and (d)" in paragraph (b) of the definition Child in the alphabetical listing.

■ 3. In § 210.19, revise paragraph (c)(6)(ii) to read as follows:

##### **§ 210.19 Additional responsibilities.**

\* \* \* \* \*

(c) \* \* \*  
(6) \* \* \*

(ii) When any review or audit reveals that a school food authority is approving applications which indicate that the households' incomes are within the Income Eligibility Guidelines issued by the Department or the applications contain food stamp or TANF case numbers or FDPIR case numbers or other FDPIR identifiers but the applications are missing the documentation specified under § 245.2(a-4)(1)(ii); or

\* \* \* \* \*

#### **PART 215—SPECIAL MILK PROGRAM FOR CHILDREN**

■ 1. The authority citation for part 215 continues to read as follows:

**Authority:** 42 U.S.C. 1772 and 1779.

■ 2. In § 215.2, amend paragraph (e-1) by removing the phrase "and 4" and revise paragraph (i-1) to read as follows:

##### **§ 215.2 Definitions.**

\* \* \* \* \*

(i-1) *Disclosure* means reveal or use individual children's program eligibility information obtained through the free

milk eligibility process for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche, electronic communication or any other means.

\* \* \* \* \*

■ 3. In § 215.13a, revise paragraphs (f) and (g) and add new paragraphs (h) through (l) to read as follows:

**§ 215.13a Determining eligibility for free milk in child-care institutions.**

\* \* \* \* \*

(f) *Privacy Act notice requirements.*

The free milk application provided to households must include a Privacy Act notice/statement informing households of how the social security number and other information provided on the application will be used. Each free milk application must include substantially the following statement, "The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free milk. You must include the social security number of the adult household member who signs the application. The social security number is not required when you apply on behalf of a foster child or you list a Food Stamp, Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number for your child or other FDPIR identifier or when you indicate that the adult household member signing the application does not have a social security number. We will use your information to determine if your child is eligible for free milk, and for administration and enforcement of the Program." When the State agency or child care institution, as appropriate, plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in paragraph (i) of this section must be added to the Privacy Act notice/statement. State agencies and child care institutions are responsible for drafting the appropriate notice and ensuring that the notice complies with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note (Disclosure of Social Security Number)).

(g) *Disclosure of children's free milk eligibility information to certain programs and individuals without parental consent.* The State agency or child care institution, as appropriate, may disclose aggregate information about children eligible for free milk to any party without parental notification

and consent when children cannot be identified through release of the aggregate data or by means of deduction. Additionally, the State agency or child care institution may disclose information that identifies children eligible for free milk to the programs and the individuals specified in this paragraph (g) without parent/guardian consent. The State agency or child care institution that makes the free milk eligibility determination is responsible for deciding whether to disclose program eligibility information.

(1) *Persons authorized to receive eligibility information.* Only persons directly connected with the administration or enforcement of a program or activity listed in paragraphs (g)(2) or (g)(3) of this section may have access to children's free milk eligibility information, without parental consent. Persons considered directly connected with administration or enforcement of a program or activity listed in paragraphs (g)(2) or (g)(3) of this section are Federal, State, or local program operators responsible for the ongoing operation of the program or activity or persons responsible for program compliance. Program operators may include persons responsible for carrying out program requirements and monitoring, reviewing, auditing, or investigating the program. Program operators may include contractors, to the extent those persons have a need to know the information for program administration or enforcement. Contractors may include evaluators, auditors, and others with whom Federal or State agencies and program operators contract with to assist in the administration or enforcement of their program on their behalf.

(2) *Disclosure of children's names and free milk eligibility status.* The State agency or child care institution, as appropriate, may disclose, without parental consent, only children's names and eligibility status (whether they are eligible for free milk) to persons directly connected with the administration or enforcement of:

- (i) A Federal education program;
- (ii) A State health program or State education program administered by the State or local education agency;
- (iii) A Federal, State, or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (i.e., food assistance programs for households with incomes at or below 185 percent of the Federal poverty level); or
- (iv) A third party contractor assisting in verification of eligibility efforts by contacting households who fail to

respond to requests for verification of their eligibility.

(3) *Disclosure of all eligibility information.* In addition to children's names and eligibility status, the State agency or child care institution, as appropriate, may disclose, without parental consent, all eligibility information obtained through the free milk eligibility process (including all information on the application or obtained through direct certification) to:

(i) Persons directly connected with the administration or enforcement of programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966. This means that all eligibility information obtained for the Special Milk Program may be disclosed to persons directly connected with administering or enforcing regulations under the National School Lunch Program, School Breakfast Program, Child and Adult Care Food Program, Summer Food Service Program and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (Parts 210, 220, 226, 225, and 246, respectively, of this chapter);

(ii) The Comptroller General of the United States for purposes of audit and examination; and

(iii) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in paragraphs (g)(2) and (g)(3) of this section.

(4) *Use of free milk eligibility information by programs other than Medicaid or the State Children's Health Insurance Program (SCHIP).* State agencies and child care institutions may use children's free milk eligibility information for administering or enforcing the Special Milk Program. Additionally, any other Federal, State, or local agency charged with administering or enforcing the Special Milk Program may use the information for that purpose. Individuals and programs to which children's free milk eligibility information has been disclosed under this section may use the information only in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(h) *Disclosure of children's free milk eligibility information to Medicaid and/or SCHIP, unless parents decline.* Children's free milk eligibility information only may be disclosed to Medicaid or SCHIP when both the State agency and the child care institution so elect, the parent/guardian does not decline to have their eligibility information disclosed and the other provisions described in paragraph (h)(1)

of this section are met. The State agency or child care institution, as appropriate, may disclose children's names, eligibility status (whether they are eligible for free milk), and any other eligibility information obtained through the free milk application or obtained through direct certification to persons directly connected with the administration of Medicaid or SCHIP. Persons directly connected to the administration of Medicaid and SCHIP are State employees and persons authorized under Federal and State Medicaid and SCHIP requirements to carry out initial processing of Medicaid or SCHIP applications or to make eligibility determinations for Medicaid or SCHIP.

(1) The State agency must ensure that:

(i) The child care institution and health insurance program officials have a written agreement that requires the health insurance program agency to use the eligibility information to seek to enroll children in Medicaid and SCHIP; and

(ii) Parents/guardians are notified that their eligibility information may be disclosed to Medicaid or SCHIP and given an opportunity to decline to have their children's eligibility information disclosed, prior to any disclosure.

(2) *Use of children's free milk eligibility information by Medicaid/SCHIP.* Medicaid and SCHIP agencies and health insurance program operators receiving children's free milk eligibility information must use the information to identify eligible children and enroll them in Medicaid or SCHIP. The Medicaid and SCHIP enrollment process may include targeting and identifying children from low-income households who are potentially eligible for Medicaid or SCHIP for the purpose of seeking to enroll them in Medicaid or SCHIP. No further disclosure of the information may be made. Medicaid and SCHIP agencies and health insurance program operators also may verify children's eligibility in a program under the Child Nutrition Act of 1966 or the Richard B. Russell National School Lunch Act.

(i) *Notifying households of potential uses and disclosures of children's free milk eligibility information.* Households must be informed that the information they provide on the free milk application will be used to determine eligibility for free milk and that their eligibility information may be disclosed to other programs.

(1) For disclosures to programs, other than Medicaid or SCHIP, that are permitted access to children's eligibility information without parent/guardian consent, the State agency or child care

institution, as appropriate, must notify parents/guardians at the time of application that their children's free milk eligibility information may be disclosed. The State agency or child care institution, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (f) of this section, "We may share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs; auditors for program reviews; and law enforcement officials to help them look into violations of program rules." For children determined eligible for free milk through direct certification, the notice of potential disclosure may be included in the document informing parents/guardians of their children's eligibility for free milk through direct certification process.

(2) For disclosure to Medicaid or SCHIP, the State agency or child care institution, as appropriate, must notify parents/guardians that their children's free milk eligibility information will be disclosed to Medicaid and/or SCHIP unless the parent/guardian elects not to have their information disclosed and notifies the State agency or child care institution, as appropriate, by a date specified by the State agency or child care institution, as appropriate. Only the parent or guardian who is a member of the household or family for purposes of the free milk application may decline the disclosure of eligibility information to Medicaid or SCHIP. The notification must inform parents/guardians that they are not required to consent to the disclosure, that the information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP, and that their decision will not affect their children's eligibility for free milk. The notification may be included in the letter/notice to parents/guardians that accompanies the free milk application, on the application itself or in a separate notice provided to parents/guardians. The notice must give parents/guardians adequate time to respond if they do not want their information disclosed. The State agency or child care institution, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (f) of this section, "We may share your information with Medicaid or the State Children's Health Insurance Program, unless you tell us not to. The information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP." For

children determined eligible for free milk through direct certification, the notice of potential disclosure and opportunity to decline the disclosure may be included in the document informing parents/guardians of their children's eligibility for free milk through direct certification.

(j) *Other disclosures.* State agencies and child care institutions that plan to use or disclose identifying information about children eligible for free milk to programs or individuals not specified in this section must obtain written consent from children's parents or guardians prior to the use or disclosure.

(1) The consent must identify the information that will be shared and how the information will be used.

(2) There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free milk and that the individuals or programs receiving the information will not share the information with any other entity or program.

(3) Parents/guardians must be permitted to limit the consent only to those programs with which they wish to share information.

(4) The consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free milk application.

(k) *Agreements with programs/individuals receiving children's free milk eligibility information.* Agreements or Memoranda of Understanding (MOU) are recommended or required as follows:

(1) The State agency or child care institution, as appropriate, should have a written agreement or MOU with programs or individuals receiving eligibility information, prior to disclosing children's free milk eligibility information. The agreement or MOU should include information similar to that required for disclosures to Medicaid and SCHIP specified in paragraph (k)(2) of this section.

(2) For disclosures to Medicaid or SCHIP, the State agency or child care institution, as appropriate, must have a written agreement with the State or local agency or agencies administering Medicaid or SCHIP prior to disclosing children's free milk eligibility information to those agencies. At a minimum, the agreement must:

(i) Identify the health insurance program or health agency receiving children's eligibility information;

(ii) Describe the information that will be disclosed;

(iii) Require that the Medicaid or SCHIP agency use the information

obtained and specify that the information must be used to seek to enroll children in Medicaid or SCHIP;

(iv) Require that the Medicaid or SCHIP agency describe how they will use the information obtained;

(v) Describe how the information will be protected from unauthorized uses and disclosures;

(vi) Describe the penalties for unauthorized disclosure; and

(vii) Be signed by both the Medicaid or SCHIP program or agency and the State agency or child care institution, as appropriate.

(l) *Penalties for unauthorized disclosure or misuse of children's free milk eligibility information.* In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.

**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.

**§ 220.2 [Amended]**

■ 2. In § 220.2, amend paragraph (c) by removing phrase “and (4)”.

**PART 225—SUMMER FOOD SERVICE PROGRAM**

■ 1. The authority citation for Part 225 is amended to read as follows:

**Authority:** Secs. 9, 13, and 14, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

■ 2. In § 225.2, revise the definition Disclosure in the alphabetical list to read as follows:

**§ 225.2 Definitions.**

\* \* \* \* \*

*Disclosure* means reveal or use individual children's program eligibility information obtained through the free and reduced price meal eligibility process for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche, electronic communication or any other means.

\* \* \* \* \*

**§ 225.6 [Amended]**

■ 3. In § 225.6:

■ a. Amend paragraph (c)(2)(ii)(C) by removing the reference “§ 225.15(g)” and adding the reference “§ 225.15(h)” in its place;

■ b. Amend paragraph (h)(1) by removing the references “§§ 225.15(g) and 225.17” and adding the references “§§ 225.15(h) and 225.17” in their place;

■ c. Amend paragraph (h)(2) (xvi) by removing the reference “§ 225.15(g)(6)—(8)” and adding the reference “§ 225.15(h)(6) through (h)(8)” in its place; and

■ d. Amend paragraph (h)(7) by removing the reference “§ 225.15(g)(1)” and adding the reference “§ 225.15(h)(1)” in its place.

■ 4. In § 225.15:

■ a. Revise paragraphs (f)(4)(iv) and (g); and

■ b. Redesignate paragraphs (h) and (i) as paragraphs (m) and (n), respectively, and add new paragraphs (h) through (l).

The revisions and additions read as follows:

**§ 225.15 Management responsibilities of sponsors.**

\* \* \* \* \*

(f) \* \* \*

(4) \* \* \*

(iv) A Privacy Act notice informing households of how the social security number and other information provided on the application will be used. Each free and reduced price meal application must include substantially the following statement, “The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free or reduced price meals. You must include the social security number of the adult household member who signs the application. The social security number is not required when you apply on behalf of a foster child or you list a Food Stamp, Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number for your child or other (FDPIR) identifier or when you indicate that the adult household member signing the application does not have a social security number. We will use your information to determine if your child is eligible for free or reduced price meals, and for administration and enforcement of the Program.” When the State agency or sponsor, as appropriate, plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in paragraph (i) of this section, must be

added to the Privacy Act notice/ statement. State agencies and sponsors are responsible for drafting the appropriate notice and ensuring that the notice complies with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note (Disclosure of Social Security Number)).

\* \* \* \* \*

(g) *Disclosure of children's free and reduced price meal eligibility information to certain programs and individuals without parental consent.* The State agency or sponsor, as appropriate, may disclose aggregate information about children eligible for free and reduced price meals to any party without parental notification and consent when children cannot be identified through release of the aggregate data or by means of deduction. Additionally, the State agency or sponsor may disclose information that identifies children eligible for free and reduced price meals to the programs and the individuals specified in this paragraph (g) without parent/guardian consent. The State agency or sponsor that makes the free and reduced price meal eligibility determination is responsible for deciding whether to disclose program eligibility information.

(1) *Persons authorized to receive eligibility information.* Only persons directly connected with the administration or enforcement of a program or activity listed in paragraphs (g)(2) or (g)(3) of this section may have access to children's free and reduced price meal eligibility information, without parental consent. Persons considered directly connected with administration or enforcement of a program or activity listed in paragraphs (g)(2) or (g)(3) of this section are Federal, State, or local program operators responsible for the ongoing operation of the program or activity or persons responsible for program compliance. Program operators may include persons responsible for carrying out program requirements and monitoring, reviewing, auditing, or investigating the program. Program operators may include contractors, to the extent those persons have a need to know the information for program administration or enforcement. Contractors may include evaluators, auditors, and others with whom Federal or State agencies and program operators contract with to assist in the administration or enforcement of their program in their behalf.

(2) *Disclosure of children's names and free or reduced price meal eligibility status.* The State agency or sponsor, as appropriate, may disclose, without parental consent, only children's names

and eligibility status (whether they are eligible for free meals or reduced price meals) to persons directly connected with the administration or enforcement of:

- (i) A Federal education program;
- (ii) A State health program or State education program administered by the State or local education agency;
- (iii) A Federal, State, or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (i.e., food assistance programs for households with incomes at or below 185 percent of the Federal poverty level); or

(3) *Disclosure of all eligibility information.* In addition to children's names and eligibility status, the State agency or sponsor, as appropriate, may disclose, without parental consent, all eligibility information obtained through the free and reduced price meal eligibility process (including all information on the application or obtained through direct certification) to:

(i) Persons directly connected with the administration or enforcement of programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966. This means that all eligibility information obtained for the Summer Food Service Program may be disclosed to persons directly connected with administering or enforcing regulations under the National School Lunch Program, Special Milk Program, School Breakfast Program, Child and Adult Care Food Program, and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (parts 210, 215, 220, 226 and 246, respectively, of this chapter);

(ii) The Comptroller General of the United States for purposes of audit and examination; and

(iii) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in paragraphs (g)(2) and (g)(3) of this section.

(4) *Use of free and reduced price meals eligibility information by programs other than Medicaid or the State Children's Health Insurance Program (SCHIP).* State agencies and sponsors may use children's free and reduced price meal eligibility information for administering or enforcing the Summer Food Service Program. Additionally, any other Federal, State, or local agency charged with administering or enforcing the Summer Food Service Program may use the information for that purpose. Individuals and programs to which children's free or reduced price meal eligibility information has been

disclosed under this section may use the information only in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(h) *Disclosure of children's free or reduced price meal eligibility information to Medicaid and/or SCHIP, unless parents decline.* Children's free or reduced price meal eligibility information only may be disclosed to Medicaid or SCHIP when both the State agency and the sponsor so elect, the parental/guardian does not decline to have their eligibility information disclosed and the other provisions described in paragraph (h)(1) of this section are met. The State agency or sponsor, as appropriate, may disclose children's names, eligibility status (whether they are eligible for free or reduced price meals), and any other eligibility information obtained through the free and reduced price meal applications or obtained through direct certification to persons directly connected with the administration of Medicaid or SCHIP. Persons directly connected to the administration of Medicaid and SCHIP are State employees and persons authorized under Federal and State Medicaid and SCHIP requirements to carry out initial processing of Medicaid or SCHIP applications or to make eligibility determinations for Medicaid or SCHIP.

(1) The State agency must ensure that:

(i) The sponsors and health insurance program officials have a written agreement that requires the health insurance program agency to use the eligibility information to seek to enroll children in Medicaid and SCHIP; and

(ii) Parents/guardians are notified that their eligibility information may be disclosed to Medicaid or SCHIP and given an opportunity to decline to have their children's eligibility information disclosed, prior to any disclosure.

(2) *Use of children's free and reduced price meal eligibility information by Medicaid/SCHIP.* Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal eligibility information must use the information to seek to enroll children in Medicaid or SCHIP. The Medicaid and SCHIP enrollment process may include targeting and identifying children from low-income households who are potentially eligible for Medicaid or SCHIP for the purpose of seeking to enroll them in Medicaid or SCHIP. No further disclosure of the information may be made. Medicaid and SCHIP agencies and health insurance program operators also may verify children's eligibility in a program under the Child

Nutrition Act of 1966 or the Richard B. Russell National School Lunch Act.

(i) *Notifying households of potential uses and disclosures of children's free and reduced price meal eligibility information.* Households must be informed that the information they provide on the free and reduced price meal application will be used to determine eligibility for free or reduced price meals and that their eligibility information may be disclosed to other programs.

(1) For disclosures to programs, other than Medicaid or the State Children's Health Insurance Program (SCHIP), that are permitted access to children's eligibility information, without parental/guardian consent, the State agency or sponsor, as appropriate, must notify parents/guardians at the time of application that their children's free or reduced price meal eligibility information may be disclosed. The State agency or sponsor, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (f)(4)(iv) of this section, "We may share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs; auditors for program reviews; and law enforcement officials to help them look into violations of program rules." For children determined eligible for free meals through the direct certification, the notice of potential disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals through direct certification.

(2) For disclosure to Medicaid or SCHIP, the State agency or sponsor, as appropriate, must notify parents/guardians that their children's free or reduced price meal eligibility information will be disclosed to Medicaid and/or SCHIP unless the parent/guardian elects not to have their information disclosed and notifies the State agency or sponsor, as appropriate, by a date specified by the State agency or sponsor, as appropriate. Only the parent or guardian who is a member of the household or family for purposes of the free and reduced price meal application may decline the disclosure of eligibility information to Medicaid or SCHIP. The notification must inform parents/guardians that they are not required to consent to the disclosure, that the information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP, and that their decision will not affect their children's eligibility for free or reduced price meals. The notification

may be included in the letter/notice to parents/guardians that accompanies the free and reduced price meal application, on the application itself or in a separate notice provided to parents/guardians. The notice must give parents/guardians adequate time to respond if they do not want their information disclosed. The State agency or sponsor, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (f) of this section, "We may share your information with Medicaid or the State Children's Health Insurance Program, unless you tell us not to. The information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP." For children determined eligible for free meals through direct certification, the notice of potential disclosure and opportunity to decline the disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals through direct certification process.

(j) *Other disclosures.* State agencies and sponsors that plan to use or disclose information about children eligible for free and reduced price meals in ways not specified in this section must obtain written consent from children's parents or guardians prior to the use or disclosure.

(1) The consent must identify the information that will be shared and how the information will be used.

(2) There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free meals and that the individuals or programs receiving the information will not share the information with any other entity or program.

(3) Parents/guardians must be permitted to limit the consent only to those programs with which they wish to share information.

(4) The consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free and reduced price meal application.

(k) *Agreements with programs/individuals receiving children's free or reduced price meal eligibility information.* Agreements or Memoranda of Understanding (MOU) are recommended or required as follows:

(1) The State agency or sponsor, as appropriate, should have a written agreement or MOU with programs or individuals receiving eligibility information, prior to disclosing children's free and reduced price meal eligibility information. The agreement or MOU should include information

similar to that required for disclosures to Medicaid and SCHIP specified in paragraph (k)(2) of this section.

(2) For disclosures to Medicaid or SCHIP, the State agency or sponsor, as appropriate, must have a written agreement with the State or local agency or agencies administering Medicaid or SCHIP prior to disclosing children's free or reduced price meal eligibility information to those agencies. At a minimum, the agreement must:

(i) Identify the health insurance program or health agency receiving children's eligibility information;

(ii) Describe the information that will be disclosed;

(iii) Require that the Medicaid or SCHIP agency use the information obtained and specify that the information must be used to seek to enroll children in Medicaid or SCHIP;

(iv) Require that the Medicaid or SCHIP agency describe how they will use the information obtained;

(v) Describe how the information will be protected from unauthorized uses and disclosures;

(vi) Describe the penalties for unauthorized disclosure; and

(vii) Be signed by both the Medicaid or SCHIP program or agency and the State agency or sponsor, as appropriate.

(l) *Penalties for unauthorized disclosure or misuse of children's free and reduced price meal eligibility information.* In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.

\* \* \* \* \*

**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 § 226.2, revise the definition Disclosure in the alphabetical list to read as follows:

**§ 226.2 Definitions.**

\* \* \* \* \*

*Disclosure* means reveal or use individual children's program eligibility information obtained through the free and reduced price meal eligibility

process for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche, electronic communication or any other means.

\* \* \* \* \*

■ 3. In § 226.23, revise paragraphs (e)(1)(ii) (F) and (i) and add new paragraphs (j) through (n) at the end to read as follows:

**§ 226.23 Free and reduced-price meals.**

\* \* \* \* \*

(e)(1) \* \* \*

(ii) \* \* \*

(F) A statement that includes substantially the following information, "The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free or reduced price meals. You must include the social security number of the adult household member who signs the application. The social security number is not required when you apply on behalf of a foster child or you list a Food Stamp, Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number for your child or other (FDPIR) identifier or when you indicate that the adult household member signing the application does not have a social security number. We will use your information to determine if your child is eligible for free or reduced price meals, and for administration and enforcement of the Program." When the State agency or child care institution, as appropriate, plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in paragraph (k) of this section, must be added to the Privacy Act notice/statement. State agencies and child care institutions are responsible for drafting the appropriate notice and ensuring that the notice complies with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note (Disclosure of Social Security Number)); and

\* \* \* \* \*

(i) *Disclosure of children's free and reduced price meal eligibility information to certain programs and individuals without parental consent.* The State agency or child care institution, as appropriate, may disclose aggregate information about children eligible for free and reduced price meals to any party without parental notification and consent when children cannot be identified through release of

the aggregate data or by means of deduction. Additionally, the State agency or institution may disclose information that identifies children eligible for free and reduced price meals to the programs and the individuals specified in this paragraph (i) without parental/guardian consent. The State agency or child care institution that makes the free and reduced price meal eligibility determination is responsible for deciding whether to disclose program eligibility information.

(1) *Persons authorized to receive eligibility information.* Only persons directly connected with the administration or enforcement of a program or activity listed in paragraphs (i)(2) or (i)(3) of this section may have access to children's free milk eligibility information, without parental consent. Persons considered directly connected with administration or enforcement of a program or activity listed in paragraphs (i)(2) or (i)(3) of this section are Federal, State, or local program operators responsible for the ongoing operation of the program or activity or persons responsible for program compliance. Program operators may include persons responsible for carrying out program requirements and monitoring, reviewing, auditing, or investigating the program. Program operators may include contractors, to the extent those persons have a need to know the information for program administration or enforcement. Contractors may include evaluators, auditors, and others with whom Federal or State agencies and program operators contract with to assist in the administration or enforcement of their program in their behalf.

(2) *Disclosure of children's names and free or reduced price meal eligibility status.* The State agency or child care institution, as appropriate, may disclose, without parental consent, only children's names and eligibility status (whether they are eligible for free meals or reduced price meals) to persons directly connected with the administration or enforcement of:

- (i) A Federal education program;
- (ii) A State health program or State education program administered by the State or local education agency;
- (iii) A Federal, State, or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (*i.e.*, food assistance programs for households with incomes at or below 185 percent of the Federal poverty level); or
- (iv) A third party contractor assisting in verification of eligibility efforts by contacting households who fail to

respond to requests for verification of their eligibility.

(3) *Disclosure of all eligibility information.* In addition to children's names and eligibility status, the State agency or child care institution, as appropriate, may disclose, without parental/guardian consent, all eligibility information obtained through the free and reduced price meal eligibility process (including all information on the application or obtained through direct certification) to:

(i) Persons directly connected with the administration or enforcement of programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966. This means that all eligibility information obtained for the Child and Adult Care Food Program may be disclosed to persons directly connected with administering or enforcing regulations under the National School Lunch Program, Special Milk Program, School Breakfast Program, Summer Food Service Program, and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (Parts 210, 215, 220, 225 and 246, respectively, of this chapter);

(ii) The Comptroller General of the United States for purposes of audit and examination; and

(iii) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in paragraphs (i)(2) and (i)(3) of this section.

(4) *Use of free and reduced price meals eligibility information by programs other than Medicaid or the State Children's Health Insurance Program (SCHIP).* State agencies and child care institutions may use children's free milk eligibility information for administering or enforcing the Child and Adult Care Food Program. Additionally, any other Federal, State, or local agency charged with administering or enforcing the Child and Adult Care Food Program may use the information for that purpose. Individuals and programs to which children's free or reduced price meal eligibility information has been disclosed under this section may use the information only in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(j) *Disclosure of children's free or reduced price meal eligibility information to Medicaid and/or SCHIP, unless parents decline.* Children's free or reduced price meal eligibility information only may be disclosed to Medicaid or SCHIP when both the State agency and the child care institution so

elect, the parent/guardian does not decline to have their eligibility information disclosed and the other provisions described in paragraph (j)(1) of this section are met. The State agency or child care institution, as appropriate, may disclose children's names, eligibility status (whether they are eligible for free or reduced price meals), and any other eligibility information obtained through the free and reduced price meal application or obtained through direct certification to persons directly connected with the administration of Medicaid or SCHIP. Persons directly connected to the administration of Medicaid and SCHIP are State employees and persons authorized under Federal and State Medicaid and SCHIP requirements to carry out initial processing of Medicaid or SCHIP applications or to make eligibility determinations for Medicaid or SCHIP.

(1) The State agency must ensure that:

(i) The child care institution and health insurance program officials have a written agreement that requires the health insurance program agency to use the eligibility information to seek to enroll children in Medicaid and SCHIP; and

(ii) Parents/guardians are notified that their eligibility information may be disclosed to Medicaid or SCHIP and given an opportunity to decline to have their children's eligibility information disclosed, prior to any disclosure.

(2) *Use of children's free and reduced price meal eligibility information by Medicaid/SCHIP.* Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal eligibility information must use the information to seek to enroll children in Medicaid or SCHIP. The Medicaid and SCHIP enrollment process may include targeting and identifying children from low-income households who are potentially eligible for Medicaid or SCHIP for the purpose of seeking to enroll them in Medicaid or SCHIP. No further disclosure of the information may be made. Medicaid and SCHIP agencies and health insurance program operators also may verify children's eligibility in a program under the Child Nutrition Act of 1966 or the Richard B. Russell National School Lunch Act.

(k) *Notifying households of potential uses and disclosures of children's free and reduced price meal eligibility information.* Households must be informed that the information they provide on the free and reduced price meal application will be used to determine eligibility for free or reduced price meals and that their eligibility

information may be disclosed to other programs.

(1) For disclosures to programs, other than Medicaid or SCHIP, that are permitted access to children's eligibility information, without parent/guardian consent, the State agency or child care institution, as appropriate, must notify parents/guardians at the time of application that their children's free or reduced price meal eligibility information may be disclosed. The State agency or child care institution, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (e)(1)(ii)(F) of this section, "We may share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs; auditors for program reviews; and law enforcement officials to help them look into violations of program rules." For children determined eligible for free meals through direct certification, the notice of potential disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals through direct certification.

(2) For disclosure to Medicaid or SCHIP, the State agency or child care institution, as appropriate, must notify parents/guardians that their children's free or reduced price meal eligibility information will be disclosed to Medicaid and/or SCHIP unless the parent/guardian elects not to have their information disclosed and notifies the State agency or child care institution, as appropriate, by a date specified by the State agency or child care institution, as appropriate. Only the parent or guardian who is a member of the household or family for purposes of the free and reduced price meal application may decline the disclosure of eligibility information to Medicaid or SCHIP. The notification must inform parents/guardians that they are not required to consent to the disclosure, that the information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP, and that their decision will not affect their children's eligibility for free or reduced price meals. The notification may be included in the letter/notice to parents/guardians that accompanies the free and reduced price meal application, on the application itself or in a separate notice provided to parents/guardians. The notice must give parents/guardians adequate time to respond if they do not want their information disclosed. The State agency or child care institution, as appropriate, must add substantially the

following statement to the Privacy Act notice/statement required under paragraph (e)(1)(ii)(F) of this section, "We may share your information with Medicaid or the State Children's Health Insurance Program, unless you tell us not to. The information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP." For children determined eligible for free meals through direct certification, the notice of potential disclosure and opportunity to decline the disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals through direct certification process.

(1) *Other disclosures.* State agencies and child care institutions that plan to use or disclose information about children eligible for free and reduced price meals in ways not specified in this section must obtain written consent from children's parents or guardians prior to the use or disclosure.

(1) The consent must identify the information that will be shared and how the information will be used.

(2) There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free or reduced price meals and that the individuals or programs receiving the information will not share the information with any other entity or program.

(3) Parents/guardians must be permitted to limit the consent only to those programs with which they wish to share information.

(4) The consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free and reduced price meal application.

(m) *Agreements with programs/individuals receiving children's free or reduced price meal eligibility information.* Agreements or Memoranda of Understanding (MOU) are recommended or required as follows:

(1) The State agency or child care institution, as appropriate, should have a written agreement or MOU with programs or individuals receiving eligibility information, prior to disclosing children's free and reduced price meal eligibility information. The agreement or MOU should include information similar to that required for disclosures to Medicaid and SCHIP specified in paragraph (m)(2) of this section.

(2) For disclosures to Medicaid or SCHIP, the State agency or child care institution, as appropriate, must have a written agreement with the State or local agency or agencies administering

Medicaid or SCHIP prior to disclosing children's free or reduced price meal eligibility information to those agencies. At a minimum, the agreement must:

(i) Identify the health insurance program or health agency receiving children's eligibility information;

(ii) Describe the information that will be disclosed;

(iii) Require that the Medicaid or SCHIP agency use the information obtained and specify that the information must be used to seek to enroll children in Medicaid or SCHIP;

(iv) Require that the Medicaid or SCHIP agency describe how they will use the information obtained;

(v) Describe how the information will be protected from unauthorized uses and disclosures;

(vi) Describe the penalties for unauthorized disclosure; and

(vii) Be signed by both the Medicaid or SCHIP program or agency and the State agency or child care institution, as appropriate.

(n) *Penalties for unauthorized disclosure or misuse of children's free and reduced price meal eligibility information.* In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.

#### **PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS**

■ 1. The authority citation for Part 245 continues to read as follows:

**Authority:** 42 U.S.C. 1752, 1758, 1759a, 1772, 1773 and 1779.

■ 2. In § 245.2, revise paragraph (a-3) to read as follows and amend paragraph (a-4)(1)(ii) by adding the word "FDPIR" between the word "other" and the word "identifier":

#### **§ 245.2 Definitions.**

\* \* \* \* \*

(a-3) *Disclosure* means reveal or use individual children's program eligibility information obtained through the free and reduced price meal or free milk eligibility process for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche,

electronic communication or any other means.

\* \* \* \* \*

#### § 245.5 [Amended]

■ 3. In § 245.5, amend paragraphs (a)(1)(iii) and (a)(1)(iv) by removing the references “§ 245.2(a-4)(1)(i)” and “§ 245.2(a-4)(1)(ii)”, respectively, and by adding in their place the reference “§ 245.2(a-4)”.

■ 4. In § 245.6:

■ a. Revise paragraph (a)(1);

■ b. Revise paragraph (f) and add new paragraphs (g) through (k) at the end.

The revisions and additions read as follows:

#### § 245.6 Certification of children for free and reduced price meals and free milk.

(a) \* \* \*

(1) “The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free or reduced price meals. You must include the social security number of the adult household member who signs the application. The social security number is not required when you apply on behalf of a foster child or you list a Food Stamp, Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number for your child or other FDPIR identifier or when you indicate that the adult household member signing the application does not have a social security number. We will use your information to determine if your child is eligible for free or reduced price meals, and for administration and enforcement of the lunch and breakfast programs.” When the State agency or school food authority, as appropriate, plans to use or disclose children’s eligibility information for non-program purposes, additional information, as specified in paragraph (h) of this section, must be added to the Privacy Act notice/ statement. State agencies and school food authorities are responsible for drafting the appropriate notice and ensuring that the notice complies with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note (Disclosure of Social Security Number)).

\* \* \* \* \*

(f) *Disclosure of children’s free and reduced price meal or free milk eligibility information to education and certain other programs and individuals without parental consent.* The State agency or school food authority, as appropriate, may disclose aggregate information about children eligible for

free and reduced price meals or free milk to any party without parental notification and consent when children cannot be identified through release of the aggregate data or by means of deduction. Additionally, the State agency or school food authority also may disclose information that identifies children eligible for free and reduced price meals or free milk to persons directly connected with the administration or enforcement of the programs and the individuals specified in this paragraph (f) without parent/ guardian consent. The State agency or school food authority that makes the free and reduced price meal or free milk eligibility determination is responsible for deciding whether to disclose children’s free and reduced price meal or free milk eligibility information.

(1) *Persons authorized to receive eligibility information.* Only persons directly connected with the administration or enforcement of a program or activity listed in paragraphs (f)(2) or (f)(3) of this section may have access to children’s eligibility information, without parental consent. Persons considered directly connected with administration or enforcement of a program or activity listed in paragraphs (f)(2) or (f)(3) of this section are Federal, State, or local program operators responsible for the ongoing operation of the program or activity or responsible for program compliance. Program operators may include persons responsible for carrying out program requirements and monitoring, reviewing, auditing, or investigating the program. Program operators may include contractors, to the extent those persons have a need to know the information for program administration or enforcement. Contractors may include evaluators, auditors, and others with whom Federal or State agencies and program operators contract with to assist in the administration or enforcement of their program in their behalf.

(2) *Disclosure of children’s names and eligibility status only.* The State agency or school food authority, as appropriate, may disclose, without parental consent, children’s names and eligibility status (whether they are eligible for free or reduced price meals or free milk) to persons directly connected with the administration or enforcement of:

(i) A Federal education program;

(ii) A State health program or State education program administered by the State or local education agency;

(iii) A Federal, State, or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (i.e., food

assistance programs for households with incomes at or below 185 percent of the Federal poverty level); or

(iv) A third party contractor assisting in verification of eligibility efforts by contacting households who fail to respond to requests for verification of their eligibility.

(3) *Disclosure of all eligibility information in addition to eligibility status.* In addition to children’s names and eligibility status, the State agency or school food authority, as appropriate, may disclose, without parental consent, all eligibility information obtained through the free and reduced price meals or free milk eligibility process (including all information on the application or obtained through direct certification) to:

(i) Persons directly connected with the administration or enforcement of programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966. This means that all eligibility information obtained for the National School Lunch Program, School Breakfast Program or Special Milk Program may be disclosed to persons directly connected with administering or enforcing regulations under the National School Lunch or School Breakfast Programs (Parts 210 and 220, respectively, of this chapter), Child and Adult Care Food Program (Part 226 of this chapter), Summer Food Service Program (Part 225 of this chapter) and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (Part 246 of this chapter);

(ii) The Comptroller General of the United States for purposes of audit and examination; and

(iii) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in paragraphs (g)(3) and (g)(4) of this section.

(4) *Use of free and reduced price meal or free milk eligibility information by other programs other than Medicaid or the State Children’s Health Insurance Program (CHIP).* State agencies and school food authorities may use free and reduced price meal or free milk eligibility information for administering or enforcing the National School Lunch, Special Milk or School Breakfast Programs (Parts 210, 215 and 220, respectively, of this chapter).

Additionally, any other Federal, State, or local agency charged with administering or enforcing these programs may use the information for that purpose. Individuals and programs to which children’s free and reduced price meal eligibility information has been disclosed under this section may

use the information only in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(g) *Disclosure of children's eligibility information to Medicaid and/or SCHIP, unless parents decline.* Children's free or reduced price meal or free milk eligibility information only may be disclosed to Medicaid or SCHIP when both the State agency and the school food authority so elect, the parent/guardian does not decline to have their eligibility information disclosed and the other provisions described in paragraph (i) of this section are met. Provided that both the State agency and school food authority opt to allow the disclosure of eligibility information to Medicaid and/or SCHIP, the State agency or school food authority, as appropriate, may disclose children's names, eligibility status (whether they are eligible for free or reduced price meals or free milk), and any other eligibility information obtained through the free and reduced price meal or free milk application or obtained through direct certification to persons directly connected with the administration of Medicaid or SCHIP. Persons directly connected to the administration of Medicaid and SCHIP are State employees and persons authorized under Federal and State Medicaid and SCHIP requirements to carry out initial processing of Medicaid or SCHIP applications or to make eligibility determinations for Medicaid or SCHIP.

(1) The State agency must ensure that:

(i) The child care institution and health insurance program officials have a written agreement that requires the health insurance program agency to use the eligibility information to seek to enroll children in Medicaid and SCHIP; and

(ii) Parents/guardians are notified that their eligibility information may be disclosed to Medicaid or SCHIP and given an opportunity to decline to have their children's eligibility information disclosed, prior to any disclosure.

(2) *Use of children's free and reduced price meal eligibility information by Medicaid/SCHIP.* Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal or free milk eligibility information may use the information to seek to enroll children in Medicaid or SCHIP. The Medicaid and SCHIP enrollment process may include targeting and identifying children from low-income households who are potentially eligible for Medicaid or SCHIP for the purpose of seeking to enroll them in Medicaid or SCHIP. No further disclosure of the information

may be made. Medicaid and SCHIP agencies and health insurance program operators also may verify children's eligibility in a program under the Child Nutrition Act of 1966 or the Richard B. Russell National School Lunch Act.

(h) *Notifying households of potential uses and disclosures of children's eligibility information.* Households must be informed that the information they provide on the free and reduced price meal or free milk application will be used to determine eligibility for free and reduced price meals or free milk and that eligibility information may be disclosed to other programs.

(1) For disclosures to programs, other than Medicaid or SCHIP, that are permitted access to children's eligibility information, without parent/guardian consent, the State agency or school food authority, as appropriate, must notify parents/guardians at the time of application that their children's free and reduced price meal or free milk eligibility information may be disclosed. The State agency or school food authority, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (a)(1) of this section, "We may share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs; auditors for program reviews; and law enforcement officials to help them look into violations of program rules." For children determined eligible through direct certification, the notice of potential disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals or free milk through direct certification.

(2) For disclosure to Medicaid or SCHIP, the State agency or school food authority, as appropriate, must notify parents/guardians that their children's free and reduced price meal or free milk eligibility information will be disclosed to Medicaid and/or SCHIP unless the parent/guardian elects not to have their information disclosed. Additionally, the State agency or school food authority, as appropriate, must give parents/guardians an opportunity to elect not to have their information disclosed to Medicaid or SCHIP. Only the parent or guardian who is a member of the household or family for purposes of the free and reduced price meal or free milk application may decline the disclosure of eligibility information to Medicaid or SCHIP. The notification must inform parents/guardians that they are not required to consent to the disclosure, that the information, if disclosed, will

be used to identify children eligible for and to seek to enroll children in a health insurance program, and that their decision will not affect their children's eligibility for free and reduced price meals or free milk. The notification may be included in the letter/notice to parents/guardians that accompanies the free and reduced price meal or free milk application, on the application itself or in a separate notice provided to parents/guardians. The notice must give parents/guardians adequate time to respond. The State agency or school food authority, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (a)(1) of this section, "We may share your information with Medicaid or the State Children's Health Insurance Program, unless you tell us not to. The information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP." For children determined eligible through direct certification, the notice of potential disclosure and opportunity to decline the disclosure may be included in the document informing parents/guardians of their children's eligibility for free meal or free milk through direct certification.

(i) *Other disclosures.* State agencies and school food authorities that plan to use or disclose information about children eligible for free or reduced price meals or free milk in ways not specified in this section must obtain written consent from the child's parent or guardian prior to the use or disclosure. Only a parent or guardian who is a member of the child's household for purposes of the free and reduced price meal or free milk application may give consent to the disclosure of free and reduced price meal eligibility information.

(1) The consent must identify the information that will be shared and how the information will be used.

(2) The consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free and reduced price meal or free milk application.

(3) There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free or reduced price meals or free milk and that the individuals or programs receiving the information will not share the information with any other entity or program.

(4) Parents/guardians must be permitted to limit the consent only to

those programs with which they wish to share information.

(j) *Agreements with programs/individuals receiving children's free and reduced price meal or free milk eligibility information.*

(1) An agreement with programs or individuals receiving free and reduced price meal or free milk eligibility information is recommended for programs other than Medicaid or SCHIP. The agreement or MOU should include information similar to that required for disclosures to Medicaid and SCHIP specified in paragraph (j)(2) of this section.

(2) The State agency or school food authorities, as appropriate, must have a written agreement with the State or local agency or agencies administering Medicaid or SCHIP prior to disclosing children's free and reduced price meal or free milk eligibility information. At a minimum, the agreement must:

(i) Identify the health insurance program or health agency receiving children's eligibility information;

(ii) Describe the information that will be disclosed;

(iii) Require that the Medicaid or SCHIP agency use the information obtained and specify that the information must be used to seek to enroll children in Medicaid or SCHIP;

(iv) Require that the Medicaid or SCHIP agency describe how they will use the information obtained;

(v) Describe how the information will be protected from unauthorized uses and disclosures;

(vi) Describe the penalties for unauthorized disclosure; and

(vii) Be signed by both the Medicaid or SCHIP program or agency and the State agency or child care institution, as appropriate.

(k) *Penalties for unauthorized disclosure or misuse of information.* In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.

Dated: March 1, 2007.

**Nancy Montanez Johner,**

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

[FR Doc. E7-4268 Filed 3-9-07; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Parts 305 and 319

[Docket No. APHIS-2006-0121]

RIN 0579-AC19

#### Importation of Mangoes From India

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the fruits and vegetables regulations to allow the importation into the continental United States of mangoes from India under certain conditions. As a condition of entry, the mangoes must undergo irradiation treatment and be accompanied by a phytosanitary certificate with additional declarations providing specific information regarding the treatment and inspection of the mangoes and the orchards in which they were grown. In addition, the mangoes will be subject to inspection at the port of first arrival. This action allows for the importation of mangoes from India into the continental United States while continuing to provide protection against the introduction of quarantine pests.

**EFFECTIVE DATE:** March 12, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-8758.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in "Subpart-Fruits and Vegetables" (7 CFR 319.56 through 319.56-8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

On November 17, 2006, we published in the **Federal Register** (71 FR 66881-66888, Docket No. APHIS-2006-0121) a proposal<sup>1</sup> to allow the importation into the continental United States of mangoes from India under certain conditions. As a condition of entry, we

<sup>1</sup>To view the proposed rule and the comments we received, go to <http://www.regulations.gov>, click on the "Advanced Search" tab, and select "Docket Search." In the Docket ID field, enter APHIS-2006-0121, then click "Submit." Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

proposed that the mangoes would have to be treated with a minimum absorbed dose of 400 gray of irradiation and be accompanied by a phytosanitary certificate certifying that the fruit received the required irradiation treatment. In addition, because the required irradiation treatment would not mitigate the risks posed by the fungi *Cytosphaera mangiferae* and *Macrophoma mangiferae* or the bacterium *Xanthomonas campestris* pv. *mangiferaeindicae*, which we consider to be of medium risk of introduction and dissemination within the continental United States, we proposed additional safeguarding measures. For the two fungi; we proposed three options: (1) The mangoes be treated with a broad-spectrum post-harvest fungicidal dip, (2) the orchard of origin be inspected at a time prior to the beginning of harvest as determined by the mutual agreement between the Animal and Plant Health Inspection Service (APHIS) and the national plant protection organization (NPPO) of India and be found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae*, or (3) the orchard of origin be treated with a broad-spectrum fungicidal application during the growing season, be inspected at a time prior to the beginning of harvest as determined by the mutual agreement between APHIS and the NPPO of India, and the fruit found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae*. For the bacterium *X. campestris* pv. *mangiferaeindicae*, we proposed that the shipment be inspected during preclearance activities and found free of *X. campestris* pv. *mangiferaeindicae*. The required phytosanitary certificate would have to confirm that one of the three measures described above for the fungi and the inspection for the bacterium had been carried out.

We solicited comments concerning our proposal for 60 days, ending January 16, 2007. We received three comments by that date. The first comment was from a private citizen who requested that American businesses be allowed to import fruit from wherever they like without being subject to regulations. Such an approach would present an unacceptable level of risk. As The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) states, the unregulated movement of plant pests, noxious weeds, plants, certain biological control organisms, plant products, and articles capable of harboring plant pests or noxious weeds could present an unacceptable risk of introducing or spreading plant pests or noxious weeds, which is contrary to