



**Billing Code: 3410-30-P**

**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

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

**RIN 0584-AE14**

**Child Nutrition Programs: Nondiscretionary Amendments Related to the Healthy, Hunger-Free Kids Act of 2010**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements several nondiscretionary provisions of the Healthy, Hunger-Free Kids Act of 2010, including those related to categorical eligibility for foster children, removal of limits on private nonprofit sponsors, outreach to eligible families, simplification of area eligibility for day care homes, application of school food safety requirements, and permanent agreements for institutions and sponsors. These provisions will make it easier for children to get nutritious meals when they are away from home, while requiring State and local agencies to make relatively minor changes in the procedures they use to operate the National School Lunch Program, Special Milk Program, School Breakfast Program, Child and Adult Care Food Program, and Summer Food Service Program.

**DATES:** This rule is effective [insert date that is 30 days from date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of

Agriculture, 3101 Park Center Drive, Suite 640, Alexandria, VA 22302-1594, or telephone 703-305-2590.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Healthy, Hunger-Free Kids Act of 2010 (HHFKA), Public Law 111-296, makes important improvements to the Child Nutrition Programs that serve the nation's children. It provides for improved access to nutrition assistance through program expansion, outreach, and modifications in administration of the National School Lunch Program, Special Milk Program, School Breakfast Program, Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP).

This rulemaking codifies the following nondiscretionary amendments into Title 7 of the Code of Federal Regulations, as they apply to parts 210, 215, 220, 225, 226, and 245:

- Confer categorical eligibility for free meals and free milk to foster children whose care and placement is the responsibility of a State foster care agency or a court.
- Eliminate an existing limitation on the number of sites that private nonprofit sponsors may be approved to operate in SFSP.
- Require each State agency administering the National School Lunch Program to ensure that school food authorities cooperate with SFSP sponsors to distribute materials to inform families of the availability of free and reduced-price breakfast during the school year and of free meals when the school year ends.

- Expand the allowable sources of income information to include data from any school to determine area eligibility for day care homes in CACFP.
- Specify that, as a condition of eligibility, applications for free or reduced-price meals and free milk include only the last four digits of the social security number of the adult who signs the application, in lieu of the complete social security number.
- Eliminate collection of social security numbers for verification of free and reduced-price meal eligibility.
- Specify that the school food safety program established for meals served through the school meal programs applies to any facility, or part of a facility, in which foods are stored, prepared, or served.
- Require State agencies and SFSP sponsors to enter into permanent agreements.
- Require State agencies and CACFP institutions to enter into permanent agreements.
- Clarify the definition of “areas in which poor economic conditions exist” in SFSP.
- Clarify revenue and accrual requirements from foods sold in schools outside of the reimbursable meals programs.

## **II. Implementation**

### **Categorical Eligibility of Foster Child**

Section 102 of HHFKA amends sections 9(b)(12)(A) and 9(d)(2)(F) of the Richard B. Russell National School Lunch Act, (NSLA), 42 U.S.C. 1758(b)(12(A) and (d)(2)(F), to provide categorical eligibility for free meals, without further application or eligibility determination, to

any foster child whose care and placement is the responsibility of the State or who is placed by a court with a caretaker household. Section 102 also amends section 9(b)(5) of NSLA to allow the local educational agency, to certify any foster child as eligible for free meals, without application, by directly communicating with the appropriate State or local child welfare agency to obtain documentation of a child's status. In accordance with section 17(c)(4), of NSLA, 42 USC 1766(c)(4), and section 13(a) of the Child Nutrition Act of 1966 (CNA), 42 USC 1773(e)(1)(A), child care institutions and sponsors may similarly certify any foster child as categorically eligible for free meals without further application.

These provisions require changes in the way free and reduced-price meals applications are handled. Previously, the application process outlined in the regulations considered a foster child as a household of one. A guardian was required to complete a separate application on behalf of each foster child. The application required provision of information, including the foster child's name and any personal income received by the child.

Under the amendments to section 9(b)(12)(A) of NSLA, effective retroactively on October 1, 2010, a child who is formally placed by a court or an agency that administers a State plan under parts B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.), or a child who is placed with a caretaker household by a court becomes automatically eligible for free meals. In accordance with section 3(a)(4) of CNA, 42 USC 1772(a)(4), a child would also be automatically eligible for free milk. The Food and Nutrition Service (FNS) encourages local education agencies, institutions, and sponsors in the Child Nutrition Programs to communicate with State and local child welfare agencies and establish formal procedures so they can receive information

directly from the foster care agencies to facilitate certification for free meals or free milk for children in foster care. If the appropriate foster care agency does not initially provide documentation for a categorically eligible foster child, an application identifying the child as a foster child must be completed. Documentation or direct contact with a State or local child welfare agency or a court where the child received placement is not required unless the household's application is selected for verification.

FNS issued a memorandum, SP 17-2011, CACFP 08-2011, SFSP 05-2011: Child Nutrition Reauthorization 2010: Categorical Eligibility of Foster Children, on January 31, 2011, and additional guidance on March 16, 2011, to help State agencies begin implementing this Program modification. FNS also revised the prototype free and reduced-price school meals application and the CACFP meal benefit income eligibility form and supporting materials. To facilitate access and communication among Program operators and households, FNS has also revised and translated the prototype application materials into 33 languages. They are available on the FNS website at <http://www.fns.usda.gov/cnd/frp/frp.process.htm> and [http://www.fns.usda.gov/cnd/care/Benefit\\_Forms/Translations.htm](http://www.fns.usda.gov/cnd/care/Benefit_Forms/Translations.htm)

Accordingly, this final rule amends Program regulations to add categorical eligibility for free meals and free milk for a child whose care and placement is the responsibility of a State foster care agency or a court. This rule makes corresponding changes to 7 CFR 210.9(b), 220.7(e), 225.2 (definition of Foster child), 225.15(e), 225.15(f), 226.2 (definitions of Foster child and Free meal), 226.23(c), 226.23(d), 226.23(e), 245.2 (definitions of Categorically eligible, Direct

certification, Documentation, and Foster child), 245.5(a), 245.6(a) 245.6(b), 245.6(c), 245.6a(a), 245.6a(c), and 245.6a(f).

### **Alignment of Eligibility Rules for Public and Private Sponsors**

The Summer Food Service Program (SFSP) is authorized under section 13 of NSLA, 42 U.S.C. 1761. Its primary purpose is to provide nutritious meals to children from low-income areas during periods when schools are closed for vacation.

Section 111 of HHFKA amends section 13(a) of NSLA, 42 U.S.C. 1761(a), to clarify the definition of “private nonprofit” in SFSP and expand the limits on the number of sites and children that private nonprofit organization sponsors may serve. Section 111 of HHFKA also specifies that private nonprofit organizations must have private nonprofit status under section 501(c) of the Internal Revenue Code of 1986, 26 USC 1.501(c)(3)-1, and be exempt from taxation under section 501(a) of that Code, 26 USC 1.501(a)-1. Section 441 of HHFKA further amends section 13(a) of NSLA to clarify how the geographic area that determines the location and eligibility of sites is defined.

Previously, statutory and regulatory limitations permitted private nonprofit sponsors to operate no more than 25 sites, with no more than 300 children served at any one site unless granted a waiver by the State agency. Private nonprofit sponsors could only operate in areas where school food authorities were not intending to participate. The new amendments to section 13(a)(7) of NSLA removed the statutory restrictions and aligned the eligibility criteria for schools, public

agencies, and private nonprofit organizations, establishing the same opportunities for all types of sponsors.

Effective retroactively on October 1, 2010, private nonprofit sponsors are eligible to participate in SFSP under the same terms as other service institutions. All sponsors may now be approved to operate a maximum of 200 sites and serve a maximum total average daily attendance of 50,000 children. Exceptions to these limits may be approved by State agencies, if the sponsor can demonstrate that its organization has the ability to manage a larger program.

FNS issued a memorandum, SFSP 02-2011: Child Nutrition Reauthorization 2010: Eligibility Requirements and Site Limits for Private Nonprofit Organizations in the Summer Food Service Program, on January 14, 2011, to help State agencies begin implementing this Program modification. Accordingly, this final rule amends Program regulations to eliminate an existing limitation on the number of sites that private nonprofit sponsors may be approved to operate, and identify the applicable sections of the Internal Revenue Code for private nonprofit organizations to certify tax exemption and Program eligibility. This rule makes corresponding changes to 7 CFR 225.2 (Private nonprofit, and Private nonprofit organization), 225.6(b)(6), and 225.14(d)(6).

### **Outreach to Eligible Families**

Section 112 of HHFKA establishes requirements for conducting outreach in SFSP and the School Breakfast Program. It adds section 13(a)(11) to NSLA, 42 U.S.C. 1761(a)(11), to coordinate outreach to families, in an effort to help more children benefit from the nutritious

meals served in the School Breakfast Program during the school year, and in SFSP when the school year ends.

This new provision requires school food authorities to cooperate with SFSP sponsors, to the maximum extent practicable, to distribute materials informing families of the availability and location of free SFSP meals when school is not in session. School food authorities must also inform families of the availability of reimbursable breakfasts at school during the school year. State agencies that administer the National School Lunch Program must ensure that school food authorities implement activities to inform families. If the State agency administering SFSP is not the same State agency that administers the National School Lunch Program, then both agencies must work together to ensure that these requirements are met.

To help State agencies begin implementing this provision, FNS issued a memorandum, SP 15-2011, SFSP 04-2011: Child Nutrition Reauthorization 2010: Outreach to Households on the Availability of Summer Food Service Program Meals, on January 25, 2011. FNS issued additional guidance, SP 40-2011: Child Nutrition Reauthorization 2010: Outreach to Households on the Availability of the School Breakfast Program on June 15, 2011.

Accordingly, this final rule amends Program regulations to require each State agency administering the National School Lunch Program to ensure cooperation among school food authorities, SFSP sponsors, and if applicable, alternate State agencies, to inform families of the availability of free and reduced-price breakfast during the school year and of free meals through

SFSP when school is not in session. This rule makes corresponding changes by adding new paragraphs at 7 CFR 210.12(d) and 210.19(g).

### **Simplifying Area Eligibility Determinations**

The Child and Adult Care Food Program (CACFP) is authorized under section 17 of NSLA, 42 U.S.C. 1766, to provide the nutrition that contributes to the wellness, healthy growth, and development of young children in family and group day care homes. CACFP targets higher levels of reimbursement to day care homes in low-income areas.

Section 121 of HHFKA amends section 17(f)(3)(A)(ii)(I)(bb) of NSLA, 42 U.S.C. 1766(f)(3)(A)(ii)(I)(bb), to allow family and group day care homes to be classified as tier I, for purposes of higher reimbursement, if the home is located in an attendance area of a school in which at least 50 percent of the enrolled children are certified eligible for free and reduced-price school meals. Each year, the National School Lunch Program State agency is responsible for compiling data into a list of area-eligible schools, and transmitting this list to the CACFP State agency. The CACFP sponsoring organization is responsible for determining day care home classifications for tier I reimbursement. Determination of a day care home's eligibility for tier I reimbursement is valid for five years.

Previously, only the enrollment of the local elementary school could be used to determine tier I eligibility. Effective retroactively on October 1, 2010, the day care home's eligibility may be determined by the enrollment of any local school, as long as the home is located within the

selected school's attendance area. FNS issued a memorandum, CACFP 05-2011: Child Nutrition Reauthorization 2010: Area Eligibility for Family Day Care Homes, on December 22, 2010, and a subsequent revision on January 10, 2011, to advise States that any elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free and reduced-price school meals may be used to make tier I determinations for homes in the local area.

Accordingly, this final rule amends Program regulations to establish CACFP area eligibility for family day care homes located in the attendance area of any school where at least 50 percent of the enrolled children are certified eligible for free and reduced-price meals. This rule makes corresponding changes to 7 CFR 210.9(b)(21), 210.19(f), 226.2 (definitions of Eligible area and Tier I day care home) 226.6(f), 226.15(e), 226.15(f), and 226.17a(1)(i).

### **Privacy Protection**

Section 301 of HRFKA amends section 9(d)(1) of NSLA, 42 U.S.C. 1758(d)(1), by removing the requirement that the adult household member who signs a household application for free and reduced-price lunches must also provide his or her complete nine-digit social security number, as a condition of eligibility. In accordance with section 4(e)(1) of CNA, 42 USC 1773(e)(1), the provision of a social security number is required for applications for free and reduced-price breakfast, as well. This amendment also removes the requirement that the social security number of each household member be collected to verify applications. However, no change was made to

any of the confidentiality requirements of NSLA regarding the use and disclosure of information obtained from an application for free and reduced-price meals.

The new amendments to section 9(d)(1) of NSLA, effective retroactively on October 1, 2010, require that the adult household member signing the free and reduced-price application provide only the last four digits of the social security number. USDA expects this change to increase privacy protections for households applying for free and reduced-price meals and free milk in the Child Nutrition Programs.

Collection of a partial social security number does not require protection under section 7(b) of the Privacy Act of 1974, 5 U.S.C. 552a note. Therefore, the Privacy Act statement, currently found at 7 CFR 245.6(a)(8), addressing the use of the social security number in determining individual eligibility for free meals and free milk benefits is no longer required.

These statutorily-driven amendments do not change how applications for free and reduced-price meals or free milk are evaluated. An application that does not include the last four digits of the social security number of the adult household member, or an indication that the adult does not have a social security number, will be considered incomplete for purposes of determining eligibility for benefits in the Child Nutrition Programs.

FNS issued a memorandum, SP 19-2011, CACFP 09-2011, SFSP 06-2011: Child Nutrition Reauthorization 2010: Privacy Protection and the Use of Social Security Numbers in Child Nutrition Programs, on February 15, 2011. FNS has revised the prototype free and reduced-price

school meals application and the CACFP meal benefit income eligibility form and supporting materials. They are available on the FNS website at

<http://www.fns.usda.gov/cnd/frp/frp.process.htm> and

[http://www.fns.usda.gov/cnd/care/Benefit\\_Forms/Translations.htm](http://www.fns.usda.gov/cnd/care/Benefit_Forms/Translations.htm)

FNS has also revised the Eligibility Manual for School Meals to give practical guidance to help State and local operators achieve the goals of these provisions. This manual contains information on Federal requirements for schools, institutions, and sponsors that must establish individual eligibility for free and reduced-price meals or free milk. It is found on the FNS website at <http://www.fns.usda.gov/cnd/guidance/default.htm>.

Accordingly, this final rule amends Program regulations to specify that, as a condition of eligibility, applications for free and reduced-price meals and free milk must include the last four digits of the social security number of the adult household member who signs the application. This rule modifies the application verification process by eliminating the collection of social security numbers. It also eliminates specific references to section 7(b) of the Privacy Act of 1974, 5 U.S.C. 552a note, regarding the collection of social security numbers. As noted above, this rule does not change the confidentiality requirements regarding the use and disclosure of information that appear elsewhere in NSLA. Additionally, this rule does not change the current regulatory provision that allows the adult household member who signs the application to indicate that the adult does not have a social security number. This rule makes corresponding changes to 7 CFR 215.13a(f), 215.13a(i), 225.2 (definitions of Adult and Documentation),

225.15(f), 226.2 (definitions of Adult and Documentation), 226.23(e), 226.23(h), 245.2 (definition of Documentation), 245.6(a), 245.6(h), and 245.6a(f).

### **Applicability of Food Safety Programs for the Entire School Campus**

Section 302 of HHFKA amends section 9(h)(5) of NSLA, 42 U.S.C. 1758(h)(5), to strengthen food safety requirements in the National School Lunch Program, School Breakfast Program, and all other Child Nutrition Programs operated in a school. NSLA now requires that Hazard Analysis and Critical Control Point (HACCP) principles for safe food handling be applied to any facility, or part of a facility in which food for any Child Nutrition Program is stored, prepared, or served.

Section 402 of HHFKA further amends section 9(h) of NSLA to extend State food safety audit and reporting requirements through fiscal year 2015. Therefore, State agencies must continue to report to FNS, by November 15 of each year, the number of food safety inspections received by schools in their States during the prior school year.

The school food safety program has been statutorily required in school cafeterias since 2004. It requires school food authorities to apply HACCP principles to address food safety in all aspects of school meal preparation and meal service.

To comply with the requirements of section 9(h)(5) of NSLA, FNS anticipates that only minor modifications to existing Child Nutrition Program operations will be needed. For example, school food authorities may apply their current procedures for safe food handling in the cafeteria

to other locations, including school buses, hallways, school courtyards, kiosks, and classrooms, where food is stored, prepared, or served. As a result, State agencies will need to review the schools' food safety programs to ensure that standard operating procedures for safe food handling are updated to include locations outside of the cafeteria.

FNS issued a memorandum, SP 37-2011: Child Nutrition Reauthorization 2010: Enhancing the School Food Safety Program, on May 18, 2011, advising State agencies of the new food safety provisions. FNS will also provide additional food safety guidance, as needed, to help State and local operators comply with the requirements of this provision.

Accordingly, this final rule amends Program regulations to specify that the school food safety program established for meals served through the school meal programs applies to any facility, or part of a facility, in which foods are stored, prepared, or served. This rule makes corresponding changes to 7 CFR 210.13(c) and 220.7(a)(3). This rule also makes corresponding changes to 7 CFR 210.20(a)(8), 210.20(b)(12), and 220.13(b)(3) to extend State food safety audit and reporting requirements through fiscal year 2015.

### **Permanent Operating Agreements**

Section 321 of HHFKA amends section 13(b) of NSLA, 42 U.S.C. 1761(b), to require permanent operating agreements between State agencies and all sponsors that are approved to participate in SFSP. Similarly, section 331(a) of HHFKA amends section 17(d)(1) of NSLA, 42 U.S.C.

1766(d)(1), to require permanent operating agreements between State agencies and child or adult care institutions in CACFP.

The use of permanent agreements is not new to State agencies administering SFSP and CACFP. Section 9(i) of NSLA, 42 U.S.C. 1758(i), has required States which administer any combination of Child Nutrition Programs within the same State administering agency, to use a single permanent agreement for all programs operated by a school food authority under that State agency. Section 9(i) of NSLA also requires that multiple programs operated by an alternate State agency would use a single permanent agreement.

CACFP regulations at 7 CFR 226.6(b)(4)(ii) give State agencies the authority to enter into permanent agreements with any institution. SFSP regulations at 7 CFR 225.6(e) instruct State agencies to enter into permanent agreements with school food authority sponsors, and the memorandum SFSP 03-2007: Permanent Agreements for All Summer Food Service Program Sponsors, issued by FNS on February 23, 2007, extends to State agencies the authority to establish permanent agreements with any type of SFSP sponsor.

Effective retroactively on October 1, 2010, the new provisions under sections 13(b)(3) and 17(d)(1)(E) of NSLA now require State agencies to establish permanent operating agreements with all approved sponsors and child or adult care institutions. FNS issued a memorandum, CACFP 07-2011, SFSP 03-2011: Child Nutrition Reauthorization 2010: Permanent Agreements in the Summer Food Service Program and the Child and Adult Care Food Program, on January 14, 2011, to implement these provisions.

Accordingly, this final rule amends Program regulations to require State agencies to enter into permanent agreements with approved sponsors in SFSP and with approved child or adult care institutions in CACFP. This rule makes corresponding changes to 7 CFR 225.6(e), 226.6(b), 226.6(c), 226.16(f), and 226.17a(f). Additional provisions of sections 331(b) and (c) of HHFKA make a number of modifications to CACFP applications, reviews, and agreements between sponsoring organizations and their facilities. FNS intends to address implementation of those discretionary provisions in a separate rulemaking.

### **Technical Amendments**

Section 441 of HHFKA includes a technical amendment that clarifies the definition of “area in which poor economic conditions exist” that appears under section 13 of NSLA, 42 USC 1761. The definition now specifically states that SFSP sites must be located in the attendance area of a school to qualify as area eligible. This clarification is consistent with how FNS and States have always interpreted area eligibility on the basis of free and reduced-price school meal data. Accordingly, this rule makes a corresponding change to 7 CFR 225.2 (definition of Areas in which poor economic conditions exist).

Section 206 of HHFKA includes an amendment to section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779) regarding revenue from foods sold in schools outside of the reimbursable meals programs. FNS published an interim rule, National School Lunch Program: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010,

76 FR 35301, on June 17, 2011, to clarify that revenue from these non-program foods must accrue to the nonprofit school food service. The interim rule addressed these revenue and accrual requirements only under 7 CFR 210.14, without amending 7 CFR 210.11. Accordingly, this rule makes a corresponding change to 7 CFR 210.11(b) to address these requirements.

This rule also includes amendments to correct technical errors that appeared in the final rule, Nutrition Standards in the National School Lunch and School Breakfast Programs, 77 FR 4088, published on January 26, 2012. That rule updated school meal patterns to align them with the Dietary Guidelines for Americans. However, the published rule misstated the required percentage of whole grains and the number of food components to offer to children.

Accordingly, this rule makes a corresponding change to 7 CFR 210.10(c)(2)(iv)(A) to specify that creditable whole grain-rich foods contain at least 50 percent whole grains and the remaining grain content of the product must be enriched. This rule also makes corresponding changes to 7 CFR 210.2 (definitions of Food component and Food item) and 210.10(e) to remove errors regarding the number of food components.

This rule makes several additional technical changes to 7 CFR parts 210, 225, 226, and 245. We are using this opportunity to fix a small number of outdated regulatory citations, obsolete terms of usage, typographical errors, and misspelled words. None of the technical changes will effect a substantive change in the Programs. Accordingly, this rule amends Program regulations to:

- Replace references to the Food Stamp Program, renamed the Supplemental Nutrition Assistance Program (SNAP), that now appear under 7 CFR 226.23(e)(1)(iv)(A), 226.23(e)(2)(vi)(A), 226.23(e)(2)(vi)(B), 226.23(h)(2)(v)(A), and 245.6a(f)(3).

- Correct the citation that references school selection criteria at 7 CFR 210.18(e).
- Remove two obsolete citations that reference the free meal policy statement in 7 CFR 225.6(c)(4).
- Correct citations that reference invitation for bid requirements in paragraphs 7 CFR 225.6(c)(2)(ii)(C) and 225.6(c)(3)(ii)(C) and late submission of claims at 7 CFR 225.13(a).
- Replace the term “handicap” with the term “disability” in 7 CFR 225.6(c)(4)(ii)(F).
- Correct the typographical error in 7 CFR 225.18(g) which misstates the \$25,000 fraud limit penalty as \$100,000.
- Correct the citation that references tax-exempt requirements in 7 CFR 226.6(f)(3)(iv)(C).
- Remove an incorrect citation of appeal rights for day care homes at 7 CFR 226.6(b)(3) and extra punctuation at 7 CFR 226.17(b)(4).
- Correct the spellings of “eligibility” in 7 CFR 226.4(b), “institution’s” in 7 CFR 226.6(c)(2)(iii)(A)(6), “ranges” in 7 CFR 226.6(d)(3)(iv)(C), and “member” in 7 CFR 226.23(e)(1)(iv).

### **III. Procedural Matters**

#### Notice and Comment

In accordance with the Secretary of Agriculture’s Statement of Policy (36 FR 13804), this rule is exempt from the notice and comment provisions of the Administrative Procedures Act, 5 U.S.C. 553, normally required before the adoption of final rulemaking. As this preamble explains, all of the HHFKA amendments adopted as final in this rule are nondiscretionary. USDA has not exercised any authority in interpreting the statutory provisions beyond the language that is

specifically provided in the law. Therefore, notice and comment would serve no useful purpose in the promulgation of these regulations.

#### Executive Order 12866

This rule has been determined to be not significant. In conformance with Executive Order 12866, this rule was not reviewed by the Office of Management and Budget (OMB).

#### Regulatory Flexibility Act

This rule has not been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612. FNS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule incorporates into the regulations governing Child Nutrition Programs authorized under NSLA and the Child Nutrition Act of 1966, as amended, nondiscretionary statutory provisions set forth in HHFKA.

Although the provisions may be applicable to State agencies, local educational agencies, school food authorities, child care institutions, adult care institutions, and sponsors that administer or operate these programs, they will not have significant economic impact on any of those entities.

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. Under section 202 of UMRA, FNS must generally prepare a written statement, including a cost benefit analysis, for proposed and final

rules with “Federal mandates” that may result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. When this statement is needed, section 205 of UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives, and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates of \$100 million or more in any one year under the regulatory provisions of Title II of UMRA for State, local, or tribal governments, or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

#### Executive Order 12372

The nutrition assistance programs affected by this rulemaking are listed in the Catalog of Federal Domestic Assistance as follows:

- National School Lunch Program, No. 10.555
- School Breakfast Program, No. 10.553
- Special Milk Program, No. 10.556
- Child and Adult Care Food Program, No. 10.558
- Summer Food Service Program, No. 10.559

For the reasons set forth in the final rule at 7 CFR 3015, subpart V and related notice (48 FR 29115, June 24, 1983), these programs are included in the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

### Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where these actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13121. FNS has considered the impact of this final rule on State and local governments and has determined that it does not have federalism implications. Therefore, under section 6(b) of this Executive Order, a federalism summary impact statement is not required.

### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is intended to have retroactive effect, as authorized under HRFKA. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

### Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with USDA regulations, 4300-4, "Civil Rights Impact Analysis," and 1512-1, "Regulatory Decision Making Requirements." After a careful review of the rule's intent and provisions, FNS has determined that this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits on the

basis of their race, color, national origin, sex, age, or disability, nor is it intended to have a differential impact on minority-owned or operated business establishments, and woman-owned or operated business establishments that participate in the programs affected by this rulemaking.

#### Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes.

In Spring 2011, FNS offered opportunities for consultation with Tribal officials or their designees to discuss the impact of HHFKA on tribes or Indian Tribal governments. FNS coordinated five consultation sessions that provided the opportunity to address Tribal concerns and gain input from elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities, and individuals.

Reports from these consultations are part of the USDA annual reporting on Tribal consultation and collaboration. FNS will respond in a timely and meaningful manner to Tribal government requests for consultation concerning this rule. Currently, FNS provides regularly scheduled quarterly consultation sessions through the end of Fiscal Year 2012 as an opportunity for collaborative conversations with Tribal officials and their designees.

## **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35; see 5 CFR 1320, requires OMB to approve all collections of information by a Federal agency before they can be implemented.

Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

## E-Government Act Compliance

FNS is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities to provide 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

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

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.

2. In §210.2, revise the definitions of Food component and Food item to read as follows:

**§210.2 Definitions.**

\* \* \* \* \*

Food component means one of the food groups which comprise reimbursable meals. The food components are: meats/meat alternates, grains, vegetables, fruits, and fluid milk. Meals offered to preschoolers must consist of: meats/meat alternates, grains, vegetables/fruits, and fluid milk.

Food item means a specific food offered within a food component.

\* \* \* \* \*

3. In §210.9:

- a. Remove the word “or” at the end of paragraph (b)(19)(iv).
- b. In paragraph (b)(19)(v), remove the period at the end of the sentence and add, in its place, the term “; or”.
- c. Add new paragraph (b)(19)(vi).
- d. In paragraph (b)(21), remove the word “elementary” each time it appears.

The addition reads as follows:

**§210.9 Agreement with State agency.**

\* \* \* \* \*

(b) \* \* \*

(19) \* \* \*

(vi) The child is a foster child as defined in §245.2 of this chapter.

\* \* \* \* \*

4. In §210.10:

- a. In paragraph (c)(2)(iv)(A), remove the number “51” and add, in its place, the number “50”.
- b. In paragraph (e), remove the word “items” and add, in its place, the word “components”.

5. In §210.11, remove the words “or the school or student organizations approved by the school” at the end of the third sentence of paragraph (b).

6. In §210.12, add new paragraph (d) to read as follows:

**§210.12 Student, parent and community involvement.**

\* \* \* \* \*

(d) Outreach activities. (1) To the maximum extent practicable, school food authorities must inform families about the availability breakfasts for students. Information about the School Breakfast Program must be distributed just prior to or at the beginning of the school year. In addition, schools are encouraged to send reminders regarding the availability of the School Breakfast Program multiple times throughout the school year.

(2) School food authorities must cooperate with Summer Food Service Program sponsors to distribute materials to inform families of the availability and location of free Summer Food Service Program meals for students when school is not in session.

7. In §210.13, revise the introductory text of paragraph (c) to read as follows:

**§210.13 Facilities management.**

\* \* \* \* \*

(c) Food safety program. The school food authority must develop a written food safety program that covers any facility or part of a facility where food is stored, prepared, or served. The food safety program must meet the requirements in paragraph (c)(1) or paragraph (c)(2) of this section, and the requirements in §210.15(b)(5).

\* \* \* \* \*

8. In §210.18, remove the term “(e)(1)” in the introductory text of paragraph (e), and add, in its place, the term “(e)(2)”.

9. In §210.19:

- a. In paragraph (f), remove the word “elementary”.
- b. Add new paragraph (g).

The addition reads as follows:

**§ 210.19 Additional responsibilities.**

\* \* \* \* \*

(g) Program outreach. State agencies must ensure that school food authorities conduct the outreach activities required under §210.12(d). If the State agency administering the Summer Food Service Program is not the same State agency that administers the National School Lunch Program, then the two State agencies must work together to implement outreach measures.

10. In §210.20:

- a. In paragraph (a)(8), remove the words “2008-2009” and add, in their place, the words “2014-2015”.
- b. Revise paragraph (b)(12).

The revision reads as follows:

**§210.20 Reporting and recordkeeping.**

\* \* \* \* \*

(b) \* \* \*

(12) Records supplied by the school food authorities showing the number of food safety inspections obtained by schools for the current and three most recent school years.

\* \* \* \* \*

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

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

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

12. In §215.13a:

a. Revise paragraph (f).

b. In paragraphs (i)(1) and (i)(2), remove the term “Privacy Act notice”.

The revision reads as follows:

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

\* \* \* \* \*

(f) Statement requirements. The free milk application provided to households must include a statement informing households of how information provided on the application will be used. Each 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 last four digits of the social security number of the adult household member who signs the application. The last four digits of the social security number are not required when you list a Supplemental Nutrition Assistance Program (SNAP), 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 this statement. State agencies and child care institutions are responsible for drafting the appropriate statement.

\* \* \* \* \*

## **PART 220 – SCHOOL BREAKFAST PROGRAM**

13. The authority for part 220 continues to read as follows:

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

14. In §220.7:

- a. Revise paragraph (a)(3).
- b. At the end of paragraph (e)(14)(ii)(D), remove the word “or”.
- c. At the end of paragraph (e)(14)(ii)(E), remove the period and add, in its place, the term “; or”.
- d. Add new paragraph (e)(14)(ii)(F).

The revision and addition read as follows:

### **§220.7 Requirements for participation.**

(a) \* \* \*

(3) The school food authority must implement a food safety program meeting the requirements of §§210.13(c) and 210.15(b)(5) of this chapter at each facility or part of a facility where food is stored, prepared, or served.

\* \* \* \* \*

(e) \* \* \*

(14) \* \* \*

(ii) \* \* \*

(F) The child is a foster child as defined in §245.2 of this chapter.

\* \* \* \* \*

15. In §220.13, revise paragraph (b)(3) to read as follows:

**§220.13 Special responsibilities of State agencies.**

\* \* \* \* \*

(b) \* \* \*

(3) For each of school years 2005-2006 through 2014-2015, each State agency shall monitor school food authority compliance with the food safety inspection requirement in §220.7(a)(2) and submit an annual report to FNS documenting school compliance based on data supplied by the school food authorities. The report must be filed by November 15 following each of school years 2005-2006 through 2014-2015, beginning November 15, 2006. The State agency shall keep the records supplied by the school food authorities showing the number of food safety inspections obtained by schools for the current and three most recent school years.

\* \* \* \* \*

## **PART 225—SUMMER FOOD SERVICE PROGRAM**

16. The authority citation for part 225 continues 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)

17. In §225.2:

- a. In the definition of Adult, after the word “collection”, add the words “of the last four digits”.
- b. In the definition of Documentation, revise paragraph (a)(4).
- c. Revise the definitions of Areas in which poor economic conditions exist, Private nonprofit, and Private nonprofit organization.
- d. Add a new definition of Foster child in alphabetical order.

The revisions and addition read as follows:

### **§225.2 Definitions.**

\* \* \* \* \*

Areas in which poor economic conditions exist means:

- (a) The attendance area of a school in which at least 50 percent of the enrolled children have been determined eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program;

(b) A geographic area where, based on the most recent census data available or information provided from a department of welfare or zoning commission, at least 50 percent of the children residing in that area are eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program;

(c) A geographic area where a site demonstrates, based on other approved sources, that at least 50 percent of the children enrolled at the site are eligible for free or reduced-price meals under the National School Lunch Program and the School Breakfast Program; or

(d) A closed enrolled site.

\* \* \* \* \*

Documentation means:

(a)\* \* \*

(4) The last four digits of the social security number of the adult household member who signs the application, or an indication that the adult does not possess a social security number; or

\* \* \* \* \*

Foster child means a child who is formally placed by a court or a State child welfare agency, as defined in §245.2 of this chapter.

\* \* \* \* \*

Private nonprofit means tax exempt under section 501(a) of the Internal Revenue Code of 1986, as amended.

Private nonprofit organization means an organization (other than private nonprofit residential camps, school food authorities, or colleges or universities participating in the NYSP) that:

(a) Exercises full control and authority over the operation of the Program at all sites under the sponsorship of the organization;

- (b) Provides ongoing year-round activities for children or families;
- (c) Demonstrates that the organization has adequate management and the fiscal capacity to operate the Program;
- (d) Is an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code; and
- (e) Meets applicable State and local health, safety, and sanitation standards.

\* \* \* \* \*

18. In §225.6:

- a. Revise paragraph (b)(6).
- b. In paragraph (c)(2)(ii)(C), remove the term “225.15(h)” and add, in its place, the term “225.15(m)”.
- c. In paragraph (c)(3)(ii)(C), remove the term “225.15(g)” and add, in its place, the term “225.15(m)”.
- d. In paragraphs (c)(4)(i) and (c)(4)(ii), remove the words “paragraph (c)(3) of” both times they appear.
- e. In paragraph (c)(4)(ii)(F), remove the word “handicap” and add, in its place, the word “disability”.
- f. Revise the introductory text in paragraph (e).

The revisions read as follows:

**§225.6 State agency responsibilities.**

\* \* \* \* \*

(b)\* \* \*

(6) The State agency must not approve any sponsor to operate more than 200 sites or to serve more than an average of 50,000 children per day. However, the State agency may approve exceptions if the applicant can demonstrate that it has the capability of managing a program larger than these limits.

\* \* \* \* \*

(e) State-Sponsor Agreement. A sponsor approved for participation in the Program must enter into a permanent written agreement with the State agency. All sponsors must agree in writing to:

\* \* \* \* \*

19. In §225.13, remove the term “§225.9(d)(5)” both times it appears in paragraph (a) and add, in its place, the term“§225.9(d)(6)”.

20. In §225.14, revise paragraph (d)(6) to read as follows:

**§225.14 Requirements for sponsor participation.**

\* \* \* \* \*

(d) \* \* \*

(6) If the sponsor is a private nonprofit organization, it must certify that it:

(i) Exercises full control and authority over the operation of the Program at all sites under the sponsorship of the organization;

(ii) Provides ongoing year-round activities for children or families;

- (iii) Demonstrates that the organization has adequate management and the fiscal capacity to operate the Program;
- (iv) Is an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code; and
- (v) Meets applicable State and local health, safety, and sanitation standards.

21. In §225.15:

- a. Remove the words “children who are members of households” in the last sentence of paragraph (e) and add, in their place, the words “a foster child and children who are members of households”.
- b. In paragraph (f)(2)(iii), after the first word “The”, add the words “last four digits of the”.
- c. In paragraph (f)(4)(ii), before the word “child,” add the word “foster”.
- d. Remove paragraph (f)(4)(iii).
- e. Redesignate paragraphs (f)(4)(iv) through (viii) as paragraphs (f)(4)(iii) through (vii) respectively.
- f. Revise redesignated paragraph (f)(4)(iii).
- g. Revise paragraph (f)(5).
- h. In paragraphs (i)(1) and (i)(2), remove the term “Privacy Act notice/”.

The revisions read as follows:

**§225.15 Management responsibilities of sponsors.**

\* \* \* \* \*

(f) \* \* \*

(4) \* \* \*

(iii) A statement informing households of how information provided on the application will be used. Each application for free meals must include substantially the following statement:

(A) “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 last four digits of the social security number of the adult household member who signs the application. The last four digits of the social security number are not required when you apply on behalf of a foster child or you list a Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number or other FDPIR identifier for your child or when you indicate that the adult household member signing the application does not have a social security number. We MAY share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs, and with auditors for program reviews and law enforcement officials to help them look into violations of program rules.”

(B) 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 statement. State agencies and sponsors are responsible for drafting the appropriate notice.

\* \* \* \* \*

(5) Verifying information on Program applications. Households selected to verify information on their Program applications must be notified in writing that:

(i) They will lose Program benefits or be terminated from participation if they do not cooperate with the verification process;

(ii) They will be given the name and phone number of an official who can assist in the verification process;

(iii) Verification may occur during program reviews, audits, and investigations;

(iv) Verification may include contacting employers, SNAP or welfare offices, or State employment offices to determine the accuracy of statements on the application about income, receipt of SNAP, FDPIR, TANF, or unemployment benefits; and

(v) They may lose benefits or face claims or legal action if incorrect information is reported on the application.

\* \* \* \* \*

22. In §225.18, remove the term “\$100,000” in paragraph (g) and add, in its place, the term “\$25,000”.

## **PART 226—CHILD AND ADULT CARE FOOD PROGRAM**

23. 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).

24. In §226.2:

- a. In the definition of Adult, after the word “collection”, add the words “of the last four digits”.
- b. In the definition of Documentation, revise paragraph (a)(4).
- c. Revise the definition of Eligible area.
- d. Add a new definition of Foster child in alphabetical order.
- e. Revise the definition of Free meal.
- f. In the definition of Tier I day care home, remove the word “elementary” in paragraph (b).

The revisions and addition read as follows:

**§226.2 Definitions.**

\* \* \* \* \*

Documentation means:

(a)\* \* \*

(4) The last four digits of the social security number of the adult household member who signs the application, or an indication that the adult does not possess a social security number; or

\* \* \* \* \*

Eligible area means:

(a) For the purpose of determining the eligibility of at-risk afterschool care centers, the attendance area of a school in which at least 50 percent of the enrolled children are certified eligible for free or reduced-price school meals; or

(b) For the purpose of determining the tiering status of day care homes, the attendance area of a school in which at least 50 percent of the enrolled children are certified eligible for free or reduced-price meals, or the area based on the most recent census data in which at least 50 percent of the children residing in the area are members of households that meet the income standards for free or reduced-price meals.

\* \* \* \* \*

Foster child means a child who is formally placed by a court or a State child welfare agency, as defined in §245.2 of this chapter.

Free meal means a meal served under the Program to:

- (a) A participant from a family which meets the income standards for free school meals, or
- (b) A foster child, or
- (c) A child who is automatically eligible for free meals by virtue of SNAP, FDPIR, or TANF benefits, or
- (d) A child who is a Head Start participant, or
- (e) A child who is receiving temporary housing and meal services from an approved emergency shelter, or
- (f) A child participating in an approved at-risk afterschool care program, or
- (g) An adult participant who is automatically eligible for free meals by virtue of SNAP or FDPIR benefits, or
- (h) An adult who is an SSI or Medicaid participant.

\* \* \* \* \*

25. In §226.4, remove the word “eligibility” each time it appears in paragraph (b) and add, in its place, the word “eligibility”.

26. In §226.6:

- a. Revise paragraph (b)(4)(i).
- b. Remove paragraphs (b)(4)(ii) and (b)(4)(iii).
- c. Redesignate paragraphs (b)(4)(iv) and (b)(4)(v) as paragraphs (b)(4)(ii) and (b)(4)(iii) respectively.
- d. In paragraph (c)(2)(iii)(A)(5), remove the parenthetical phrase “(if the State agency has temporarily extended the agreement pursuant to paragraph (c)(2)(iii)(D) of this section)”.
- e. In paragraph (c)(2)(iii)(A)(6), remove the word “institution’s” and add in its place the word “institution’s”.
- f. In paragraph (c)(2)(iii)(C)(1), remove the words “temporarily-extended”.
- g. Remove paragraph (c)(2)(iii)(D).
- h. Redesignate paragraph (c)(2)(iii)(E) as paragraph (c)(2)(iii)(D).
- i. In redesignated paragraph (c)(2)(iii)(D)(1), remove the words “temporarily-extended”.
- j. In paragraph (d)(3)(iv)(C), remove the word “range” and add, in its place the word “ranges”.
- k. In paragraph (f)(1)(viii)(A), remove the word “elementary” each time it appears.
- l. In paragraph (f)(1)(ix)(A), remove the words “elementary, middle, and high” each time they appear.
- m. In paragraph (f)(3)(i), remove the word “elementary”.

- n. In paragraph (f)(3)(iv)(C), remove the term “§226.16(a)” and add, in its place, the term “§226.15(a)”.

The revision reads as follows:

**§226.6 State agency administrative responsibilities.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(i) The State agency must require each institution that has been approved for participation in the Program to enter into a permanent agreement governing the rights and responsibilities of each party. The existence of a valid permanent agreement, however, does not eliminate the need for an institution to comply with the reapplication and related provisions at paragraphs (b) and (f) of this section; nor does it limit the State agency’s ability to terminate the agreement as provided under paragraph (c) of this section.

\* \* \* \* \*

27. In §226.15:

- a. In paragraph (e)(3), remove the word “elementary”.
- b. In paragraph (f), remove the word “elementary” each time it appears, and then, before the word “school’s” in the fifth sentence, remove the word “an” and add, in its place, the word “a”.

28. In §226.16, remove the second sentence in paragraph (f).
29. In §226.17(b)(4), remove the second period at the end of the third sentence.
30. In §226.17a:
- a. In paragraph (f)(2), remove the words “an agreement or amend an existing” and add, in their place, the words “a permanent”, and then, remove the last sentence.
  - b. In paragraph (i)(1), remove the words “an elementary, middle, or high school” and add, in their place, the words “a school”.
31. In §226.23:
- a. Revise the second sentence of paragraph (c)(2).
  - b. Revise the fifth sentence of paragraph (d).
  - c. Revise the last sentence of paragraph (e)(1)(i).
  - d. Revise paragraph (e)(1)(ii)(C).
  - e. Remove paragraph (e)(1)(ii)(E).
  - f. Redesignate paragraphs (e)(1)(ii)(F) and (e)(1)(ii)(G) as paragraphs (e)(1)(ii)(E) and (e)(1)(ii)(F) respectively.
  - g. Revise redesignated paragraph (e)(1)(ii)(E).
  - h. Revise paragraph (e)(1)(iii)(C).
  - i. Revise paragraph (e)(1)(iii)(E).

- j. In the introductory text of paragraph (e)(1)(iv), remove the word “0members ” in the third sentence and add, in its place, the word ”members”.
- k. In paragraph (e)(1)(iv)(A), remove the words “ food stamp” and add, in their place, the term “SNAP”.
- l. Remove paragraph (e)(2)(vi).
- m. Redesignate paragraph (e)(2)(vii) as paragraph (e)(2)(vi).
- n. In redesignated paragraphs (e)(2)(vi)(A) and (B), remove the words “Food Stamp” each time they appear and add, in their place, the term “SNAP”.
- o. Remove the last two sentences of paragraph (h)(2)(iii).
- p. Remove paragraphs (h)(2)(iii)(A) through (h)(2)(iii)(E).
- q. In paragraph (h)(2)(v)(A), remove the words “Food Stamp” each time they appear and add, in their place, the term “SNAP”.
- r. In paragraphs (k)(1) and (k)(2), remove the term “Privacy Act notice/”.

The revisions read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \* These methods will ensure that applications are accepted from households on behalf of a foster child and children who receive SNAP, FDPIR, or TANF assistance, or for adult participants who receive SNAP, FDPIR, SSI, or Medicaid assistance;

\* \* \* \* \*

(d) \* \* \* The release issued by child care institutions shall also announce that a foster child, or a child who is a member of a household receiving SNAP, FDPIR, or TANF assistance, or a Head Start participant is automatically eligible to receive free meal benefits.\* \* \*

(e) \* \* \*

(1) \* \* \*

(i) \* \* \* Furthermore, such forms and materials distributed by child care institutions shall state that a foster child is automatically eligible to receive free Program meal benefits, and a child who is a Head Start participant is automatically eligible to receive free Program meal benefits, subject to submission by Head Start officials of a Head Start statement of income eligibility or income eligibility documentation.

(ii) \* \* \*

(C) The last four digits of the social security number of the adult household member who signs the application, or an indication that the adult does not possess a social security number.

\* \* \* \* \*

(E) A statement which includes substantially the following information:

(I) “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 the participant for free or reduced-price meals. You must include the last four digits of the Social Security Number of the adult household member who signs the application. The last four digits of the Social Security Number are not required when you apply on behalf of a foster child or you list a Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case

number for the participant 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 the participant is eligible for free or reduced-price meals, and for administration and enforcement of the Program.”

(2) When either the State agency or the child care institution 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 this statement; and

\* \* \* \* \*

(iii) \* \* \*

(C) The last four digits of the social security number of the adult household member who signs the application, or an indication that the adult does not possess a social security number.

\* \* \* \* \*

(E) A statement which includes substantially the following information: “The Richard B. Russell National School Lunch Act requires the information on this meal benefit form. You do not have to give the information, but if you do not, we cannot approve the participant for free or reduced-price meals. You must include the last four digits of the social security number of all adult household members, including the adult day care participant. The last four digits of the social security number are not required when you list a Supplemental Nutrition Assistance Program (SNAP), Food Distribution Program on Indian Reservations (FDPIR) or other FDPIR identifier, SSI or Medicaid case number for the participant receiving meal benefits 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 the participant is eligible for free or reduced-price meals, and for administration and enforcement of the CACFP;” and

\* \* \* \* \*

**PART 245 – DETERMINING ELIGIBILITY FOR FREE AND REDUCED-PRICE MEALS AND FREE MILK IN SCHOOLS**

31. The authority citation for part 245 continues to read as follows:

**Authority:** 42 U.S.C. 1751-1760, 1779.

32. In §245.2:

- a. In the definitions of Categorically eligible and Direct certification, add the words “Foster child, a” before the word “Homeless”.
- b. In the definition of Documentation, revise paragraphs (1)(i) and (2)(ii) and the first and third sentences of paragraph (2)(iv).
- c. Add a new definition of Foster child in alphabetical order.

The addition and revisions read as follows:

**§245.2 Definitions.**

\* \* \* \* \*

Documentation means:

(1) \* \* \*

- (i) For households applying on the basis of income and household size, names of all household members; income received by each household member, identified by source of the income (such

as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security and other cash income); the signature of an adult household member; and the last four digits of the social security number of the adult household member who signs the application or an indication that the adult does not possess a social security number; or

\* \* \* \* \*

(2) \* \* \*

(ii) A letter or other document provided to the household by the agency administering FDPIR or the TANF program, as defined in this section or by the court, entity, or official authorized to administer an eligible program for a Foster child, a Homeless child, a Migrant child, a Head Start child, or a Runaway child as defined in this section.

\* \* \* \* \*

(iv) Information obtained from an official responsible for determining if a child is a Foster child, a Homeless child, a Migrant child, a Head Start child, or a Runaway child, as defined in the section. \* \* \* Documentation may also be a list of children, a computer match, or a court document that includes this information.

\* \* \* \* \*

Foster child means a child who is formally placed by a court or an agency that administers a State plan under parts B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.). It does not include a child in an informal arrangement that may exist outside of State or court based systems.

\* \* \* \* \*

33. In §245.5:

- a. Remove paragraph (a)(1)(viii).
- b. Redesignate paragraphs (a)(1)(ix) through (a)(1)(xii) as paragraphs (a)(1)(viii) through (a)(1)(xi) respectively.
- c. In redesignated paragraph (a)(1)(viii), remove “and” from the end of the sentence.
- d. In redesignated paragraph (a)(1)(ix), remove the period and add, in its place, a semicolon.
- e. Revise redesignated paragraph (a)(1)(ix).

The revision reads as follows:

**§245.5 Public announcement of the eligibility criteria.**

(a) \* \* \*

(1) \* \* \*

(ix) An explanation that Head Start enrollees and foster, homeless, migrant, and runaway children, as defined in §245.2, are categorically eligible for free meals and free milk and their families should contact the school for more information;

\* \* \* \* \*

34. In §245.6:

- a. Remove the last sentence in paragraph (a)(1).
- b. In paragraph (a)(6), in the second sentence, after the words “In addition,” add the words “the last four digits of”.
- c. Revise paragraph (a)(8).

- d. In paragraph (b)(2), remove the words “Migrant child, a homeless” and add, in their place, the words “Foster child, a Homeless child, a Migrant”.
- e. In paragraph (b)(4), remove the words “homeless, migrant,” and add, in their place the words “foster, homeless, migrant, or”.
- f. Revise paragraph (b)(5)(iii).
- g. In paragraph (b)(6)(ii), add a new sentence at the beginning of the paragraph.
- h. Revise paragraph (b)(8).
- i. In the heading of paragraph (c)(5)(ii), remove the words “Homeless, migrant,” and add in their place the words “Foster, homeless, migrant, and”.
- j. In paragraphs (h)(1) and (h)(2), remove the term “Privacy Act notice”.

The revisions and addition read as follows:

**§245.6 Application, eligibility and certification of children for free and reduced-price meals and free milk.**

(a) \* \* \*

(8) Required statements for the application. (i) The application and descriptive materials must include substantially the following statements:

(A) “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 last four digits of the social security number of the adult household member who signs the application. The last four digits of the social security number are not required when you list a Supplemental Nutrition Assistance

Program (SNAP), Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number or other FDPIR identifier for your child 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. 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.”

(B) “Foster, migrant, homeless, and runaway children, and children enrolled in a Head Start program are categorically eligible for free meals and free milk. If you are completing an application for these children, contact the school for more information.”

(ii) When either the State agency or the local educational agency 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 this statement. State agencies and local educational agencies are responsible for drafting the appropriate statement.

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(iii) Individual notices from officials of eligible programs for a Foster child, a Homeless child, a Migrant child, a Runaway child, or a Head Start child, as defined in §245.2, may continue to be used. These notices are provided to school officials who must certify these children as eligible for free meals or free milk, as applicable, without further application, upon receipt of such notice.

(6) \* \* \*

(ii) For a Foster child, as defined in §245.2, an official document indicating the status of the child as a foster child from an appropriate State or local agency or a court where the foster child received placement may provide appropriate documentation. \* \* \*

\* \* \* \* \*

(8) Foster, Homeless, Migrant, Runaway, or Head Start Children. To be categorically eligible as a Foster child, a Homeless child, a Migrant child, a Runaway child, or a Head Start child, the child's individual eligibility or participation for these programs shall be established. Categorical eligibility based on these programs shall not be extended to other children in the household.

\* \* \* \* \*

35. In §245.6a:

- a. Revise paragraph (a)(7)(iii).
- b. In paragraph (c)(2), revise the third sentence.
- c. Revise paragraph (f)(1).
- d. In paragraph (f)(3), remove the words "Food Stamp" and "Food Stamp Program" wherever they appear, and add, in their place, the term "SNAP".

The revisions read as follows:

**§245.6a Verification requirements.**

(a) \* \* \*

(7) \* \* \*

(iii) Agency records to which the State agency or local educational agency may have access are not considered collateral contacts. Information concerning income, household size, or SNAP, FDPIR, or TANF eligibility, maintained by other government agencies to which the State agency, the local educational agency, or school can legally gain access, may be used to confirm a household's income, size, or receipt of benefits. Information may also be obtained from individuals or agencies serving foster, homeless, migrant, or runaway children, as defined in §245.2. Agency records may be used for verification conducted after the household has been notified of its selection for verification or for the direct verification procedures in paragraph (g) of this section.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \* Verification of eligibility is not required of households if all children in the household are determined eligible based on documentation provided by the State or local agency responsible for the administration of the SNAP, FDPIR or TANF or if all children in the household are determined to be foster, homeless, migrant, or runaway, as defined in §245.2.\* \* \*

\* \* \* \* \*

(f) Verification procedures and assistance for households -- (1) Notification of selection. Other than households verified through the direct verification process in paragraph (g) of this section, households selected for verification must be notified in writing that their applications were selected for verification. The written statement must include a telephone number for assistance as required in paragraph (f)(5) of this section. Any communications with households concerning verification must be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and guardians can understand. These households must be advised of the type of information or documents the school accepts. Households selected for verification must be informed that:

- (i) They are required to submit the requested information to verify eligibility for free or reduced-price meals, by the date determined by the local educational agency.
- (ii) They may, instead, submit proof that the children receive SNAP, FDPIR, or TANF assistance, as explained in paragraph (f)(3) of this section.
- (iii) They may, instead, request that the local educational agency contact the appropriate officials to confirm that their children are foster, homeless, migrant, or runaway, as defined in §245.2.
- (iv) Failure to cooperate with verification efforts will result in the termination of benefits.

\* \* \* \* \*

Dated: February 4, 2013.

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Audrey Rowe  
Administrator  
Food and Nutrition Service

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