

Claims Settlement Act (43 U.S.C. 1601, *et seq.*) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(c) *Local government* means a:

- (1) County;
- (2) Borough;
- (3) Municipality;
- (4) City;
- (5) Town;
- (6) Township;
- (7) Parish;
- (8) Local public authority, including any public housing agency under the United States Housing Act of 1937;
- (9) Special district;
- (10) School district;
- (11) Intrastate district;
- (12) Council of governments, whether or not incorporated as a nonprofit corporation under State law; and
- (13) Any other instrumentality of a local government.

(d) *Private entity*.

(1) This term means any entity other than a State, local government, Indian tribe, or foreign public entity.

(2) This term includes:

(i) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe in paragraph (b) of this section.

(ii) A for-profit organization.

(e) *State*, consistent with the definition in section 103 of the TVPA, as amended (22 U.S.C. 7102), means:

- (1) Any State of the United States;
- (2) The District of Columbia;
- (3) Any agency or instrumentality of a State other than a local government or State-controlled institution of higher education;
- (4) The Commonwealths of Puerto Rico and the Northern Mariana Islands; and
- (5) The United States Virgin Islands, Guam, American Samoa, and a territory or possession of the United States.

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 210, 215, 220, 235 and 245

[FNS-2007-0023]

RIN 0584-AD54

#### Applying for Free and Reduced Price Meals in the National School Lunch Program and School Breakfast Program and for Benefits in the Special Milk Program and Technical Amendments

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

**ACTION:** Interim Rule.

**SUMMARY:** This interim rule amends the regulations on eligibility determinations for free and reduced price school meals to implement nondiscretionary provisions of the Child Nutrition and WIC Reauthorization Act of 2004. In this interim rule, the statutory definition of "local educational agency" is added. In addition, this interim rule specifies that a family only has to submit one application for all children in the household as long as they attend schools in the same local educational agency and requires enhancement of the descriptive materials distributed to families. This rule provides for electronically-submitted applications, addresses electronic signatures and establishes use and disclosure standards for such applications. This rule establishes that eligibility for free or reduced price school meals remains valid for one year unless the household chooses to decline a level of benefits. These changes are intended to provide children with increased access to the school nutrition programs by simplifying the certification process, streamlining program operations and improving program management.

**DATES:** *Effective date:* This rule is effective December 13, 2007.

*Comment date:* To be assured of consideration, mailed comments must be postmarked on or before May 12, 2008; e-mailed or faxed comments must be submitted by 11:59 p.m. May 12, 2008; and hand-delivered comments must be received by 5 p.m. May 12, 2008.

**ADDRESSES:** The Food and Nutrition Service invites interested persons to submit comments on this interim rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Address comments to Mr. Robert M. Eadie, Chief, Policy and Program Planning Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302-1594.

- *Fax:* Submit comments by facsimile transmission to: (703) 305-2879, attention Mr. Robert M. Eadie.

- *Hand Delivery or Courier:* Deliver comments to 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302-1594, during normal business hours of 8:30 a.m.-5 p.m.

All comments submitted in response to this interim rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. All submissions will be available for public inspection at the address noted above Monday through Friday, 8:30 a.m.-5 p.m. The Department may also make the comments available on the Federal eRulemaking portal.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Eadie, Child Nutrition Division, Food and Nutrition Service at 703-305-2590.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Public Law 108-265, the Child Nutrition and WIC Reauthorization Act of 2004, enacted June 30, 2004, amended the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1751 *et seq.*) and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1771 *et seq.*) concerning applications for free and reduced price meals under the National School Lunch Program and the School Breakfast Program, and for free milk under the Special Milk Program for Children. Please note that while the application and certification procedures apply to the Special Milk Program, the preamble will only discuss free and reduced price meal benefits, as only a very small number of children participate in the Special Milk Program. However, this interim rule makes appropriate changes to the Special Milk Program regulations. All references to regulatory citations in this preamble are to Title 7, United States Code unless otherwise indicated.

In response to the statutorily imposed effective dates established by sections 501 and 502 of Public Law 108-265, the Department of Agriculture (USDA or the Department) issued memoranda to implement some of the provisions regulatorily codified in this interim rule.

These memoranda include the July 7, 2004 Duration of Households' Free and Reduced Price Meal Eligibility—Reauthorization 2004 Implementation Memo—SP 3; the March 7, 2005 Statutory Changes in the Free and Reduced Price Eligibility Determination Process and Revised Prototype Application—Implementation Memo—SP 12; the August 30, 2005 Initial Carry-over of Previous Year's Eligibility—Reauthorization Implementation Memo—SP 17; the September 26, 2005 memo General Follow-up of Provisions—Reauthorization 2004 Implementation Memo—SP 21; the November 22, 2005 memo SP 03–2006, Translation of Free and Reduced Price Application Prototypes for People with Limited English Proficiency; the December 23, 2005 memo, SP 08–2006 Reauthorization 2004: Communication with Households; and the February 9, 2006 memo Commercial Software Used in School Nutrition Programs; all located at <http://www.fns.usda.gov/cnd/> click on Policy under “See Also”.

This interim rule includes modifications made by Public Law 108–265 that necessitated changes to the existing regulatory procedures relating to application and certification for free and reduced price meal benefits. This rule also adds definitions and makes other technical changes to 7 CFR Part 210 (National School Lunch Program), 7 CFR Part 215 (Special Milk Program for Children), 7 CFR Part 220 (School Breakfast Program), 7 CFR Part 235 (State Administrative Expense Funds) and 7 CFR Part 245 (Determining Eligibility for Free and Reduced Meals and Free Milk in Schools) to increase consistency among these regulatory divisions in relation to application and certification requirements.

Readers should note that while this interim regulation makes a number of changes to 7 CFR Part 245 (specifically § 245.6), separate rules on verification and direct certification will additionally revise this section, completing the changes mandated by Public Law 108–265. USDA's program guidance on eligibility determinations will be updated to reflect the regulatory changes resulting from Public Law 108–265. Also of note—updated prototype multi-child (household) applications in English, Spanish and 24 additional languages are now available at <http://www.fns.usda.gov/cnd/FRP/frp.process.htm>.

In addition, this interim rule makes technical nonsubstantive changes to 7 CFR §§ 215.2, 220.2, 235.2, and 245.2, the definitions sections for these parts. The rule removes primary designations and alphabetizes the definitions. In

addition, new definitions are added for “Food Stamps” and “Nonprofit.”

## II. Specific Provisions

### A. Definition of Local Educational Agency

What was in place prior to Public Law 108–265?

Prior to Public Law 108–265, the NSLA used the term “school food authority” to describe “the governing body which is responsible for the administration of one or more schools and has the legal authority to operate the Program therein or be otherwise approved by the Food and Nutrition Service to operate the Program.” The term is used consistently throughout regulations and guidance that govern all aspects of the school meals programs. There was no regulatory or statutory definition of local educational agency prior to the 2004 statutory amendment.

What changes were made by Public Law 108–265?

Section 108 of Public Law 108–265 replaced the terms “school food authorities” and “local school authorities” with the term “local educational agencies” in sections 9(b)(11) and 9(d)(2) of the NSLA, 42 U.S.C. 1758(b)(11) and (d)(2), and in section 4(b)(1)(E) of the CNA, 42 U.S.C. 1773 (b)(1)(E). The NSLA now specifies, in section 12(d)(4), (42 U.S.C. 1761 (d)(4)), that local educational agency has the meaning as provided for in section 9101 of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 7801) and, for private nonprofit schools, entities as determined by the Secretary. In addition to section 108, other sections of Public Law 108–265 use the term “local educational agencies” instead of school food authorities or local school authorities.

Under the ESEA, “local educational agency” means “a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.” The definition in the ESEA also includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school, eligible Bureau of Indian Affairs schools, educational service agencies

and consortia of those agencies, and the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools. The ESEA, however, does not address non-profit private schools in its definition. Such schools do participate in the school meals programs. For the purposes of the school meals programs, the Department currently defines schools to include nonprofit private as well as public entities for the purposes of the school meals programs. It also defines nonprofit for the purposes of the school meals and school milk programs.

What are the changes that this interim rule makes?

The term “local educational agency” will be used when discussing certification and verification requirements, but the term “school food authority” will continue to be used when addressing other aspects of operating the school meals programs, such as when discussing agreements or nutritional requirements.

Because the ESEA does not define private nonprofit schools, section 108 of Public Law 108–265 states that the term local educational agency includes, for the purposes of a private nonprofit school, an appropriate entity determined by the Secretary. Current school meals programs regulations, at §§ 210.2 and 220.2, recognize private nonprofit schools and nonprofit private residential child care institutions in the definition of “School.” As a result, for schools meals programs purposes, local educational agencies may be comprised of private, nonprofit schools/institutions. The terms private nonprofit school and private nonprofit residential child care institution in the definition of “Local educational agency” have the same meaning as used in the paragraphs (b) and (c) of the definition of “School” in § 210.2 and in corresponding regulatory provisions in Parts 215, 220, 235 and 245. A definition of “Local educational agency” is added to §§ 210.2, 215.2, 220.2, 235.2 and 245.2.

### B. Applications and Descriptive Materials

#### 1. Household Applications

What was in place prior to Public Law 108–265?

Prior to Public Law 108–265, a State or school food authority could require an application for each potentially eligible child in the household (single child application) or one application for all potentially eligible children in the household (household application). The

Department provided prototypes for each of these types of applications.

Under existing regulations, single child applications are used for foster and institutionalized children. This is in accordance with § 245.3(c) of existing regulations which states that any child who is not a member of a family, as defined in § 245.2, is considered a family of one. FNS Instruction 765-5, Revision 1, entitled "Free and Reduced Price Eligibility Determinations for Foster and Institutionalized Children" (March 19, 1986) clarifies that foster children and institutionalized children are considered households of one, thus triggering use of the single child application.

What changes were made by Public Law 108-265?

Section 105 of Public Law 108-265 revised section 9(b)(3) of the NSLA to require local educational agencies to only use household applications. The provision became effective on July 1, 2005, pursuant to Section 502 of Public Law 108-265. Therefore, effective July 1, 2005, only household applications may be used when all school age children in a household attend schools in the same local educational agency. This change was made to decrease paperwork for households who wish to apply and schools by eliminating multiple application completion and submission for households with more than one child.

What are the changes that this interim rule makes?

This interim rule adds a definition of "Household application" in § 245.2, and stipulates in § 245.6(a) that the household application must identify all children in the household for whom free or reduced price meal benefits are being requested. A household has the same definition as "Family" in § 245.2; that is, a group of related or non-related individuals, who are not residents of an institution or boarding house, but who are living as one economic unit. This rule also prohibits State agencies and local educational agencies from requesting separate applications for each child attending schools in the same local educational agency. A household only has to submit one application for all children in their household (even if the children attend different schools) as long as those schools are in the same local educational agency. To clarify, however, since § 245.3(c) of the regulations requires that each foster or institutionalized child be considered a family of one, a separate application will continue to be needed for each such child in the household's care.

This change does not mandate central processing of applications. However, the Department encourages all local educational agencies to use centralized approval of applications whenever possible. Local educational agencies need to ensure that children who transfer to schools within the same local educational agency are not required to reapply for free or reduced price meal benefits as stated in existing regulations at § 245.3(c). Copies of the approved application or the direct certification notice may be provided to the new school. Since applications must still be tied to individual schools for reviews conducted by State agencies, a local educational agency may establish a separate record for each child for tracking purposes. These changes may be found at § 245.6(a)(1).

## 2. Notification of Possible Eligibility

What was in place prior to Public Law 108-265?

Prior to Public Law 108-265, section 9(b) of the NSLA required that applications for free and reduced price school meals and descriptive materials about school meal programs must be distributed to parents and guardians. Existing regulations require that the school meal application and media materials include notification that State Temporary Assistance for Needy Families (TANF), Food Stamp Program, and Food Distribution Program on Indian Reservations (FDPIR) participants can submit an application with a case number rather than income information.

What changes were made by Public Law 108-265?

Effective July 1, 2005, section 104(a) of Public Law 108-265 amended section 9(b)(2) of the NSLA to require that school meal applications and descriptive materials distributed to parents and guardians contain a notification that, in addition to the notification already provided pursuant to school meals programs provisions, notification that participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) may be eligible for free or reduced price school meals. It is important to note that this does not mean that children from families that participate in WIC are automatically (categorically) eligible; rather it means that such participants are likely to be eligible and should consider applying for free or reduced priced meals.

What are the changes that this interim rule makes?

This interim rule adds the requirement that the school meal application's descriptive materials include notification that WIC participants may be eligible for free or reduced price meals. The updated free and reduced price meal benefits prototype application includes this notification. Please refer to our Web site (<http://www.fns.usda.gov/cnd/FRP/frp.process.htm>). This change can be found in § 245.5(a)(1)(ix) of this interim regulation.

## 3. Communications

What was in place prior to Public Law 108-265?

Under Federal regulations implementing Title VI of the Civil Rights Act of 1964, recipients of Federal financial assistance, such as school food authorities, have a responsibility to ensure meaningful access to their programs by persons with limited English proficiency. Prior to Public Law 108-265, the NSLA did not specifically address providing materials in other than English for the school meal programs.

Current regulations at § 245.6(a) mandate that the school meals programs application be clear and simple in design and that the information requested be limited to that required to demonstrate that the family does, or does not, meet the eligibility criteria for free or reduced price meals. In regard to foreign language translations, the Department encourages schools to provide households with assistance in completing applications through the use of personnel proficient in foreign languages.

To assist schools with providing simpler applications and applications in other languages, the Department worked with a contractor in 2002 that specialized in form design and language simplification to provide an application with a reduced reading level and in a format that is easier to accurately complete. In 2006, the application materials for the free and reduced price prototype application and descriptive materials were translated into Spanish and 24 additional languages. If foreign language materials for a particular language are not available, local educational agencies are always encouraged to provide assistance with completion of English language school meals programs applications through the use of personnel proficient in the necessary foreign language(s) as well as English.

What changes were made by Public Law 108–265?

In addition to the responsibilities established under Title VI of the Civil Rights Act of 1964, section 104(b) of Public Law 108–265, effective July 1, 2005, amended section 9(b) of the NSLA to require that any communication with households regarding application, verification, or documentation of eligibility must be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and legal guardians can understand.

What are the changes that this interim rule makes?

This interim rule amends the existing regulations that to state that the school meals programs application must be clear and simple in design. This rule adds language reflecting the statutory requirement that any communication with households regarding certification be understandable, and to the maximum extent practicable, provided in a language that the parents and guardians can understand is being added at § 245.6(a)(2). A similar statement concerning verification materials is being added at § 245.6a (a)(2).

#### 4. Electronic Applications

What was in place prior to Public Law 108–265?

There were no provisions in the NSLA prior to Public Law 108–265 that addressed electronic applications and electronic signatures. Current regulations do not address use of these methods, but do permit the use of electronic applications and electronic signatures in keeping with pertinent administrative guidance. Currently the Department allows electronic signatures and recommends that State agencies follow the same guidelines provided to Federal agencies for electronic transactions by the Department of Justice. The May 1, 2007, memorandum “Update on Electronic Transactions in the Child Nutrition Programs” may be found at [http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2007/SP\\_10-2007](http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2007/SP_10-2007).

What changes were made by Public Law 108–265?

Effective July 1, 2005, section 104(b) of Public Law 108–265 amended section 9(b)(3) of the NSLA to address electronic signatures and applications. The law states that a household application may be executed using an electronic signature if the application is submitted electronically and if the electronic application system meets

confidentiality standards established by the Secretary. An electronic signature may be accepted pursuant to section 105(a) of Public Law 108–265.

What are the changes that this interim rule makes?

Many State and local educational agencies already have systems available to households that allow them to submit an application electronically and the Department encourages State and local agencies to facilitate the household’s ability to apply electronically. This interim rule incorporates the provisions on electronic submissions in the NSLA. In addition, such systems must comply with technical assistance and guidance provided by the Department. On May 1, 2007, we provided such guidance based on guidelines for electronic transactions prescribed to Federal agencies by the Department of Justice.

#### C. Duration of Eligibility for Free or Reduced Price Meals

What was in place prior to Public Law 108–265?

Prior to Public Law 108–265, regulations at § 245.5(a)(1)(vi) and § 245.6(c)(1) directed that, households be informed that they must report income increases of more than \$50 monthly, decreases in household size, or, for children certified based on an application containing a case number, termination of receipt of TANF, food stamp, or FDPIR benefits. If the change reduced children’s benefits, the local school food authority was to adjust their eligibility status as appropriate, including providing advance notification of an adverse change in accordance with § 245.6a(e). The existing regulations at § 245.6(c) permit the use of applications and documentation of direct certification from the preceding year to determine eligibility during the 30 operating days following the first operating day at the beginning of the school year, or during a timeframe established by the State agency, that cannot exceed the 30 operating day limit.

What changes were made by Public Law 108–265?

Effective July 1, 2004, section 106 of Public Law 108–265 amended section 9(b)(9) of the NSLA by establishing that eligibility, beginning on the date of approval, is valid for the full school year until a date in the subsequent school year determined by USDA.

What are the changes that this interim rule makes?

This rule provides for year long eligibility as now required by the NSLA.

Therefore, once a child is determined eligible for free and reduced price meals, eligibility remains in effect from the date of eligibility determination for the current school year and for up to 30 operating days (as discussed in the next paragraph) into the next school year. A household is no longer required to report changes in income, household size or categorical eligibility status.

Section 106 of Public Law 108–265 also required that a child’s eligibility be valid into the subsequent school year. The Department used the long-standing permissive carry-over authority of current § 245.6(c) as the basis for the new requirement. Section 245.6(c)(2) of this rule mandates that local educational agencies carry-over a child’s eligibility from the previous school year. The local educational agency must use the previous year’s eligibility status for a period not to exceed 30 operating days or until the new eligibility determination is made, whichever comes first.

Year-long eligibility does not apply when the initial eligibility determination was incorrect, when verification activities for the household do not support the level of benefits for which the child was approved or if an administrative review (as provided for in § 210.18) indicates that the initial eligibility determination was in error. In those instances, local educational agency officials must make appropriate changes in eligibility in accordance with regulatory requirements. These provisions may be found at new § 245.6(c)(3)(i) and (c)(3)(ii).

Additionally, year-long eligibility does not apply when a household is given temporary approval. We continue to encourage determining officials to approve households on a temporary basis when their need for assistance appears to be short-term, such as when the household experiences a temporary reduction in income. A suggested time period for temporary approvals is 45 days unless otherwise stipulated by the State agency. At the end of the temporary approval, determining officials must re-evaluate the household’s situation. The provision on temporary approval may be found at new § 245.6(c)(3)(iii). Additional information on the use of temporary approvals may be found in program guidance issued by the Department.

With the exception of the situations described above, if a household’s income exceeds the eligibility limits at any point during the school year, their initial eligibility determination remains valid unless a new application is submitted. Since the household is no longer required to report changes in

income or household size or loss of food stamp or TANF benefits, this requirement is being deleted by removing paragraph (a)(1)(vi) from § 245.5 and by removing it as part of the revisions to § 245.6(c)(1). However, households may voluntarily report changes, may apply for benefits any time during the school year. The household may also decline benefits when children are directly certified. This provision may be found at new § 245.6(c)(6)(iii).

As State child nutrition agencies and local educational agencies implement full-year eligibility, they have the opportunity to minimize disruptions when a child moves mid-year from one school district to another. They can do so by establishing an optional transfer of information system under which a child's school meal certification status is transferred from one school or local educational agency to another when the child moves. For example, States that maintain a database for all students could establish a data field to indicate the child's certification status—accessible only in accordance with the use or disclosure of information provisions set forth in section 9 of the NSLA—that could be checked by a school whenever a new student is enrolled. A local educational agency is not required to send this information, or accept this information from another local educational agency. However, this rule, at § 245.6(a)(4), includes a provision that allows any local educational agency to accept the eligibility determination from the student's old school district without incurring liability for the accuracy of the initial determination.

#### D. Technical amendments

##### 1. Numbering of Definitions

Existing §§ 215.2, 220.2, 235.2, and 245.2 include “primary designations” (i.e. the letters and numbers that precede the words being defined) while § 210.2 simply lists definitions in alphabetical order. This interim rule removes primary designations in the listed sections, makes corresponding reference changes, and places the definitions in alphabetical order. This is being done to create uniformity among the regulations for the school nutrition programs and is technical in nature.

##### 2. Adding Definition of Food Stamp Program

For consistency among the school nutrition programs, a definition of “Food Stamp Program” is being added to § 245.2. The Food Stamp Program is also administered by USDA and the

regulations governing this program may be found at 7 CFR Parts 271 through 283 of this Chapter.

##### 3. Updating Definitions

We are updating the definition of “Nonprofit” in our regulations to correspond to the definition in section 12(d)(5) of the NSLA and section 15(1) of the CNA which applies nonprofit status to schools and institutions which are exempt from tax under section 501(c)(3) of Internal Revenue Act of 1986. To accomplish this change, the definition of “Nonprofit” in §§ 210.2, 215.2 and 220.2 is amended. Also for consistency the definition of “Nonprofit” is added to §§ 235.2 and 245.2. The definition of “School” in § 215.2 is amended to remove an obsolete reference and the definition of “School” in § 235.2 is amended to remove an erroneous citation.

#### III. Procedural Matters

##### Executive Order 12866

This interim rule has been determined to be not significant for purposes of Executive Order 12866 and was not reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

##### 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). Roberto Salazar, Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. Households applying for free or reduced price school meals for their children will be affected as they can no longer be required by the school district to complete and submit an application for each child. Local educational agencies will also be affected because there will be fewer applications to process and there will be potential for more economically beneficial centralized systems. This rule will reduce paperwork and reduce the workload for school officials.

##### Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food Nutrition Service must generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in

expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

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

##### Executive Order 12372

The National School Lunch Program, Special Milk Program, School Breakfast Program, and State Administrative Expense Funds are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555, 10.556, 10.553 and 10.560, respectively. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V, and final rule related notice at 48 FR 29114, June 24, 1983, these programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

##### Executive Order 13132—Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The Food and Nutrition Service has considered the impact of this rule on State and local governments and has determined that this rule does not have Federalism implications. This rule does not impose or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary impact statement is not required.

##### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its

provisions or which would otherwise impede its full implementation.

This rule is not intended to have retroactive effect unless so specified in the DATES section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

#### *Civil Rights Impact Analysis*

Under Department Regulation 4300–4, Civil Rights Impact Analysis, the Food and Nutrition Service, USDA, has reviewed this interim rule to identify and address any major civil rights impacts the interim rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, the Food and Nutrition Service, USDA, has determined that this rule would not in any way limit or reduce participants' ability to participate in the Child Nutrition Programs on the basis of an individual's or group's race, color, national origin, sex, age or disability (the Child Nutrition Programs' nondiscrimination policy can be found at § 210.23(b)). The Food and Nutrition Service found no factors that would negatively and disproportionately affect any group of individuals.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain any new information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995. Information collections associated with this rule have been approved under following OMB control numbers 0584–0005, 0584–0006, 0584–0012, 0584–0026 and 0584–0067.

#### *E-Government Act Compliance*

The Food and Nutrition Service is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes.

#### *Public Participation*

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and

(B). This rule is being implemented through amendments to current program regulations because of nondiscretionary provisions mandated by the Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108–265) and the provisions included in this interim rule are consistent with long-standing policies and procedures in the Child Nutrition Programs. This rule implements new requirements in a manner that builds on existing requirements and policies. Further, section 501(b) of Public Law 108–265 permitted the Secretary to issue an interim rule to implement the provisions in Sections 105 and 106 of Public Law 108–265 which are included herein. These provisions have been substantially implemented through the Department's issuance of guidance, which was also permitted by section 501(a) of Public Law 108–265. Therefore, State agencies and local educational agencies began implementing the requirements and procedures set forth in this rule in School Year 2004–2005 and have been operating under them since that time. The Department has also modified and clarified some of these procedures in response to recommendations from State and local program officials and this interim regulation reflects those modifications and clarifications.

In addition, promulgating these provisions in an interim rule allows for prompt codification in the Code of the **Federal Register** of procedures that are already in place. Codification reinforces the provisions significance with State agencies and local educational agencies. Publication of an interim rule provides the Department with the ability to collect comment on the actual implementation experience at all levels. Needed policy changes identified by comments can then be implemented through the publication of a final rule. Thus, the Department has determined in accordance with 5 U.S.C. 553(b), that Notice of Proposed Rulemaking and Opportunity for Public Comments is unnecessary and contrary to the public interest and, in accordance with 5 U.S.C. 553(d), finds that good cause exists for making this action effective without prior public comment.

#### **List of Subjects**

##### *7 CFR Part 210*

Children, Commodity School Program, Food assistance programs, Grants programs—social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

##### *7 CFR Part 215*

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

##### *7 CFR Part 220*

Children, Food assistance programs, Grant programs—social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

##### *7 CFR Part 235*

Administrative practice and procedure, Child and Adult Care Food Program, Food assistance programs, Grant administration, Intergovernmental relations, National School Lunch Program, Reporting and recordkeeping requirements, School Breakfast Program, Special Milk Program.

##### *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, 235 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:

■ a. Amend paragraph (b) in the definition of “Child” by removing the reference “paragraphs (c)” and adding in its place the reference “paragraph (c)”;

■ b. Add a definition of “Local educational agency” in alphabetical order; and

■ c. Revise the definition of “Nonprofit”.

The addition and revision read as follows:

#### **§ 210.2 Definitions.**

\* \* \* \* \*

*Local educational agency* means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or

counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools. The term also includes any other public or private nonprofit institution or agency having administrative control and direction of a public or private nonprofit elementary school or secondary school, including residential child care institutions, Bureau of Indian Affairs schools, and educational service agencies and consortia of those agencies, as well as the State educational agency in a State or territory in which the State educational agency is the sole educational agency for all public or private nonprofit schools.

\* \* \* \* \*

*Nonprofit* means, when applied to schools or institutions eligible for the Program, exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986.

\* \* \* \* \*

**§ 210.9 [Amended]**

■ 4. In § 210.9, amend paragraph (b)(7) by removing the words “school food authority” and adding in their place the words “local educational agency”.

**§ 210.19 [Amended]**

■ 5. In 210.19, amend paragraph (c)(6)(ii) by removing the words “the documentation specified under § 245.2(a-4)(1)(ii); or” and adding in their place the words “the information specified in paragraph (1)(ii) of the definition of *Documentation* in § 245.2 of this chapter; or”.

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

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

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

■ 2. In § 215.2:

■ a. Remove currently reserved paragraph (o);

■ b. Remove the remaining paragraph designations for paragraphs (a), (b), (c), (d), (e), (e-1), (e-2), (e-3), (e-4), (e-5), (f), (g), (h), (i), (i-1), (j), (j-1), (k), (k-1), (l), (m), (n), (p), (q), (r), (r-1), (s), (s-1), (t), (u), (u-1), (v), (w), (w-1), (x), (x-1), (x-2), (x-3), (x-4), (x-5), (x-6), (y), (z), (aa), and (bb) and arrange the definitions in alphabetical order;

■ c. Amend the definition of “Child-care institution” by removing the words “Child-care” and “child-care” wherever they appear and adding in their place the words “Child care” and “child care”, respectively;

■ d. Amend third sentence of the definition of “Child care institution” by removing the words “paragraph (v) of”;

■ e. Remove the definition of “Children” and add in its place a definition of “Child”;

■ f. Amend the first sentence of the definition of “Cost of milk” by removing the words “child-care” wherever they appear and by adding in their place the words “child care”;

■ g. Add a definition of “Local educational agency” in alphabetical order;

■ h. Revise the definition of “Nonprofit”;

■ i. Amend the definition of “Reimbursement” by removing the words “child-care” and adding in their place the words “child care”; and

■ j. Amend the definition of “School” by adding the word “or” before the number “(3)” in the first sentence and by removing the words “more; or (4) with respect to the Commonwealth of Puerto Rico, non-profit child care centers certified as such by the Governor of Puerto Rico.” and adding in their place the word “more.”

The revisions and additions read as follows:

**§ 215.2 Definitions.**

\* \* \* \* \*

*Child* means

(1) A person under 19 chronological years of age in a Child care institution as defined in this section;

(2) A person under 21 chronological years of age attending a school as defined in paragraphs (3) and (4) of the definition of *School* in this section;

(3) A student of high school grade or under attending school as defined in paragraphs (1) and (2) of the definition of *School* in this section; or

(4) A student who is mentally or physically disabled as determined by the State and who is participating in a school program established for the mentally or physically disabled, of high school grade or under as determined by the State educational agency in paragraphs (1) and (2) of the definition of *School* in this section.

\* \* \* \* \*

*Local educational agency* means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools. The term also

includes any other public or private nonprofit institution or agency having administrative control and direction of a public or private nonprofit elementary school or secondary school, including residential child care institutions, Bureau of Indian Affairs schools, and educational service agencies and consortia of those agencies, as well as the State educational agency in a State or territory in which the State educational agency is the sole educational agency for all public or private nonprofit schools.

\* \* \* \* \*

*Nonprofit* means, when applied to schools or institutions eligible for the Program, exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986.

\* \* \* \* \*

**§ 215.3 [Amended]**

■ 3. In § 215.3:

■ a. Amend paragraphs (b) and (c) by removing the words “child-care” wherever they appear and adding in their place the words “child care”;

■ b. Amend paragraph (b) by removing the words “as defined in § 215.2(v)(3) or § 215.2(v)(4)” and adding in their place the words “as described in paragraph (3) of the definition of *School* in § 215.2”; and

■ c. Amend paragraph (c) by removing the words “in any school as defined in § 215.2(v)(1), § 215.2(v)(2) or § 215.2(v)(3) or any child care institution as defined in § 215.2(e)” and adding in their place the words “in any *School* or any *Child care institution* as defined in § 215.2”.

**PART 220—SCHOOL BREAKFAST PROGRAM**

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

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

■ 2. In § 220.2:

■ a. Remove the paragraph designations for paragraphs (a), (a-1), (b), (c), (c-1), (d), (d-1), (e), (f), (g), (g-1), (h), (i), (i-1), (j), (k), (l), (m), (n), (o), (o-1), (o-2), (o-3), (p), (p-1), (q), (q-1), (q-2), (r), (s), (t), (t-1), (u), (v), (v-1), (w), (w-1), (x), (x-1), (x-2), (x-3), (x-4), (x-5), (y), (z), (aa), and (bb) and arrange the definitions in alphabetical order;

■ b. Amend paragraph (2) of the definition of “Child” by removing the words “in paragraphs (3) of the definition of “School” “ and adding in their place the words “in paragraph (3) of the definition of *School* in this section”;



- c. Add a definition of “Local educational agency” in alphabetical order;
- d. Amend the second sentence of the definition of “Menu item” by removing the reference “§ 220.2(i-1)” and adding in its place the words “the definition of *Foods of minimal nutritional value* in this section”;
- e. Revise the definition of “Nonprofit”; and
- f. Amend the definition of “State agency” by removing the words “as defined in § 220.2(u)(3) of this part” and adding in their place the words “as described in paragraph (3) of the definition of *School* in this section”.

The revision and addition read as follows:

**§ 220.2 Definitions.**

\* \* \* \* \*

*Local educational agency* means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools. The term also includes any other public or private nonprofit institution or agency having administrative control and direction of a public or private nonprofit elementary school or secondary school, including residential child care institutions, Bureau of Indian Affairs schools, and educational service agencies and consortia of those agencies, as well as the State educational agency in a State or territory in which the State educational agency is the sole educational agency for all public or private nonprofit schools.

\* \* \* \* \*

*Nonprofit* means, when applied to schools or institutions eligible for the Program, exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986.

\* \* \* \* \*

**§ 220.3 [Amended]**

- 3. In § 220.3:
  - a. Paragraph (b) is amended by removing the words “as defined in § 220.2(u)(1), (u)(2) and (u)(4)” and adding in their place the words “as described in paragraphs (1) and (2) of the definition of *School* in § 220.2”;

- b. Paragraph (b) is further amended by removing the words “as defined in § 220.2(u)(1) of” and adding in their place the words “as described in paragraph (1) of the definition of *School* in § 220.2 in”; and
- c. Paragraph (c) is amended by removing the words “as defined in § 220.2(u)(3)” and adding in their place the words “, as described in paragraph (3) of the definition of *School* in § 220.2,”.

**§ 220.8 [Amended]**

- 4. In § 220.8, amend paragraph (h)(3)(iv) by removing the words “in §§ 220.2(i-1) and 220.12 and appendix B to this part” and adding in their place the words “in the definition of *Foods of minimal nutritional value* in § 220.2, in § 220.12 and in Appendix B of this part”.

**§ 220.12 [Amended]**

- 5. In § 220.12:
  - a. Amend paragraph (b)(1) by removing the reference “§ 220.2(i-1)” wherever it appears and adding in its place the words “the definition of *Foods of minimal nutritional value* in § 220.2”; and
  - b. Amend (b)(2) by removing the words “as foods of minimal nutritional value as defined in § 220.2(i-1)” wherever they appear and adding in their place the words “ as meeting the definition of *Foods of minimal nutritional value* in § 220.2”.

**PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS**

- 1. The authority citation for part 235 continues to read as follows:

**Authority:** Secs. 7 and 10 of Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

- 2. In § 235.2:
  - a. Remove currently reserved paragraphs (e), (j), (k), and (m);
  - b. Remove the paragraph designations for paragraphs (a), (b), (c), (d), (f), (g), (h), (i), (l), (n), (o), (p), (q), (q-1), (q-2), (q-3), (q-4), (q-5), (r), (s), and (t) and arrange the definitions in alphabetical order;
  - c. Add a definition of “Nonprofit” in alphabetical order;
  - d. Revise the definition of “School”; and
  - e. Amend the last sentence of paragraph (2) of the definition of “State agency” by removing the words “‘distributing agency’, as defined in § 235.2(d),” and adding in their place the words “*Distributing agency* as defined in this section,”.

The addition and revision read as follows:

**§ 235.2 Definitions.**

\* \* \* \* \*

*Nonprofit* means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986.

\* \* \* \* \*

*School* means the term as defined in § 210.2, § 215.2, and § 220.2 of this chapter, as applicable.

\* \* \* \* \*

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

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

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

**§ 245.1 [Amended]**

- 2. In § 245.1:
  - a. Amend the first sentence of paragraph (a) by removing the words “(where applicable), and School Food Authorities” and adding in their place the words “, school food authorities or local educational agencies, as defined in § 245.2, as applicable”; and
  - b. Amend paragraph (b) by removing the words “and School Food Authorities” and adding in their place the words “school food authorities or local educational agencies, as applicable,”.
- 3. In § 245.2:
  - a. Remove the paragraph designations for paragraphs (a), (a-1), (a-2), (a-3), (a-4), (b), (b-1), (b-2), (b-3), (c), (d), (d-1), (d-2), (e), (f), (f-1), (f-2), (f-3), (g), (h), (i), (j), (k), (l), and (m) and arrange the definitions in alphabetical order;
  - b. Amend the first sentence of paragraph (2) of the definition of “Documentation” by removing the words “school food authority” and adding in their place “local educational agency (as defined in this section)”;
  - c. Amend the definition of “Household” by removing the reference “§ 245.2(b)” and adding in their place the words “this section”;
  - d. Add definitions of “Food Stamp Program”, “Household application”, “Local educational agency” and “Nonprofit” in alphabetical order; and
  - e. Amend the second sentence of the definition of “Verification” by removing the words “in the application which is defined as documentation in § 245.(a-4)” and adding in their place the words “on the application and defined as *Documentation* in this section”.

The additions read as follows:

**§ 245.2 Definitions.**

\* \* \* \* \*



*Food Stamp Program* means the program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) and operated under Parts 271 through 283 of this chapter.

\* \* \* \* \*

*Household application* means an application for free and reduced price meal or milk benefits, submitted by a household for a child or children who attend school(s) in the same local educational agency.

\* \* \* \* \*

*Local educational agency* means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools. The term also includes any other public or private nonprofit institution or agency having administrative control and direction of a public or private nonprofit elementary school or secondary school, including residential child care institutions, Bureau of Indian Affairs schools, and educational service agencies and consortia of those agencies, as well as the State educational agency in a State or territory in which the State educational agency is the sole educational agency for all public or private nonprofit schools.

\* \* \* \* \*

*Nonprofit* means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986.

\* \* \* \* \*

#### § 245.3 [Amended]

- 4. In § 245.3:
  - a. Amend the first sentence of paragraph (a) by removing the words “School Food Authorities of schools” and adding in their place the words “local educational agencies, as defined in § 245.2.”;
  - b. Amend the first sentence of paragraph (b) introductory text by removing the words “School Food Authority” and adding in their place the words “local educational agency”;
  - c. Amend paragraph (b)(1) by removing the words “School Food Authority” the first time they appear and adding in their place the words “local educational agency”;

- d. Amend the first sentence of paragraph (b)(2) by removing the words “School Food Authority” and adding in their place the words “local educational agency” and amend the second sentence of paragraph (b)(2) removing the words “School Food Authority’s” and adding in their place the words “local educational agency’s” and
- e. Amend the second sentence of paragraph (c) by removing the words “as defined in § 245.2(b)” and adding in their place the words “(as defined in § 245.2)”.
- 5. In § 245.5:
  - a. Amend the first sentence of paragraph (a) introductory text by removing the words “school food authority” wherever they appear and adding in their place the words “local educational agency (as defined in § 245.2)”;
  - b. Amend paragraph (a)(1)(iii) by removing the words “documentation” as defined in “§ 245.2(a–4);” and adding in its place the words “information as described in paragraph (1)(i) of the definition of *Documentation* in § 245.2”;
  - c. Amend paragraph (a)(1)(iv) by removing the reference “§ 245.2(a–4)” and adding in its place the words “paragraph (2)(ii) of the definition of *Documentation* in § 245.2”;
  - d. Remove paragraph (a)(1)(vi);
  - e. Redesignate paragraphs (a)(1)(vii) through (a)(1)(xi) as (a)(1)(vi) through (a)(1)(x), respectively;
  - f. Amend newly redesignated paragraph (a)(1)(viii) by removing the words “School Food Authority” and adding in their place the words “local educational agency”;
  - g. Amend newly redesignated paragraph (a)(1)(x) by removing the words “School Food Authority” and adding in their place the words “local educational agency”; and
  - h. Add a new paragraph (a)(1)(xi).  
The addition reads as follows:

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

- (a) \* \* \*
- (1) \* \* \*
- (xi) A statement to the effect that the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) participants may be eligible for free or reduced price meals.  
\* \* \* \* \*
- 8. In § 245.6:
  - a. Revise the heading;
  - b. Revise paragraph (a);
  - c. Amend paragraph (b) introductory text:
    - 1. By removing the words “school food authorities” in the first sentence and adding in their place the words “local educational agencies”; and

- 2. By removing the reference “§ 245.2(a–4)(2)” in the second sentence and adding in its place the words “paragraph (2) of the definition of *Documentation* in § 245.2”;
- d. Revise paragraph (c);
- e. Amend paragraphs (d) and (e) by adding headings;
- f. Amend paragraph (d) by:
  - 1. Removing the words “School Food Authority” wherever they appear and adding in their place the words “local educational agency”; and
  - 2. Removing the words “School Food Authority’s” wherever they appear and adding in their place the words “local educational agency’s”;
- g. Amend paragraphs (e) through (h) by removing the words “school food authority” wherever they appear and adding in their place the words “local educational agency”;
- h. Amend paragraph (f)(4) by removing the words “school food authorities” and adding in their place the words “local educational agencies”; and
- i. Amend the second sentence of paragraph (h)(1) and the sixth sentence of paragraph (h)(2) by removing references to “paragraph (a)(1)” and adding in their place references to “paragraph (a)(8)(i)”;
- j. Amend paragraph (i) by removing the words “school food authorities” and adding in their place the words “local educational agencies”.

The revisions and additions read as follows:

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

(a) *General requirements—content of application and descriptive materials.* Each local educational agency, as defined in § 245.2, for schools participating in the National School Lunch Program, School Breakfast Program or Special Milk Program or a commodity only school shall provide meal benefit forms for use by families in making application for free or reduced price meals or free milk for their children.

(1) *Household applications.* The State agency or local educational agency must provide a form that permits a household to apply for all children in that household who attend schools in the same local educational agency. The local educational agency cannot require the household to submit an application for each child attending its schools. The application shall be clear and simple in design and the information requested therein shall be limited to that required to demonstrate that the household does, or does not, meet the eligibility criteria

for free or reduced price meals, respectively, or for free milk, issued by the local educational agency. In accordance with § 245.3(c), a foster child or an institutionalized child is considered a family of one.

(2) *Understandable communications.* Any communication with households for eligibility determination purposes must be in an understandable and uniform format and to the maximum extent practicable, in a language that parents and guardians can understand.

(3) *Electronic availability.* In addition to the distribution of applications and descriptive materials in paper form as provided for in this section, the local educational agency may establish a system for executing household applications electronically and using electronic signatures. The electronic submission system must comply with the disclosure requirements in this section and with technical assistance and guidance provided by FNS. Descriptive materials may also be made available electronically by the local educational agency.

(4) *Transferring eligibility status.* When a student transfers to another school district, the new local educational agency may accept the eligibility determination from the student's former local educational agency without incurring liability for the accuracy of the initial determination. As required under paragraph (c)(3) of this section, the accepting local educational agency must make changes that occur as a result of verification activities or coordinated review findings conducted in that local educational agency.

(5) *Required income information.* The information requested on the application with respect to the current income of the household must be limited to:

(i) The income received by each member identified by the household member who received the income or an indication that which household members had no income; and

(ii) The source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income). Other cash income includes cash amounts received or withdrawn from any source, including savings, investments, trust accounts, and other resources which are available to pay for a child's meals or milk.

(6) *Household members and social security numbers.* The application must require applicants to provide the names of all household members. In addition, the social security number of the adult household member who signs the

application must be provided. If the adult member signing the application does not possess a social security number, the household must so indicate. However, if application is being made for a child(ren) who is a member of a household receiving assistance under the Food Stamp Program, or is in a FDPIR or TANF household, the application shall enable the household to provide the appropriate food stamp or TANF case number or FDPIR case number or other FDPIR identifier in lieu of names of all household members, household income information and social security number.

(7) *Adult member's signature.* The application must be signed by an adult member of the family. The application must contain clear instructions with respect to the submission of the completed application to the official or officials designated by the local educational agency to make eligibility determinations. A household must be permitted to file an application at any time during the school year. A household may, but is not required to, report any changes in income, household size or program participation during the school year.

(8) *Required statements for the application.* The application and/or descriptive materials must contain substantially the following statements:

(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 your child for free or reduced price meals. You must include the social security number of the adult household member who signs the application. The social security number is not required when you apply on behalf of a foster child or you list a Food Stamp, Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number for your child or other FDPIR identifier or when you indicate that the adult household member signing the application does not have a social security number. We will use your information to determine if your child is eligible for free or reduced price meals, and for administration and enforcement of the lunch and breakfast programs." When the State agency or local educational agency, as appropriate, plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in paragraph (h) of this section, must be added to the Privacy Act notice/statement. State agencies and local educational agencies are responsible for drafting the appropriate

notice and ensuring that the notice complies with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note (Disclosure of Social Security Number)); and

(ii) "In certain cases, foster children are eligible for free or reduced price meals or free milk regardless of your household income. If you have foster children living with you and wish to apply for such meals or milk for them, please contact us."

(9) *Attesting to information on the application.* The application must also include a statement, immediately above the space for signature, that the person signing the application certifies that all information furnished in the application is true and correct, that the application is being made in connection with the receipt of Federal funds, that school officials may verify the information on the application, and that deliberate misrepresentation of the information may subject the applicant to prosecution under applicable State and Federal criminal statutes.

\* \* \* \* \*

(c) *Determination of eligibility—(1) Duration of eligibility.* Except as otherwise specified in paragraph (c)(3) of this section, eligibility, as determined through an approved application or by direct certification, for free or reduced price meals must remain in effect for the entire school year and for up to 30 operating days into the subsequent school year. The local educational agency must determine household eligibility, for free or reduced price meals, either through direct certification or the application process at or about the beginning of the school year. The local educational agency must determine eligibility for free or reduced price meals when a household submits an application or, if feasible, through direct certification, at any time during the school year.

(2) *Use of prior year's eligibility status.* Prior to the processing of applications or the completion of direct certification procedures for the current school year, children from households with approved applications or documentation of direct certification on file from the preceding year shall be offered reimbursable free and reduced price meals or free milk, as appropriate. However, applications and documentation of direct certification from the preceding year shall be used only to determine eligibility for a period not to exceed the first 30 operating days following the first operating day at the beginning of the school year, or until a new eligibility determination is made in

the current school year, whichever comes first.

(3) *Exceptions for year-long duration of eligibility*—(i) *Voluntary reporting of changes*. If the household voluntarily reports a change in income or in program participation resulting in categorical eligibility, the local educational agency must inform the household of the consequences of any change that will result in lowered benefits. The household has the option to decline to have the change put into effect.

(ii) *Changes resulting from verification or administrative reviews*. The local educational agency must change the children's eligibility status when a change is required as a result of verification activities conducted under § 245.6a or as a result of a review conducted in accordance with § 210.18 of this chapter.

(iii) *Temporary approvals*. When a household reports no income or a temporary reduction in income, local educational agencies are encouraged to approve free or reduced price meal benefits on a temporary basis only. Approvals for a maximum of 45 days are recommended. At the end of the temporary approval period, the local educational agency would review the household's circumstances and certify or deny the household accordingly.

(4) *Calculating income*. The local educational agency must use the income information provided by the household on the application to calculate the household's total current income. When a household submits an application containing complete documentation, as defined in § 245.2, and the household's total current income is at or below the eligibility limits specified in the Income Eligibility Guidelines as defined in § 245.2, the children in that household must be approved for free or reduced price benefits, as applicable.

(5) *Categorical eligibility*. When a household submits an application containing the required food stamp, FDPIR or TANF documentation, as defined under *Documentation* in § 245.2, the children in that household must be approved for free benefits. Additionally, when the local educational agency obtains documentation, as defined in § 245.2, from the State or local agency responsible for the administration of the Food Stamp Program, FDPIR and/or TANF Program that children are members of a Food Stamp Program, FDPIR or TANF household receiving assistance from one or more of those programs, the local educational agency must approve such children for free benefits without an application.

(6) *Notice of approval*—(i) *Income applications*. The local educational agency must promptly notify the household of the children's eligibility and provide the eligible children the benefits to which they are entitled.

(ii) *Direct Certification*. Households approved for benefits based on information provided by the appropriate State or local agency responsible for the administration of the Food Stamp Program, FDPIR or TANF Program must be notified, in writing, that their children are eligible for free meals or free milk, that no application for free and reduced price school meals or free milk is required. The notice of eligibility must also inform the household that the parent or guardian must notify the local educational agency if they do not want their children to receive free benefits. However, when the parent or guardian transmits a notice of eligibility provided by the food stamp, FDPIR or TANF office, the local educational agency is not required to provide a separate notice of eligibility.

(iii) *Households declining benefits*. Children from households that notify the local educational agency that they do not want free benefits must have their benefits discontinued as soon as possible. Any notification from the household declining benefits must be documented and maintained on file, as required under paragraph (e) of this section, to substantiate the eligibility determination.

(7) *Denied applications and the notice of denial*. When the application furnished by a family is not complete or does not meet the eligibility criteria for free or reduced price benefits, the local educational agency must document and retain the reasons for ineligibility and must retain the denied application. In addition, the local educational agency must promptly provide written notice to each family denied benefits. As a minimum, this notice shall include:

- (i) The reason for the denial of benefits, e.g. income in excess of allowable limits or incomplete application;
- (ii) Notification of the right to appeal;
- (iii) Instructions on how to appeal; and
- (iv) A statement reminding parents that they may reapply for free or reduced price benefits at any time during the school year.

(8) *Appeals of denied benefits*. A family that wishes to appeal an application that was denied may do so in accordance with the procedures established by the local educational agency as required by § 245.7. However, prior to initiating the hearing procedure, the family may request a conference to

provide the opportunity for the family and local educational agency officials to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request for a conference shall not in any way prejudice or diminish the right to a fair hearing. The local educational authority shall promptly schedule a fair hearing, if requested.

(d) *Households that fail to apply*.

\* \* \*

\* \* \* \* \*

(e) *Recordkeeping*. \* \* \*

\* \* \* \* \*

■ 9. In § 245.6a:

■ a. Amend paragraph (a) introductory text by:

■ 1. Removing the words "School Food Authorities" wherever they appear and adding in their place the words "local educational agencies"; and

■ 2. Removing the words "School Food Authority" in the fifth sentence and adding in their place the words "local educational agency";

■ b. Amend paragraph (a)(1) by:

■ 1. Removing the words "School Food Authority" wherever they appear and adding in their place the words "local educational agency"; and

■ 2. By removing the words "the essential information specified in § 245.2(a-4)" in the second sentence and adding in their place the words "the information specified in the definition of *Documentation* in § 245.2";

■ c. Amend paragraph (a)(2) introductory text by:

■ 1. Removing the words "school food authority" in the first sentence and adding in their place the words "local educational agency";

■ 2. Adding a new sentence between the first and second sentences; and

■ 3. Removing the words "School food authorities" in the last sentence and adding in their place the words "Local educational agencies";

■ d. Amend the second sentence of paragraph (a)(2)(v) by removing the words "school food authorities" and adding in their place the words "local educational agencies";

■ e. Amend the second sentence of paragraph (a)(4) by removing the words "School Food Authority's" and adding in their place the words "local educational agency's";

■ f. Amend paragraph (b)(3) by:

■ 1. Removing the words "School Food Authority" in the first sentence and adding in their place the words "local educational agency"; and

■ 2. Removing the words "school food authority" in the second sentence and adding in their place the words "local educational agency";

- g. Amend paragraph (c) by:
  - 1. Removing the words “school food authority” wherever they appear and adding in their place the words “local educational agency”; and
  - 2. Removing the words “school food authorities” wherever they appear and adding in their place the words “local educational agencies”; and
- h. Amend paragraph (e) by removing the words “School Food Authority” wherever they appear and adding in their place the words “local educational agency”.

The addition reads as follows:

**§ 245.6a Verification requirements.**

- (a) \* \* \*
- (2) \* \* \* Any communication 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.

\* \* \* \* \*

- 10. In § 245.7:
  - a. Revise the heading; and
  - b. Amend paragraph (a) by removing the words “School Food Authority” wherever they appear and adding in their place the words “local educational agency”;

The revision reads as follows:

**§ 245.7 Hearing procedure for families and local educational agencies.**

\* \* \* \* \*

**§ 245.8 [Amended]**

- 11. In § 245.8:
  - a. Amend the first sentence of the introductory text by adding the words “and local educational agencies” after the words “School Food Authorities”; and
  - b. Amend paragraph (e) by removing the references “§ 210.10, § 210.15a, § 220.8 or § 215.2(1)” and adding in their place the words “§ 210.10, § 220.8 or the definition of *Milk* in § 215.2”.
- 12. Amend § 245.10 by:
  - a. Revising the heading;
  - b. Removing the words “School Food Authority” wherever they appear and adding in their place the words “local educational agency”;
  - c. Removing the words “school food authority” wherever they appear and adding in their place the words “local educational agency”;
  - d. Removing the words “School Food Authority’s” wherever they appear and adding in their place the words “local educational agency’s”; and
  - e. Removing the words “school food authorities” in the third sentence of paragraph (a)(3) and adding in their place the words “local educational agencies”.

The revision reads as follows:

**§ 245.10 Action by local educational agencies.**

\* \* \* \* \*

**§ 245.11 [Amended]**

- 13. In 245.11:
  - a. Amend the first sentence of paragraph (a)(1) by removing the words “school food authority” and adding in their place the words “local educational agency as defined in § 245.2”;
  - b. Amend paragraph (c) by removing the words “School Food Authorities” and adding in their place the words “local educational agencies”;
  - c. Amend paragraph (d) by removing the words “School Food Authorities” and adding in their place the words “local educational agencies”;
  - d. Amend paragraph (e) removing the words “school food authority” and adding in their place the words “local educational agency”;
  - e. Amend paragraph (f) by removing the words “School Food Authorities” wherever they appear and adding in their place the words “local educational agencies”;
  - f. Amend paragraph (i) by removing the words “school food authority” wherever they appear and adding in their place the words “local educational agency”;
  - g. Amend the third sentence of paragraph (i) by removing the words “school food authorities” and adding in their place the words “local educational agencies”.

Dated: November 2, 2007.

**Roberto Salazar,**  
*Administrator, Food and Nutrition Service.*  
 [FR Doc. E7-22053 Filed 11-9-07; 8:45 am]  
**BILLING CODE 3410-30-P**

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 94**

[Docket No. 00-111-3]

**Foot-and-Mouth Disease Status of Uruguay**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting as a final rule, with one change, our July 2001 interim rule that amended the regulations governing the importation of certain animals, meat, and other animal products by removing Uruguay from the

list of areas considered free of rinderpest and foot-and-mouth disease. The interim rule also removed Uruguay from the list of regions declared free of those diseases, but that are subject to certain restrictions because of their proximity to or trading relations with regions affected with rinderpest or foot-and-mouth disease. The interim rule was necessary because the existence of foot-and-mouth disease had been confirmed in 18 Departments in Uruguay. Because there have been no occurrences of rinderpest in Uruguay, this final rule adds Uruguay to the list of regions considered free of that disease.

**EFFECTIVE DATE:** December 13, 2007.

**FOR FURTHER INFORMATION CONTACT:** Dr. Gary Colgrove, Director, Sanitary Trade Issues Team, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737-1231; (301) 734-3276.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products into the United States in order to prevent the introduction of various animal diseases including rinderpest, foot-and-mouth disease (FMD), African swine fever, classical swine fever, swine vesicular disease, and bovine spongiform encephalopathy. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and FMD. Under § 94.11 of the regulations, some of those regions are subject to additional restrictions because of their proximity to or trading relationships with rinderpest and FMD-affected regions.

In an interim rule effective October 1, 2000, and published in the **Federal Register** on December 13, 2000 (65 FR 77771-77773, Docket No. 00-111-1), we amended the regulations by removing Artigas, a region in northern Uruguay, from the list of regions considered to be free of rinderpest and FMD because FMD had been confirmed there. Prior to the effective date of that interim rule, the entire country of Uruguay was listed in §§ 94.1 and 94.11 as a region considered free of rinderpest and FMD.

We solicited comments concerning the interim rule for 60 days ending February 12, 2001, and received two comments by that date.

However, on April 23, 2001, FMD was confirmed in the Uruguayan department of Soriano. Subsequently, new