

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

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

RIN 0584-AC95

#### Special Milk Program for Children, Summer Food Service Program, Child and Adult Care Food Program and Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools: Disclosure of Children's Eligibility Information to State Medicaid and the State Children's Health Insurance Program

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule amends the regulations for the Special Milk Program for Children, Summer Food Service Program, Child and Adult Care Food Program, and Determining Eligibility for Free and Reduced Price Meals and Milk in Schools. The rule establishes requirements for the disclosure of children's free and reduced price meal or free milk eligibility information to State Medicaid (Medicaid) and the State Children's Health Insurance Program (SCHIP) by State and local agencies responsible for free and reduced price meal or free milk eligibility determinations. These regulations affect State agencies and program operators that administer the Child Nutrition Programs (National School Lunch Program, Special Milk Program for Children, School Breakfast Program, Child and Adult Care Food Program, and the Summer Food Service Program) and who elect to disclose children's free and reduced price meal or free milk eligibility information to Medicaid and SCHIP. The provisions also affect households determined eligible for free and reduced price meals or free milk.

The rule reflects the waiver of confidentiality provisions of the Agricultural Risk Protection Act of 2000 and is intended to facilitate enrollment of eligible children in Medicaid and SCHIP.

**DATES:** *Effective Date:* October 1, 2000.

*Comment Date:* To be assured of consideration, comments must be postmarked on or before April 11, 2001.

**ADDRESSES:** Address all comments concerning this interim rule to Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. You also may submit comments electronically at [cdninterim@fns.usda.gov](mailto:cdninterim@fns.usda.gov). All written submissions received will be available for public inspection in Room 1007 at the address listed above, during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Barbara Semper or Mary Jane Whitney at the above address or by telephone at 703-305-2590. A regulatory cost-benefit analysis was completed for this rule. Single copies may be requested from the FNS officials identified above.

#### SUPPLEMENTARY INFORMATION:

##### Background

##### *What Is the Purpose of This Rule?*

This interim rule implements a provision of the Agricultural Risk Protection Act of 2000, Public Law (P.L.) 106-224, enacted June 20, 2000. P.L. 106-224 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 add Medicaid under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*) and SCHIP under title XXI of that Act (42 U.S.C. 1397aa *et seq.*) to the programs that are authorized limited access to children's free and reduced price meal or free milk eligibility information provided:

(1) The State agency and school food authority elect to disclose children's free and reduced price meal or free milk eligibility information to these health insurance programs;

(2) There is a written agreement between the school and the health insurance program agency that requires the health insurance program agency to use the information to seek to enroll children in Medicaid and SCHIP; and

(3) Parents/guardians are notified and given an opportunity to elect not to have their children's eligibility information disclosed to Medicaid or SCHIP.

##### *Does the NSLA Allow Disclosure of Children's Eligibility Information to Other Programs?*

On July 25, 2000, the Food and Nutrition Service (FNS) published a proposed rule on the disclosure of children's (and adult participants' in the Child and Adult Care Food Program) free and reduced price meal or free milk eligibility information (65 FR 45725) to implement provisions of Pub. L. 103-448, the Healthy Meals for Healthy Americans Act of 1994. Pub. L. 103-448 amended the NSLA to allow limited disclosure of children's eligibility information to certain programs and individuals. The comment period for the proposed rule closes on November 22, 2000. In accordance with the statute, the proposed rule would authorize disclosure, without parental/guardian consent, to persons directly connected with the administration or enforcement of:

(1) 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;

(2) A Federal education program;

(3) A State health or education program (other than Medicaid) administered by the State or local education agency;

(4) A Federal, State or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (NSLP);

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

(6) Certain law enforcement officials for investigating alleged program violations.

Pub. L. 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.*). Pub. L. 103-448 did not address disclosure of children's eligibility information to SCHIP, which was established in later Federal legislation. The Agricultural Risk Protection Act of 2000, Pub. L. 106-224, subsequently amended the NSLA to provide disclosure of children's eligibility information to Medicaid and

SCHIP. This interim rule promulgates the regulations for Pub. L. 106–224.

FNS previously issued guidance that allows disclosure of eligibility information consistent with P.L. 103–448. Under that guidance, disclosure to Medicaid and SCHIP is allowed with parental/guardian consent. Please refer to the proposed rule published on July 25, 2000 at 65 FR 45725 for a discussion of the disclosure provisions under P.L. 103–448.

*Why Is This Rule Being Issued as an Interim Rule and Not a Proposed Rule?*

Section 242(c) of Pub. L. 106–224 makes the provisions of that law addressed in this rulemaking effective October 1, 2000 and section 263 requires that FNS promulgate regulations to implement the provisions as soon as practicable after the date of enactment without regard to the Administrative Procedure Act's notice and comment provisions at 5 U.S.C. § 553; the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking; and the Paperwork Reduction Act at 44 U.S.C. chapter 35. In addition, section 172 of Pub. L. 106–224 requires us to promulgate rules to carry out the Act and its amendments not later than 120 days after the date of enactment. For these reasons, we are not taking public comment prior to promulgation of this interim rule.

To benefit from the experiences of program operators and because the disclosure of eligibility information is a sensitive issue, FNS decided to issue this rule as an interim, rather than a final rule, in order to facilitate public comment. FNS intends to issue a final rule combining the proposed disclosure provisions implementing Pub. L. 103–448 and these interim disclosure provisions implementing Pub. L. 106–224 after consideration of the comments received on these rules.

*What Programs Are Being Affected?*

As with the amendment to the NSLA made by Pub. L. 103–448, the new provisions pertaining to disclosure of children's eligibility information to Medicaid and SCHIP appear in the part of the NSLA that applies to the free and reduced price meal application process for the NSLP. However, based on FNS practices and policies dealing with past issues and the need for consistency among the Child Nutrition Programs, these regulations on the disclosure of free and reduced price meal or free milk eligibility information by determining agencies to Medicaid and SCHIP apply

to all the Child Nutrition Programs—the NSLP, School Breakfast Program (SBP), Special Milk Program for Children (SMP), Child and Adult Care Food Program (CACFP), and camps and enrolled sites in the Summer Food Service Program (SFSP). Therefore, this rule amends the regulations for each of these programs. The various sections amended are listed following the discussion of each issue addressed by this rule. The minor wording differences necessary to accommodate the terminology for the specific programs are not addressed in the preamble. School food authorities, SMP child-care institutions, CACFP institutions, and SFSP sponsors are determining agencies and are collectively referred to as “program operators” in the preamble. Additionally, this approach is consistent with the July 25, 2000, proposed rule.

*What Definitions Will Be Added to the Regulations?*

*Disclosure.* Any time information is revealed or used for a purpose other than for the purpose for which the information was obtained, it is a disclosure. This is true even when the same agency that obtained the information is the one wishing to use it for another purpose. The term “disclosure,” refers to access, release, or transfer of personal data about participants by means of print, tape, microfilm, microfiche, electronic communication or any other means. In this rule, the data would be individual children's free and reduced price eligibility status or other information obtained through the free and reduced price meal or free milk application or through direct certification.

*Medicaid and SCHIP.* Medicaid and SCHIP refers to the Federal and State funded health insurance programs under titles XIX and XXI of the Social Security Act, which provide free and low cost health insurance to needy children.

This interim rule will include the above definitions in the alphabetical listings at 7 CFR 215.2, 225.2, 226.2, and 245.2.

*Is Disclosure of Individual Children's Eligibility Information to Medicaid or SCHIP Required?*

Section 9(b)(2)(C)(ii)(IV) of the NSLA, as amended by Pub. L. 106–224, specifies that individual children's eligibility information may be disclosed to Medicaid and SCHIP only if the State agency and program operators “elect” to do so. Both the State agency and program operator must agree to the disclosure. Since the disclosure

provision applies to all the Child Nutrition Programs, in most cases, this would be the State agency and the school food authority or school, SFSP sponsor, or CACFP institution. This provision is included in §§ 215.13a(g)(1), 225.15(g)(1), 226.23(i)(1), 245.6(f)(1) of this interim rule. Additionally, as discussed later in this preamble, parents/guardians must be given the opportunity to elect not to have their information disclosed.

*What Information May Be Disclosed for Use by Medicaid and SCHIP?*

When both the State agency and program operators elect to disclose eligibility information for use by Medicaid/SCHIP and parents/guardians have not declined the disclosure, program operators may disclose children's eligibility information. In accordance with section 9(b)(2)(C)(iii)(IV) of the NSLA, program operators 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 from the application for free and reduced price meals or free milk or through direct certification to persons directly connected with the administration of Medicaid or SCHIP. (Please note that for the Child and Adult Care Food Program and the Summer Food Service Program, children's eligibility information may only be disclosed to the extent that there are free and reduced price meal applications for these children.) This provision is included in §§ 215.13a(g)(2), 225.15(g)(2), 226.23(i)(2), and 245.6(f)(2).

*Who Is a Person “directly connected” With the Administration of Medicaid or SCHIP?*

The NSLA permits disclosure and use of program eligibility information specifically to “a person directly connected with the administration” of Medicaid or SCHIP for the purpose of identifying and seeking to enroll children in Medicaid or SCHIP. Persons directly connected with the administration of State Medicaid and SCHIP for purposes of disclosure of free and reduced price meal and free milk eligibility information 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. Initial processing of Medicaid or SCHIP applications includes assisting individuals to fill out the application, explaining requirements and similar

activities. In addition to being authorized under Federal and State Medicaid requirements, persons directly connected with Medicaid or SCHIP administration must be designated by the Medicaid or SCHIP agency to receive Medicaid or SCHIP eligibility information. This may include employees of county health departments, county departments of human or social services, family service agencies or income maintenance agencies. This also may include persons under contract to the State health program to make eligibility determinations and enroll children in the State health insurance program. These entities and persons must have a formal relationship with the Medicaid or SCHIP agency to be directly connected with Medicaid or SCHIP administration.

The statute allows disclosure of children's eligibility information to identify children who may be eligible for one of these health insurance programs and to seek to enroll eligible children in the applicable program. The statute does not authorize disclosure to persons connected with Medicaid or SCHIP enforcement activities. Thus, Federal, State and local reviewers responsible for reviewing or auditing compliance with State Medicaid or SCHIP regulations may not have access to children's free and reduced price meal or free milk eligibility information under this rule.

In general, organizations and individuals assisting in Medicaid and SCHIP outreach activities are not authorized access to children's free and reduced price eligibility information. The intent is to limit disclosure of program eligibility information to those who have a "need to know" program eligibility information for identifying and seeking to enroll eligible children in Medicaid and SCHIP. Since States have flexibility in implementing Medicaid and SCHIP, FNS recommends that State agencies and determining agencies contact the Medicaid/SCHIP coordinator in their State to determine the persons or entities authorized and designated by Medicaid or SCHIP to receive eligibility information. A description of "a person directly connected" with State Medicaid or SCHIP administration is included in §§ 215.13a(g)(3), 225.15(g)(3), 226.23(i)(3), and 245.6(f)(3) of this rule.

#### *What If Student Records and Other Systems Are Computerized?*

FNS is concerned about maintaining the confidentiality of children's eligibility information that is maintained in a computerized data base. Procedures must be in place to ensure

that only authorized individuals have access to children's eligibility information.

Many schools are now computerized, and individual student information is often part of a Statewide electronic database under the responsibility of the State's Department of Education. The information may also be part of a local school district database. Typically, these databases contain "directory information," such as student's name, address, phone number, and "education records," such as achievement test scores, grades, special education plans, and evaluations. The Department of Education has regulations restricting access to "education records," including those on computerized systems. These regulations are found at 34 CFR Part 99.

Program operators should take note that "education records" do not include Child Nutrition Program eligibility information. Therefore, the Department of Education regulations do not extend to program eligibility information for the Child Nutrition Programs. Nor is compliance with the Department of Education confidentiality regulations sufficient to meet the confidentiality protections in the NSLA. Therefore, program operators, who may also be database managers, must ensure that to the extent that Child Nutrition Program eligibility information is kept together with other school records, controls are established and maintained to ensure that the program eligibility information is available only to authorized persons and used only for authorized purposes.

FNS is not proposing any specific methods to ensure compliance with the NSLA confidentiality provisions in these situations. However, FNS remains concerned about the extent of access to the databases, and ways to protect program eligibility information from disclosure and use beyond what is authorized by Congress. Since FNS experience in this area is limited, commenters are encouraged to provide their experiences with student databases in which access restrictions vary according to the sensitivity of the different data items in the database. An example would be a school district database where access to students' academic records is more restricted than is access to students' class schedules, addresses, and other common information. Comments on this subject will aid FNS in determining whether special controls are necessary in situations in which program eligibility information reside in the same database where other student information is maintained. While this rule would not forbid such arrangement, FNS wishes to emphasize that to comply with this rule,

database managers, who may also be program operators, must restrict access to program eligibility information to only those individuals and uses authorized by statute and regulation.

#### *Are There Restrictions on How Children's Free and Reduced Price Eligibility Information May Be Used by State Medicaid and SCHIP?*

Section 9(b)(2)(C)(iii)(IV) of the NSLA specifies that Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal or free milk eligibility information may only use that information to identify children that may be eligible for State Medicaid or SCHIP and to seek to enroll them in those programs. State agencies and program operators must include this restriction in the agreement with Medicaid or SCHIP officials discussed later in this preamble. This provision is added to §§ 215.13a(g)(4), 225.15(g)(4), 226.23(i)(4), and 245.6(f)(4).

The statute and this regulation specify that children's eligibility information, when disclosed to Medicaid or SCHIP, must be used to identify and "seek to enroll" children in one of these health insurance programs. In actuality, it is unlikely that children will be automatically enrolled in Medicaid or SCHIP based on information from the free or reduced price application or obtained through direct certification, because Medicaid and SCHIP need additional information to enroll children. Rather, children's free and reduced price meal or free milk eligibility information will be used to facilitate Medicaid and SCHIP enrollment. There is concern that households may believe that by allowing their information to be disclosed to Medicaid and SCHIP, their children will be automatically enrolled in one of these health insurance programs without the household taking further action. Medicaid and SCHIP officials and program operators should work together to ensure that once households are identified as potentially eligible for Medicaid or SCHIP, households are aware that they must complete the Medicaid or SCHIP application process.

#### *Must Households Be Notified of Potential Disclosures to Medicaid and SCHIP?*

In accordance with section 9(b)(2)(C)(vi)(II)(aa) and (bb) of the NSLA, for any disclosures to State Medicaid and/or SCHIP, parents/guardians must be notified of the potential disclosure and given the opportunity to elect not to have their

information disclosed. The notification must inform the parents/guardians that: (1) They are not required to consent to the disclosure; (2) the information, if disclosed, will be used to facilitate the identification and enrollment of eligible children in a health insurance program; and (3) 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 but concurrent notice provided to parents/guardians. The notice must be given prior to the disclosure and parents/guardians must be given a reasonable time limit to respond. (A discussion about notifying households of potential disclosures of eligibility information for children who are determined eligible for free meals through direct certification is included below.) 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, *i.e.*, the parent/guardian included on the application, must be notified and given the option to decline the disclosure of eligibility information. In most cases of divorce or separation, this means the custodial parent or guardian. However, if custody is shared, the parents or guardians must decide who has primary custody for purposes of making application for the program. The parent or guardian having such custody would be the only person who must be notified and given the option to elect to decline the disclosure. In other words, by not declining to have their information disclosed to Medicaid/SCHIP, the parent/guardian is consenting to have their eligibility information shared. FNS is concerned about the personal financial data at stake. This information is unlike other student records that directly concern the education of the child, and in which both parents have a direct interest. The program eligibility information in these circumstances is associated with one parent or guardian, and FNS believes that only that parent or guardian should be given the option of electing whether or not to disclose their eligibility information. FNS recognizes that this is a difficult issue and is particularly interested in comments on this point.

Regardless of the document used to notify parents/guardians and to secure the consent/declination, officials must provide the household with adequate information for them to determine whether or not to allow the disclosure of their eligibility information. This rule

would amend §§ 215.13a(g)(5), 225.15(g)(5), 226.23(i)(5), and 245.6(f)(5) to set the minimum standards for the notice of potential disclosure.

*How Are Households Who Are Determined Eligible for Free Meals Through Direct Certification Notified About the Potential Disclosure of Eligibility Information?*

Section 9(b)(2)(C)(iii) of the NSLA authorizes the disclosure of participants' free and reduced price information obtained from a free and reduced price meal application or obtained through direct certification. As specified in § 245.6(b), direct certification is the process by which program operators determine program eligibility by directly communicating with the appropriate State or local agency to obtain documentation that an individual is a member of a food stamp household (or member of a household receiving benefits under the Food Distribution Program on Indian Reservations (FDPIR) in lieu of food stamps) or a member of a family receiving assistance under certain State programs for the Temporary Assistance for Needy Families (TANF). In the case of direct certification, the agency administering the Food Stamp Program, FDPIR or TANF, as appropriate, may add a notification/declination statement to the notice of eligibility for free meals or milk under the Child Nutrition Programs that is provided to the household as documentation of eligibility for free meals. The household would be asked to contact the program operator if they did not want their information disclosed to Medicaid or SCHIP. Another option is for the program operator to include the notification/declination statement on the notice of eligibility for free meals that the program operator provides to the households when the direct certification is accomplished by computer match. Regardless of the method chosen to notify households of the potential disclosure and to obtain their consent/declination, officials must provide households with adequate information to determine whether to disclose their information and adequate time for the household to respond.

*May Social Security Numbers Be Disclosed?*

The Privacy Act of 1974 (5 U.S.C. 552a note) requires that notice be given of the intended uses of social security numbers. Thus, if a State agency or program operator intends to disclose social security numbers, either through the disclosure provisions authorized in the NSLA or with specific parental

consent, then section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note) requires that notice of the planned uses of the social security number be given.

The easiest method is to include the planned uses of social security numbers in the Privacy Act notice currently required by §§ 225.15(f)(4)(iv), 226.23(e)(1)(ii)(F), and 245.6(a)(1), because a Privacy Act notice is already on the free and reduced price meal application. The only uses of social security numbers currently listed in the regulations and the prototype application are for the determination and verification of eligibility for program meals. Any State agency or program operator that plans to disclose all eligibility information, including the social security number, to Medicaid or SCHIP administrators or plans to use the number for purposes not specified in their Privacy Act notice must amend the Privacy Act notice to reflect this. State agencies and program operators are responsible for ensuring the adequacy of their Privacy Act notice, and FNS encourages them to consult with their legal counsel. The requirement regarding Privacy Act compliance is specified in §§ 215.13a(g)(6), 225.15(g)(6), 226.23(i)(6), and 245.6(f)(6) of this interim rule.

Currently, the regulations for the SMP do not include a Privacy Act notice. The addition of a Privacy Act notice to the SMP was proposed in the July 25, 2000 rule (65 FR 45725). To ensure Privacy Act compliance in that program, this rule adds a Privacy Act notice requirement for the SMP in child-care institutions. The Privacy Act notice requirement for the SMP in child-care institutions is added at § 215.13a(f).

This rule amends and simplifies current Privacy Act notice required in §§ 226.23(e) and 245.6(a). The revision to the Privacy Act notice on the free and reduced price application replaces the three sentences giving detailed descriptions of the potential use of the social security number for verification with a more general, simpler statement that the social security number will be used in the administration and enforcement of the program. This revision is intended to respond to concerns about the lengthy Privacy Act notice previously required by program regulations. This revision shortens the notice and reduces the amount of space it takes up on the application. An additional Privacy Act notice is required to be given before verification (for those programs subject to verification). That notice would continue to provide the more detailed description on the potential uses of social security numbers in verification. The sections

revised are §§ 225.15(f)(4)(iv), 226.23(e)(1)(ii)(F), and 245.6(a)(1). This revision was proposed in the July 25, 2000 rule (65 FR 45725).

*Must There Be an Agreement With State Medicaid and/or SCHIP?*

Section 9(b)(2)(C)(vi)(I) of the NSLA specifies that the determining agency must have a written agreement with the State or local agency or agencies administering Medicaid and/or SCHIP prior to disclosing children's free and reduced price meal or free milk eligibility information. At a minimum, the agreement must: (1) Identify the health insurance program or health agency receiving children's eligibility information; (2) describe the information that will be disclosed; (3) require the insurance program or health agency to use the eligibility information obtained; (4) specify that the information must only be used to identify children eligible for and to seek to enroll children in Medicaid or SCHIP; (5) describe how the information will be protected from unauthorized uses and disclosures; (6) describe the penalties for unauthorized disclosure; and (7) be signed by both the determining agency and the Medicaid/SCHIP program or agency receiving children's eligibility information. This provision is included in §§ 215.13a(g)(7), 225.15(g)(7), 226.23(i)(7), and 245.6(f)(7).

*What Are the Penalties for Improper Disclosure?*

The NSLA establishes a fine of not more than \$1000 or imprisonment of not more than 1 year, or both, for publishing, divulging, disclosing, or making known in any manner or extent not authorized by Federal law, any eligibility information. This includes the disclosure of eligibility information by one entity authorized under the statute to receive the information to any other entity, even if that entity would otherwise be authorized to receive the information directly from the determining agency, i.e., third party disclosures are prohibited. These penalties are described in §§ 215.13a(g)(8), 225.15(g)(8), 226.23(i)(8), and 245.6(f)(8) of this interim rule.

*What Are the State Agency's Responsibilities?*

A State agency that elects to disclose children's free and reduced price meal or free milk information, with the agreement of the determining agency, must ensure that the determining agency: (1) Has a written agreement with the State or local agency or agencies administering health insurance

programs for children under title XIX and XXI of the Social Security Act (42 U.S.C. 1396 *et seq.* and 1397aa *et seq.*) that requires the health agencies to use children's free and reduced price meal or free milk eligibility information to seek to enroll children in those health insurance programs; and (2) notifies each household of the information that will be disclosed, that the information disclosed will be used only to seek to enroll children in Medicaid or the State Children's Health Insurance Program and provides each parent/guardian with an opportunity to elect not to have the information disclosed. Sections 215.13a(g)(9), 225.15(g)(9), 226.23(i)(9), and 245.6(f)(9) specify the State agency's responsibilities regarding disclosures.

**Summary**

FNS is amending the Child Nutrition Program regulations to permit the disclosure of program eligibility information to Medicaid and SCHIP consistent with the recent amendments to the NSLA made by P.L. 106-224. FNS' goal is to facilitate the enrollment of eligible children in those health insurance programs, without sacrificing the confidentiality of children's eligibility information.

**Public Participation**

Section 242(c) of Pub. L. 106-224 (7 U.S.C. 1421 note) makes the provisions of this rule effective on October 1, 2000. Further, section 263 of Pub. L. 106-224 directs the Department to implement these provisions without regard to the Administrative Procedure Act's notice and public comment provisions at 5 U.S.C. § 553. The Department is thus promulgating the provisions of this interim rule without prior notice or public comment. As a result, as of October 1, program administrators will be given the opportunity to disclose participant's program eligibility information to Medicaid and SCHIP to facilitate enrollment in those programs. The Department, however, is providing interested parties an opportunity to comment on the interim regulatory provisions during the public comment period and will consider comments submitted when finalizing this rule.

**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.

**Public Law 104-4**

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, the 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 the 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 interim 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 interim rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Regulatory Flexibility Act**

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Shirley R. Watkins, 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. By permitting access to certain eligibility information, this rule could reduce duplicative paperwork by certain agencies which serve low-income children and adults. The rule could streamline operations of those programs. The provisions of this rule also may enhance access to these programs by needy children. The Department of Agriculture does not anticipate any adverse fiscal impact resulting from implementation of this rulemaking. Although there may be some burdens associated with this rule, the burdens would not be significant and would be outweighed by the benefits of sharing of information.

**Executive Order 12372**

The 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. 10.556, 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).

#### **Executive Order 12988**

This interim 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 proposed 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; § 226.23(e)(5) for the CACFP).

#### **Paperwork Reduction Act**

In accordance with the authority provided under section 263 of Pub. L. 106-224, this rulemaking is made without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

This rule contains burdens that were included in the burden estimate in the proposed rule, Disclosure of Children's Eligibility Information, published on July 25, 2000, at 65 FR 45725. That rule proposed to allow the disclosure of children's eligibility information to various education, nutrition, and health programs authorized under Pub. L. 103-448. Additionally, under the proposed rule, officials may disclose children's eligibility to other programs, such as Medicaid and SCHIP, with parental consent.

Since many of the provisions in the proposed rule, mentioned above, and this interim rule are similar, such as taking agreements with persons or agencies receiving children's eligibility information and notifying households of potential disclosures, the Department plans to issue one final rule that responds to commenter concerns on the proposed rule and this interim rule. The Department will make any adjustments to the burden estimate in that final rule.

#### **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 interim rule, we received input from State and local agencies at various times. Since the Child Nutrition Programs (CNP) are State administered, federally funded programs, our regional offices 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. Pub. L. 106-224 mandates that we promptly promulgate regulations without regard to the notice and comment provisions of 5 U.S.C. 553. However, because the disclosure of children's eligibility information is a sensitive issue, we are issuing this rule as an interim rule with a request for public comment.

#### *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.

The issuance of a regulation is required by Pub. L. 106-224. Prior to Pub. L. 106-224, program officials were permitted to disclose children's eligibility information to certain programs and individuals without parental consent. Medicaid and SCHIP were not included. Therefore, program officials had to obtain the consent of parents/guardians if they elected to disclose children's eligibility information with Medicaid and SCHIP. A proposed rule to allow the disclosure of eligibility information to these other programs was published on July 25, 2000 (64 FR 45725). In accordance with Pub. L. 106-224, this interim rule will allow the disclosure of children's eligibility information unless parents/guardian elect not to have their information disclosed to Medicaid and SCHIP. Certain other provisions, as specified in the statute, must also be met prior to disclosing information to Medicaid and SCHIP.

#### *Extent to Which We Meet These Concerns*

We believe that we adequately address the issue of State and local flexibility. We clarify that the disclosure of children's eligibility information to Medicaid is a State and local decision. They are not required to disclose children's eligibility information. However, we encourage State and local agencies to work with Medicaid and SCHIP officials to make the exchange of eligibility information as streamlined as possible. Additionally, FNS has issued prototype materials, such as a prototype agreement between program operators and an agency receiving eligibility information and a prototype notification to parents/guardians that their eligibility information may be disclosed unless the program operator is notified that they do not want their information disclosed. Additionally, the Department of Health and Human Services, the department that administers Medicaid and SCHIP, is preparing an administrative guidance on reimbursement for costs associated with Medicaid and SCHIP outreach and enrollment. Finally, we will consider all comments received on this rule when we draft the final rule.

#### **List of Subjects**

##### *7 CFR Part 215*

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

##### *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, 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 215, 225, 226, and 245 are amended as follows:

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

1. Revise the authority citation for Part 215 to read as follows:

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

2. In § 215.2:

a. Add a new paragraph (i–l)

*Disclosure;*

b. Add a new paragraph (k–l)

*Medicaid;* and

c. Redesignate paragraph (aa) *Summer Food Service Program* as paragraph (bb) *Summer Food Service Program* and add a new paragraph (aa) *State Children's Health Insurance Program* in its place.

The additions read as follows:

**§ 215.2 Definitions.**

\* \* \* \* \*

(i–l) *Disclosure* means individual children's program eligibility information obtained through the free milk eligibility process that is revealed or used 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.

\* \* \* \* \*

(k–l) *Medicaid* means the State medical assistance program under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*).

\* \* \* \* \*

(aa) *State Children's Health Insurance Program (SCHIP)* means the State medical assistance program under title XXI of the Social Security Act (42 U.S.C. 1397aa *et seq.*).

\* \* \* \* \*

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

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

\* \* \* \* \*

(f) *Is a Privacy Act notice required on the free milk application?* Each free milk application must include substantially the following statement: "Unless you include your child's case number for the Food Stamp Program, the Food Distribution Program on Indian Reservations (or other identifier for the Food Distribution Program on Indian Reservations) or the Temporary Assistance for Needy Families Program, you must include the social security number of the adult household member signing the application or indicate that the household member does not have a social security number. This is required by section 9 of the National School Lunch Act. The social security number is not mandatory, but the application

cannot be approved if a social security number is not given or an indication is not made that the signer does not have a social security number. The social security number will be used in the administration and enforcement of the program."

(g) *Disclosure of program eligibility information to State Medicaid (Medicaid) and the State Children's Health Insurance Program (SCHIP)* Program eligibility information about children eligible for free milk may be disclosed to Medicaid and SCHIP as described in this section.

(1) *Who decides whether to disclose program eligibility information to Medicaid and/or SCHIP?* The State agency may elect to allow child care institutions to disclose children's free milk eligibility information to Medicaid and SCHIP. Child care institutions may then elect to do so. Children's program eligibility information may only 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 as described in paragraph (g)(5), and the requirements in this paragraph (g) are met.

(2) *What information may we disclose for use by Medicaid and SCHIP?* 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.

(3) *Who are persons "directly connected" with the administration of Medicaid and SCHIP?* 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 are persons directly connected with the administration of Medicaid and SCHIP for purposes of disclosure of children's free milk eligibility information.

(4) *What are the restrictions on how Medicaid and SCHIP use children's free milk eligibility information?* Medicaid and SCHIP agencies and health insurance program operators receiving children's free milk eligibility information may only 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.

(5) *Must we notify households of potential 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. Additionally, the State agency or sponsor, 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. 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 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. 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 milk through direct certification.

(6) *May social security numbers be disclosed?* The State agency or child care institution, as appropriate, may disclose social security numbers to any programs or persons authorized to receive all program eligibility information under this paragraph (g), provided parents/guardians have not declined to have their information disclosed. However State agencies and child care institutions that plan to disclose social security numbers must give notice of the planned use of the social security numbers. This notice must be in accordance with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note). The application must include substantially the following language for disclosures of social security numbers to Medicaid or SCHIP: "The social security number may also be disclosed to Medicaid and the State Children's Health Insurance Program for the purpose of identifying and seeking to enroll eligible children in one of these health insurance programs." This

language is in addition to the notice required in paragraph (f) of this section. State agencies and child care institutions are responsible for drafting the appropriate notice for disclosures of social security numbers.

(7) *Are agreements required before disclosing program eligibility information?* 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. 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 only be used to seek to enroll children in Medicaid or SCHIP;
- (iv) Describe how the information will be protected from unauthorized uses and disclosures;
- (v) Describe the penalties for unauthorized disclosure; and
- (vi) Be signed by both the Medicaid or SCHIP program or agency and the State agency or child care institution, as appropriate.

(8) *What are the penalties for unauthorized disclosure or misuse of information?* In accordance with section 9(b)(2)(C)(v) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(2)(C)(v)), 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 paragraph (g) will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.

(9) *What are the State agency's responsibilities regarding disclosures?* State agencies that elect to allow disclosure of children's free milk eligibility information to Medicaid or SCHIP, as provided in this paragraph (g), must ensure that any child care institution acting in accordance with that option:

- (i) Has a written agreement with the State or local agency or agencies administering health insurance programs for children under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq. and 1397aa et seq.) that requires the health agencies to use children's free milk eligibility information to seek to enroll children in those health insurance programs; and
- (ii) Notifies each household of the information that will be disclosed, that

the information disclosed will be used only to seek to enroll children in Medicaid or SCHIP and provides each parent/guardian with an opportunity to elect not to have the information disclosed.

**PART 225—SUMMER FOOD SERVICE PROGRAM**

1. The authority citation for Part 225 continues to read as follows:

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

2. In § 225.2, add new paragraphs *Disclosure; Medicaid;* and *State Children's Health Insurance Program (SCHIP)* in alphabetical order to read as follows:

**§ 225.2 Definitions.**

\* \* \* \* \*

*Disclosure* means individual children's program eligibility information obtained through the free and reduced price meal eligibility process that is revealed or used 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.

\* \* \* \* \*

*Medicaid* means the State medical assistance program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

\* \* \* \* \*

*State Children's Health Insurance Program (SCHIP)* means the State medical assistance program under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

\* \* \* \* \*

3. In § 225.15:

- a. Revise paragraph (f)(4)(iv), and
- b. Redesignate paragraphs (g) and (h) as paragraphs (h) and (i) and add a new paragraph (g).

The revision and addition reads as follows:

**§ 225.15 Management responsibilities of sponsors.**

\* \* \* \* \*

(f) \* \* \*

(4) \* \* \*

(iv) The following statement that provides notice to the household member whose social security number is disclosed: "Unless you include your child's case number for the Food Stamp Program, the Food Distribution Program on Indian Reservations (or other identifier for the Food Distribution Program on Indian Reservations) or the

Temporary Assistance for Needy Families Program, you must include the social security number of the adult household member signing the application or indicate that the household member does not have a social security number. This is required by section 9 of the National School Lunch Act. The social security number is not mandatory, but the application cannot be approved if a social security number is not given or an indication is not made that the signer does not have a social security number. The social security number will be used in the administration and enforcement of the program."

\* \* \* \* \*

(g) *Disclosure of program eligibility information to State Medicaid (Medicaid) and the State Children's Health Insurance Program (SCHIP).* Program eligibility information about children eligible for free and reduced price meals may be disclosed to Medicaid and SCHIP as described in this section.

(1) *Who decides whether to disclose program eligibility information to Medicaid and/or SCHIP?* The State agency may elect to allow sponsors to disclose children's free and reduced price meal eligibility information to Medicaid and SCHIP. Sponsors may then elect to do so. Children's program eligibility information may only be disclosed to Medicaid or SCHIP when both the State agency and the sponsor so elect, the parent/guardian does not decline to have their eligibility information disclosed as described in paragraph (g)(5), and the requirements in this paragraph (g) are met. y

(2) *What information may we disclose for use by Medicaid and SCHIP?* 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 application or obtained through direct certification to persons directly connected with the administration of Medicaid or SCHIP.

(3) *Who are persons "directly connected" with the administration of Medicaid and SCHIP?* 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 are persons directly connected with the administration of Medicaid and SCHIP for purposes of disclosure of children's free and

reduced price meal eligibility information.

(4) *What are the restrictions on how Medicaid and SCHIP use children's free and reduced price meal eligibility information?* Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal eligibility information may only use the information 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.

(5) *What are the requirements for notifying households of potential 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. Additionally, the State agency or sponsor, 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. 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 seek to enroll children in a health insurance program, 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 application, on the application itself or in a separate notice provided to parents/guardians. The notice must give parents/guardians adequate time to respond. 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 through direct certification.

(6) *May social security numbers be disclosed?* The State agency or sponsor, as appropriate, may disclose social security numbers to any programs or persons authorized to receive all program eligibility information under this paragraph (g), provided parents/guardians have not declined to have their information disclosed. However,

State agencies and sponsors that plan to disclose social security numbers must give notice of the planned use of the social security number. This notice must be in accordance with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note). The application must include substantially the following language for disclosures of social security numbers to Medicaid or SCHIP: "The social security number may also be disclosed to Medicaid and the State Children's Health Insurance Program for the purpose of identifying and seeking to enroll eligible children in one of these health insurance programs." This language is in addition to the notice required in paragraph (f)(4)(iv) of this section. State agencies and sponsors are responsible for drafting the appropriate notice for disclosures of social security numbers.

(7) *Are agreements required before disclosing program eligibility information?* 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 and reduced price 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 only be used to seek to enroll children in Medicaid or SCHIP;
- (iv) Describe how the information will be protected from unauthorized uses and disclosures;
- (v) Describe the penalties for unauthorized disclosure; and
- (vi) Be signed by both the Medicaid or SCHIP program or agency and the State agency or sponsor, as appropriate.

(8) *What are the penalties for unauthorized disclosure or misuse of information?* In accordance with section 9(b)(2)(C)(v) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(2)(C)(v)), 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 paragraph (g) will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.

(9) *What are the State agency's responsibilities regarding disclosures?* State agencies that elect to allow disclosure of children's free and reduced price meal eligibility information to Medicaid or SCHIP, as

provided in this paragraph (g), must ensure that any sponsor acting in accordance with that option:

(i) Has a written agreement with the State or local agency or agencies administering health insurance programs for children under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 *et seq.* and 1397aa *et seq.*) that requires the health agencies to use children's free and reduced price meal eligibility information to seek to enroll children in those health insurance programs; and

(ii) Notifies each household of the information that will be disclosed, that the information disclosed will be used only to seek to enroll children in Medicaid or SCHIP and provides each parent/guardian with an opportunity to elect not to have the information disclosed.

\* \* \* \* \*

## 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, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765, and 1766).

2. In § 226.2, add new paragraphs *Disclosure; Medicaid;* and *State Children's Health Insurance Program (SCHIP)* in alphabetical order to read as follows:

### § 226.2 Definitions.

\* \* \* \* \*

*Disclosure* means individual children's program eligibility information obtained through the free and reduced price meal eligibility process that is revealed or used 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.

\* \* \* \* \*

*Medicaid* means Title XIX of the Social Security Act.

\* \* \* \* \*

*State Children's Health Insurance Program (SCHIP)* means the State medical assistance program under title XXI of the Social Security Act (42 U.S.C. 1397aa *et seq.*).

\* \* \* \* \*

3. In § 226.23, revise paragraph (e)(1)(ii)(F) and add a new paragraph (i) to read as follows:

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

\* \* \* \* \*

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

(ii) \* \* \*

(F) A statement that includes substantially the following information: "Unless you include your child's case number for the Food Stamp Program, the Food Distribution Program on Indian Reservations (or other identifier for the Food Distribution Program on Indian Reservations) or the Temporary Assistance for Needy Families Program, you must include the social security number of the adult household member signing the application or indicate that the household member does not have a social security number. This is required by section 9 of the National School Lunch Act. The social security number is not mandatory, but the application cannot be approved if a social security number is not given or an indication is not made that the signer does not have a social security number. The social security number will be used in the administration and enforcement of the program." State agencies and institutions must ensure that the notice complies with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note); and

\* \* \* \* \*

(i) *Disclosure of program eligibility information to State Medicaid (Medicaid) and the State Children's Health Insurance Program (SCHIP)* Program eligibility information about children eligible for free and reduced price meals may be disclosed to Medicaid and SCHIP as described in this section.

(1) *Who decides whether to disclose program eligibility information to Medicaid and/or SCHIP?* The State agency may elect to allow institutions to disclose children's free and reduced price meal eligibility information to Medicaid and SCHIP. Institutions may then elect to do so. Children's program eligibility information may only be disclosed to Medicaid or SCHIP when both the State agency and the institution so elect, the parent/guardian does not decline to have their eligibility information disclosed as described in paragraph (i)(5), and the requirements in this paragraph (i) are met.

(2) *What information may we disclose for use by Medicaid and SCHIP?* The State agency or 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 to persons directly connected with the administration of Medicaid or SCHIP.

(3) *Who are persons "directly connected" with the administration of*

*Medicaid and SCHIP?* 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 are persons directly connected with the administration of Medicaid and SCHIP for purposes of disclosure of children's free and reduced price meal eligibility information.

(4) *What are the restrictions on how Medicaid and SCHIP use children's free and reduced price meal eligibility information?* Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal eligibility information may only 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.

(5) *What are the requirements for notifying households of potential disclosure to Medicaid or SCHIP?* The State agency or institution, as appropriate, must notify parents/guardians that 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. Additionally, the State agency or institution, 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. 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 or reduced price meals. The notification may be included in the letter/notice to parents/guardians that accompanies the free and reduced price application, on the application itself or in a separate notice provided to parents/guardians. The notice must give parents/guardians adequate time to respond. 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 through direct certification.

(6) *May social security numbers be disclosed?* The State agency or institution, as appropriate, may disclose social security numbers to any programs or persons authorized to receive all program eligibility information under this paragraph (i), provided parents/guardians have not declined to have their information disclosed. However, State agencies and institutions that plan to disclose social security numbers must give notice of the planned use of the social security numbers. This notice must be in accordance with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note). The application must include substantially the following language for disclosures of social security numbers to Medicaid or SCHIP: "The social security number may also be disclosed to Medicaid and the State Children's Health Insurance Program for the purpose of identifying and seeking to enroll eligible children in one of these health insurance programs." This language is in addition to the notice required in paragraph (e)(1)(i)(F) of this section. State agencies and institutions are responsible for drafting the appropriate notice for disclosures of social security numbers.

(7) *Are agreements required before disclosing program eligibility information?* The State agency or 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 and reduced price 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 only be used to seek to enroll children in Medicaid or SCHIP;
- (iv) Describe how the information will be protected from unauthorized uses and disclosures;
- (v) Describe the penalties for unauthorized disclosure; and
- (vi) Be signed by both the Medicaid or SCHIP program or agency and the State agency or institution, as appropriate.

(8) *What are the penalties for unauthorized disclosure or misuse of information?* In accordance with section 9(b)(2)(C)(v) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(2)(C)(v)), 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 paragraph (i) will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.

(9) *What are the State agency's responsibilities regarding disclosures?* State agencies that elect to allow disclosure of children's free and reduced price meal eligibility information to Medicaid or SCHIP, as provided in this paragraph (i), must ensure that any institution acting in accordance with that option:

(i) Has a written agreement with the State or local agency or agencies administering health insurance programs for children under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 *et seq.* and 1397aa *et seq.*) that requires the health agencies to use children's free and reduced price meal eligibility information to seek to enroll children in those health insurance programs; and

(ii) Notifies each household of the information that will be disclosed, that the information disclosed will be used only to seek to enroll children in Medicaid or SCHIP and provides each parent/guardian with an opportunity to elect not to have the information disclosed.

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

1. The authority citation for Part 245 is revised to read as follows:

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

2. In § 245.2:

a. Redesignate paragraph (a-3) as paragraph (a-4) and add new paragraph (a-3) in its place;

b. Redesignate paragraph (f-1) as paragraph (f-2) and add a new paragraph (f-1) in its place; and

c. Redesignate paragraphs (k) and (l) as paragraphs (l) and (m) and add a new paragraph (k).

The additions read as follows:

#### **§ 245.2 Definitions.**

\* \* \* \* \*

(a-3) *Disclosure* means individual children's program eligibility information obtained through the free and reduced price meal or free milk eligibility process that is revealed or used 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.

\* \* \* \* \*

(f-1) *Medicaid* means the State medical assistance program under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*).

\* \* \* \* \*

(k) *State Children's Health Insurance Program (SCHIP)* means the State medical assistance program under title XXI of the Social Security Act (42 U.S.C. 1397aa *et seq.*).

\* \* \* \* \*

3. In § 245.6, revise paragraph (a)(1) and add a new paragraph (f) to read as follows:

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

(a) \* \* \*

(1) "Unless you include your child's case number for the Food Stamp Program, the Food Distribution Program on Indian Reservations (or other identifier for the Food Distribution Program on Indian Reservations) or the Temporary Assistance for Needy Families Program, you must include the social security number of the adult household member signing the application or indicate that the household member does not have a social security number. This is required by section 9 of the National School Lunch Act. The social security number is not mandatory, but the application cannot be approved if a social security number is not given or an indication is not made that the signer does not have a social security number. The social security number will be used in the administration and enforcement of the program." State agencies and school food authorities must ensure that the notice complies with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note); and

\* \* \* \* \*

(f) *Disclosure of program eligibility information to State Medicaid (Medicaid) and the State Children's Health Insurance Program (SCHIP)* Program eligibility information about children eligible for free and reduced price meals may be disclosed to Medicaid and SCHIP as described in this section.

(1) *Who decides whether to disclose program eligibility information to Medicaid and/or SCHIP?* The State agency may elect to allow school food authorities to disclose children's free and reduced price meal eligibility information to Medicaid and SCHIP. School food authorities may then elect to do so. Children's program eligibility information may only 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 as described in paragraph (f)(5), and the requirements in this paragraph (f) are met.

(2) *What information may we disclose for use by Medicaid and 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/milk application or obtained through direct certification to persons directly connected with the administration of Medicaid or SCHIP.

(3) *Who are persons "directly connected" with the administration of Medicaid and SCHIP?* 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 are persons directly connected with the administration of Medicaid and SCHIP for purposes of disclosure of children's free and reduced price meal and free milk eligibility information.

(4) *What are the restrictions on how Medicaid and SCHIP use children's free and reduced price meal and free milk eligibility information?* Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal and free milk eligibility information may only 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.

(5) *Must we notify households of potential disclosure to Medicaid or SCHIP?* The State agency or school food authority, as appropriate, must notify parents/guardians that their children's free or 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. 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 seek to enroll children in a health insurance program, and that their decision will not affect their children's eligibility for free or 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. 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.

(6) *May social security numbers be disclosed?* The State agency or school food authority, as appropriate, may disclose social security numbers to any programs or persons authorized to receive all program eligibility information under this paragraph (f), provided parents/guardians have not declined to have their information disclosed. However, State agencies and school food authorities that plan to disclose social security numbers must give notice of the planned use of the social security numbers. This notice must be in accordance with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note). The application must include substantially the following language for disclosures of social security numbers to Medicaid or SCHIP: "The social security number may also be disclosed to Medicaid and the State Children's Health Insurance Program for the purpose of identifying and seeking to enroll eligible children in one of these health insurance programs." This language is in addition to the notice required in paragraph (a)(1) of this section. State agencies and school food authorities are responsible for drafting the appropriate notice for disclosures of social security numbers.

(7) *Are agreements required before disclosing program eligibility information?* The State agency or school food authority, 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 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 only be used to seek to enroll children in Medicaid or SCHIP;
  - (iv) Describe how the information will be protected from unauthorized uses and disclosures;
  - (v) Describe the penalties for unauthorized disclosure; and
  - (vi) Be signed by both the Medicaid or SCHIP program or agency and the State agency or school food authority, as appropriate.
- (8) *What are the penalties for unauthorized disclosure or misuse of information?* In accordance with section 9(b)(2)(C)(v) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(2)(C)(v)), 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 paragraph (f) will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.

(9) *What are the State agency's responsibilities regarding disclosures?* State agencies that elect to allow disclosure of children's free and reduced price meal eligibility information to Medicaid or SCHIP, as provided in this paragraph (f), must ensure that any school food authority acting in accordance with that option:

- (i) Has a written agreement with the State or local agency or agencies administering health insurance programs for children under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 *et seq.* and 1397aa *et seq.*) that requires the health agencies to use children's free and reduced price meal eligibility information to seek to enroll children in those health insurance programs; and
- (ii) Notifies each household of the information that will be disclosed, that the information disclosed will be used only to seek to enroll children in Medicaid or SCHIP and provides each parent/guardian with an opportunity to elect not to have the information disclosed.

Dated: January 5, 2001.

**Shirley R. Watkins,**

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

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**BILLING CODE 3410-30-P**

## DEPARTMENT OF AGRICULTURE

### 9 CFR Parts 331 and 381

[Docket No. 00-052F]

#### Termination of Designation of the State of Missouri With Respect to the Inspection of Meat and Meat Food Products and Poultry and Poultry Food Products

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule and termination of designation.

**SUMMARY:** This final rule amends the Federal meat and poultry products inspection regulations by terminating the designation of the State of Missouri under Titles I, II, and IV of the Federal Meat Inspection Act (FMIA) and under sections 1 through 4, 6 through 11, and 12 through 22 of the Poultry Products Inspection Act (PPIA).

**DATES:** This final rule is effective January 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Dr. William F. Leese, Director, Federal-State Relations Staff, Food Safety and Inspection Service; telephone (202) 418-8900 or fax (202) 418-8834.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 301(c) of the FMIA (21 U.S.C. 661(c)) and section 5(c) of the PPIA (21 U.S.C. 454(c)) authorize the Secretary of Agriculture (Secretary) to designate a State as one in which the provisions of Titles I and IV of the FMIA and sections 1-4, 6-11, and 12-22 of the PPIA will apply to operations and transactions wholly within the State after the Secretary has determined that requirements at least "equal to" those imposed under the Acts have not been developed and effectively enforced by the State.

On August 18, 1972, the Secretary designated the State of Missouri under section 301(c) of the FMIA and section 5(c) of the PPIA as a State in which the Federal Government is responsible for providing meat and poultry inspection at eligible establishments and for otherwise enforcing the applicable provisions of the FMIA and the PPIA with regard to intrastate activities in the State.

In addition, on January 31, 1975, the Federal Government assumed the responsibility of administering the authorities provided for under sections 202 and 203 of the FMIA (21 U.S.C. 642 and 643) and sections 11(b) and (c) of the PPIA (21 U.S.C. 460(b) and (c)) regarding certain classes of operators of meat and poultry products in Missouri.