

child care institutions under this part shall be used only to purchase United States agricultural commodities and other foods for use in their food service under the National School Lunch Program, Child Care Food Program, or Summer Food Service Program for Children, as applicable. Such foods shall be limited to those necessary to meet the requirements set forth in §210.10 of part 210 of this chapter, §225.10 of part 225 of this chapter and §226.10 of part 226 of this chapter, respectively. On or before disbursing funds to school food authorities (for program schools), service institutions and nonresidential child care institutions, State agencies and FCSRO's shall notify them of the reason for special disbursement, the purpose for which these funds may be used, and, if possible, the amount of funds they will receive.

(b) Cash payments received under §240.5 of this part shall be used only to pay donated-food processing and handling expenses of commodity schools.

(c) Funds provided under this part shall be subject to the Department's Uniform Federal Assistance Regulations (7 CFR part 3015).

**§240.10 Unobligated funds.**

State agencies shall release to FCS any funds paid to them under this part which are unobligated at the end of each fiscal year. Release of funds by any State agency shall be made as soon as practicable, but in any event, not later than 30 days following demand by FCS. Release of funds shall be reflected by a related adjustment in the State agency's Letter of Credit where appropriate or payment by State check where the funds have been paid by United States Treasury Department check.

**§240.11 Records and reports.**

(a) State agencies and distributing agencies shall maintain records and reports on the receipt and disbursement of funds made available under this part, and shall retain such records and reports for a period of three years after the end of the fiscal year to which they pertain, except that, if audit findings have not been resolved, the records shall be retained beyond the three-year

period as long as required for the resolution of the issues raised by the audit.

(b) State agencies shall establish controls and procedures which will assure that the funds made available under this part are not included in determining the State's matching requirements under §210.6 of part 210 of this chapter.

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

Sec.

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- 245.14 Information collection/record-keeping—OMB assigned control numbers.

AUTHORITY: Secs. 3, 4, and 10 of the Child Nutrition Act of 1966, 80 Stat. 885, 886, 889, as amended (42 U.S.C. 1772, 1773, 1779); secs. 2–12, 60 Stat. 230, as amended (42 U.S.C. 1751–60).

**§245.1 General purpose and scope.**

(a) This part established the responsibilities of State agencies, Food and Consumer Service Regional Offices (where applicable), and School Food Authorities in providing free and reduced price meals and free milk in the National School Lunch Program (7 CFR part 210), the School Breakfast Program (7 CFR part 220), the Special Milk Program for Children (7 CFR part 215), and commodity schools. Section 9 of the National School Lunch Act, as amended, and sections 3 and 4 of the

Child Nutrition Act of 1966, as amended, require schools participating in any of the programs and commodity schools to make available, as applicable, free and reduced price lunches, breakfasts, and at the option of the School Food Authority for schools participating only in the Special Milk Program free milk to eligible children.

(b) This part sets forth the responsibilities under these Acts of State agencies, the Food and Consumer Service Regional Offices, and School Food Authorities with respect to the establishment of income guidelines, determination of eligibility of children for free and reduced price meals, and for free milk and assurance that there is no physical segregation of, or other discrimination against, or overt identification of children unable to pay the full price for meals or milk.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[Amdt. 6, 39 FR 30337, Aug. 22, 1974, as amended by Amdt. 10, 41 FR 28783, July 13, 1976; 47 FR 31852, July 23, 1982]

#### § 245.2 Definitions.

(a) *Adult* means any individual 21 years of age or older.

(a-1) *AFDC Assistance Unit* means any individual or group of individuals which is currently certified to receive assistance under the Aid to Families with Dependent Children Program in a State where the standard of eligibility for AFDC benefits does not exceed the income eligibility guidelines for free meals or free milk under this part.

(a-2) *Commodity school* means a school which does not participate in the National School Lunch Program under part 210 of this chapter, but which enters into an agreement as provided in § 210.15a(b) to receive commodities donated under part 250 of this chapter for a nonprofit lunch program.

(a-3) *Current income* means income, as defined in § 245.6(a), received during the month prior to application. If such income does not accurately reflect the household's annual rate of income, income shall be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be

used as a base for the projected annual rate of income.

(a-4) *Documentation* means the completion of the following information on a free and reduced price application:

- (1) Names of all household members;
- (2) 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);
- (3) The signature of an adult household member; and
- (4) The social security number of the adult household member who signs the application or an indication that he/she does not possess a social security number.

Alternatively, "documentation" for a child who is a member of a food stamp household or an AFDC assistance unit means completion of only the following information on a free and reduced price application: the name and appropriate food stamp or AFDC case number for the child and the name and signature of an adult member of the household.

(b) *Family* means a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit.

(b-1) *Food Stamp Household* means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Stamp Program.

(c) *FCSRO where applicable* means the appropriate Food and Consumer Service Regional Office when that agency administers the National School Lunch Program, School Breakfast Program or Special Milk Program with respect to nonprofit private schools.

(d) *Free meal* means a meal for which neither the child nor any member of his family pays or is required to work in the school or in the school's food service.

(d-1) *Free milk* means milk served under the regulations governing the Special Milk Program and for which neither the child nor any member of his family pays or is required to work in the school or in the school's food service.

(d-2) *Household* means "family" as defined in § 245.2(b).

(e) *Income eligibility guidelines* means the family-size income levels prescribed annually by the Secretary for use by States in establishing eligibility for free and reduced price meals and for free milk.

(f) *Meal* means a lunch or meal supplement or a breakfast which meets the applicable requirements prescribed in §§ 210.10, 210.15a, and 220.8 of this chapter.

(f-1) *Milk* means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk except that, in the meal pattern for infants (0 to 1 year of age) milk means unflavored types of whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meet such standards. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, and the Virgin Islands, if a sufficient supply of such types of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with State and local standards for such milk.

(g) *Reduced price meal* means a meal which meets all of the following criteria: (1) The price shall be less than the full price of the meal; (2) the price shall not exceed 40 cents for a lunch and 30 cents for a breakfast; and (3) neither the child nor any member of his family shall be required to supply an equivalent value in work for the school or the school's food service.

(h) *Service institution* shall have the meaning ascribed to it in part 225 of this chapter.

(i) *School, school food authority*, and other terms and abbreviations used in this part shall have the meanings ascribed to them in part 210 of this chapter.

(j) *Special Assistance Certification and Reimbursement Alternatives* means the two optional alternatives for free and reduced price meal application and claiming procedures in the National School Lunch Program and School Breakfast Program which are available to those School Food Authorities with

schools in which at least 80 percent of the enrolled children are eligible for free or reduced price meals, or schools which are currently, or who will be serving all children free meals.

(k) *Verification* means confirmation of eligibility for free or reduced price benefits under the National School Lunch Program or School Breakfast Program. Verification shall include confirmation of income eligibility and, at State or local discretion, may also include confirmation of any other information required in the application which is defined as documentation in § 245.2(a-4). Such verification may be accomplished by examining information provided by the household such as wage stubs, or by other means as specified in § 245.6a(b). However, if a food stamp or AFDC case number is provided for a child, verification for such child shall only include confirmation that the child is included in a currently certified food stamp household or AFDC assistance unit.

(Secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1759(a), 1773, 1758))

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 245.2, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

### § 245.3 Eligibility standards and criteria.

(a) Each State agency, or FCSRO where applicable, shall by July 1 of each year announce family-size income standards to be used by School Food Authorities of schools under the jurisdiction of such State agency, or FCSRO where applicable, in making eligibility determinations for free or reduced price meals and for free milk. Such family size income standards for free and reduced price meals and for free milk shall be in accordance with Income Eligibility Guidelines published by the Department by notice in the FEDERAL REGISTER.

(b) Each School Food Authority shall establish eligibility criteria for free and reduced price meals and for free milk in conformity with the family-size income standards prescribed by the State agency, or FCSRO where applicable, under paragraph (a) of this section. Such criteria shall:

(1) For all schools under the jurisdiction of the School Food Authority, specify the uniform family-size income criteria to be used for determining eligibility for free and reduced price meals in schools participating in the National School Lunch or School Breakfast Programs and in commodity-only schools, and for determining eligibility for free milk when the School Food Authority has chosen to serve free milk in its schools participating in the Special Milk Program; and

(2) Provide that all children from a family meeting family-size income criteria and attending any school under the jurisdiction of the School Food Authority which participates under the National School Lunch Program, School Breakfast Program, Special Milk Program, or is a commodity only school shall be provided the same benefits. The School Food Authority's eligibility criteria shall be a part of the policy statement required under §245.10 and shall be publicly announced in accordance with the provisions of §245.5.

(c) Each School Food Authority shall serve free and reduced price meals or free milk in the respective programs to children eligible under its eligibility criteria. When a child is not a member of a family as defined in §245.2(b), the child shall be considered a family of one. In any school which participates in more than one of the child nutrition programs, eligibility shall be applied uniformly so that eligible children receive the same benefits in each program. If a child transfers from one school to another school under the jurisdiction of the same School Food Authority, his eligibility for free or reduced price meals or for free milk, if previously established, shall be transferred to, and honored by, the receiving school if it participates in the National School Lunch Program, School Breakfast Program, Special Milk Program and the School Food Authority has elected to provide free milk, or is a commodity-only school.

(Sec. 8, Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1758); sec. 5, Pub. L. 95-627, 92 Stat. 3619 (42 U.S.C. 1772); 42 U.S.C. 1785, 1766, 1772, 1773(e), sec. 203, Pub. L. 96-499, 94 Stat. 2599; secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535, 42

U.S.C. 1772, 1784, 1760; sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[Amdt. 8, 40 FR 57207, Dec. 8, 1975; 40 FR 58281, Dec. 16, 1975, as amended by Amdt. 10, 41 FR 28783, July 13, 1976; Amdt. 13, 44 FR 33049, June 8, 1979; 47 FR 31852, July 23, 1982]

#### **§245.4 Exceptions for Puerto Rico and the Virgin Islands.**

Because the State agencies of Puerto Rico and the Virgin Islands provide free meals or milk to all children in schools under their jurisdiction, regardless of the economic need of the child's family, they are not required to make individual eligibility determinations or publicly announce eligibility criteria. Instead, such State agencies may use a statistical survey to determine the number of children eligible for free or reduced price meals and milk on which a percentage factor for the withdrawal of special cash assistance funds will be developed subject to the following conditions:

(a) State agencies shall conduct a statistical survey once every three years in accordance with the standards provided by FCS;

(b) State agencies shall submit the survey design to FCS for approval before proceeding with the survey;

(c) State agencies shall conduct the survey and develop the factor for withdrawal between July 1 and December 31 of the first school year of the three-year period;

(d) State agencies shall submit the results of the survey and the factor for fund withdrawal to FCS for approval before any reimbursement may be received under that factor;

(e) State agencies shall keep all material relating to the conduct of the survey and determination of the factor for fund withdrawal in accordance with the record retention requirements in §210.8(e)(14) of this chapter;

(f) Until the results of the triennial statistical survey are available, the factor for fund withdrawal will be based on the most recently established percentages. The Department shall make retroactive adjustments to the States' Letter of Credit, if appropriate, for the year of the survey;

(g) If any school in these States wishes to charge a student for meals, the State agency, School Food Authority

and school shall comply with all the applicable provisions of this part and parts 210, 215 and 220 of this chapter.

(Sec. 9, Pub. L. 95-166, 91 Stat 1336 (42 U.S.C. 1759a); secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1772, 1784, 1760; 44 U.S.C. 3506)

[Amdt. 18, 45 FR 52771, Aug. 8, 1980, as amended at 46 FR 51366, Oct. 20, 1981; 47 FR 746, Jan. 7, 1982]

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

(a) After the State agency, or FCSRO where applicable, notifies the School Food Authority that its criteria for determining the eligibility of children for free and reduced price meals and for free milk have been approved, the School Food Authority shall publicly announce such criteria: *Provided however*, That no such public announcement shall be required for boarding schools, schools as defined in § 210.2(o)(2) of part 210 of this chapter, or a school which includes food service fees in its tuition, where all attending children are provided the same meals or milk. Such announcements shall be made at the beginning of each school year or, if notice of approval is given thereafter, within 10 days after the notice is received. The public announcement of such criteria, as a minimum, shall include the following:

(1) A letter or notice distributed on or about the beginning of each school year, to the parents of children in attendance at school. The letter or notice shall contain the following information:

(i) In schools participating in a meal service program, the eligibility criteria for *reduced price* benefits with an explanation that households with incomes less than or equal to the reduced price criteria would be eligible for either free or reduced price meals, or in schools participating in the free milk option, the eligibility criteria for *free* milk benefits;

(ii) How a household may make application for free or reduced price meals or for free milk for its children;

(iii) An explanation that an application for free or reduced price benefits cannot be approved unless it contains complete "documentation" as defined in § 245.2(a-4);

(iv) An explanation that households with children who are members of currently certified food stamp households or AFDC assistance units may submit applications for such children with the abbreviated information described in § 245.2(a-4);

(v) An explanation that the information on the application may be verified at any time during the school year;

(vi) An explanation that households receiving free or reduced price benefits must notify school officials during the school year of any decreases in household size and any increases in income of over \$50 per month or \$600 per year (or a lesser amount if established by the State) or, in the case of households that provided a food stamp or AFDC case number to establish eligibility for free meals or milk for a child, of any termination of certification for receipt of benefits for such children under the Food Stamp or AFDC Programs;

(vii) How a household may apply for benefits at any time during the school year as circumstances change;

(viii) A statement to the effect that children having parents or guardians who become unemployed are eligible for free or reduced price meals or for free milk during the period of unemployment, *Provided*, that the loss of income causes the household income during the period of unemployment to be within the eligibility criteria;

(ix) A statement to the effect that in certain cases foster children are eligible for free or reduced price meals or free milk regardless of the income of the household with whom they reside and that households wishing to apply for such benefits for foster children should contact the School Food Authority;

(x) The statement: "In the operation of child feeding programs, no child will be discriminated against because of race, sex, color, national origin, age or handicap;" and

(xi) How a household may appeal the decision of the School Food Authority with respect to the application under the hearing procedure set forth in § 245.7. The letter or notice shall be accompanied by a copy of the application form required under § 245.6.

(2) On or about the beginning of each school year, a public release, containing the same information supplied to parents, and including both free and reduced price eligibility criteria shall be provided to the informational media, the local unemployment office, and to any major employers contemplating large layoffs in the area from which the school draws its attendance.

(b) Copies of the public release shall be made available upon request to any interested persons. Any subsequent changes in a school's eligibility criteria during the school year shall be publicly announced in the same manner as the original criteria were announced.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758); Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-642, 80 Stat. 885-880 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[Amdt. 8, 40 FR 57207, Dec. 8, 1975, as amended by Amdt. 10, 41 FR 28783, July 13, 1976; 47 FR 31852, 31853, July 23, 1982; Amdt. 24, 48 FR 19355, Apr. 29, 1983; 49 FR 26034, June 26, 1984; 52 FR 19275, May 22, 1987]

**§245.6 Application for free and reduced price meals and free milk.**

(a) Each School Food Authority of a school participating in the National School Lunch Program, School Breakfast Program or Special Milk Program or of a commodity only school shall provide supplies of a form for use by families in making application for free or reduced price meals or free milk for their children. The application shall be clear and simple in design and the information requested thereon shall be limited to that required to demonstrate that the family does, or does not, meet the eligibility criteria for free or reduced price meals, respectively, or for free milk, issued by the School Food Authority. The information requested on the application with respect to the current income of the household shall be limited to the income received by each member identified by the household member who received the income, and 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 re-

ceived or withdrawn from any source, including savings, investments, trust accounts, and other resources which are available for payment of the price of a child's meals or milk. Additionally, the application shall require applicants to provide the names of all household members and the social security number of the adult household member who signs the application. In lieu of a social security number, the household may indicate the adult household member who signs the application does not possess a social security number. However, if application is being made for a child who is a member of a food stamp household or an AFDC assistance unit, the application shall enable the household to provide the appropriate food stamp or AFDC case number in lieu of names of all household members, household income information and social security number. The application shall also contain substantially the following statements:

(1) Section 9 of the National School Lunch Act requires that, unless your child's food stamp or AFDC case number is provided, you must include the social security number of the adult household member signing the application or indicate that the household member signing the application does not have social security number. Provision of a social security number is not mandatory, but if a social security number is not given or an indication is not made that the signer does not have such a number, the application cannot be approved. The social security number may be used to identify the household member in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps or AFDC benefits, contacting the State employment security office to determine the amount of benefits received and checking the documentation produced by household members to prove the amount of income received. These efforts may result in a loss or reduction of benefits, administrative claims

or legal actions if incorrect information is reported.” State agencies and School Food Authorities shall ensure that the notice complies with section 7 of Pub. L. 93–579 (Privacy Act of 1974); and

(2) “In certain cases foster children are eligible for free or reduced price meals or free milk regardless of your household income. If you have such children living with you and wish to apply for such meals or milk for them, please contact us.” The application shall 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. The application shall be signed by an adult member of the family. The application shall contain clear instructions with respect to the submission of the completed application to the official or officials designated by the School Food Authority to make eligibility determinations on its behalf. A family shall be permitted to file an application at any time during the school year.

(b) *Determination of eligibility.* Prior to the processing of applications for the current school year, children from households with approved applications on file from the preceding year may be served reimbursable free and reduced price meals or free milk. However, applications from the preceding year may be used to determine eligibility only 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, provided that any State agency timeframe does not exceed the 30 operating day limit. School officials shall take the income information provided by the household on the application and calculate the household’s total current income. When a completed application furnished by a family indicates that the family meets the eligibility criteria for free and reduced

price meals or free milk, the family shall be promptly notified and the children from that family shall be provided the benefits to which they are entitled.

(1) *Notice of denial.* When the application furnished by the family is not fully documented or does not meet the eligibility criteria for free or reduced price benefits, school officials shall 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 and reduced price benefits at any time during the school year. The reasons for ineligibility shall be properly documented and retained on file at the School Food Authority.

(2) *Appeals of denied benefits.* A family who wishes to appeal a denied application by the School Food Authority may do so as specified in §245.7. However, prior to initiating the hearing procedure, the parent may request a conference to provide the opportunity for the parent and school 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 School Food Authority shall promptly schedule a fair hearing, if requested.

(c) After the letter to parents and the applications have been disseminated, the School Food Authority may determine, based on information available to it, that a child for whom an application has not been submitted meets the School Food Authority’s eligibility criteria for free and reduced price meals or for free milk. In such a situation, the School Food Authority shall complete and file an application for such child setting forth the basis of determining the child’s eligibility. When a School Food Authority has obtained a determination of individual family income and family-size data from other sources, it need not require the submission of an application for any child

from a family whose income would qualify for free or reduced price meals or for free milk under the School Food Authority's established criteria. In such event, the School Food Authority shall notify the family that its children are eligible for free or reduced price meals or for free milk. Nothing in this paragraph shall be deemed to provide authority for the School Food Authority to make eligibility determinations or certifications by categories or groups of children.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[35 FR 14065, Sept. 4, 1970, as amended at 38 FR 14957, June 7, 1973; Amdt. 6, 39 FR 30338, Aug. 22, 1974; Amdt. 9, 41 FR 26192, June 25, 1976; Amdt. 19, 45 FR 67287, Oct. 10, 1980; 47 FR 31853, July 23, 1982; 49 FR 26034, June 26, 1984; 52 FR 19275, May 22, 1987; 55 FR 19240, May 9, 1990; 56 FR 32950, July 17, 1991; 56 FR 33860, July 24, 1991]

#### § 245.6a Verification requirements.

(a) *Verification requirement.* School officials may seek verification of the information on the application. State agencies shall ensure that by December 15 of each School Year, School Food Authorities have selected and verified a sample of their approved free and reduced price applications in accordance with the conditions and procedures described in this section. Verification activity may begin at the start of the school year but the final required sample size shall be based on the number of approved applications on file as of October 31. Any extensions to these deadlines must be approved in writing by FCS. School Food Authorities are required to satisfy the verification requirement by using either random sampling or focused sampling as described below. *Random* sampling consists of verifying a minimum of the lesser of 3 percent or 3,000 applications which are selected by the School Food Authority. *Focused* sampling consists of selecting and verifying a minimum of: the lesser of 1 percent or 1,000 of total applications selected from non-food stamp households claiming monthly income within \$100 or yearly income within \$1200 of the income eligibility limit for free or reduced price meals; plus the lesser of one half of 1 percent (.5%) or 500 applications of food stamp house-

holds that provided food stamp case numbers in lieu of income information. A State may require all School Food Authorities to perform either random or focused sampling. School Food Authorities may choose to verify up to 100 percent of all applications to improve program integrity. Any State may, with the written approval of FCS, assume responsibility for complying with the verification requirements of this part within any of its School Food Authorities. When assuming such responsibility, States may utilize alternate approaches to verification provided that such verification meets the requirements of this part.

(1) *Confirmation of income information.* Verification efforts shall not delay the approval of applications. An application must be approved if it contains the essential information specified in § 245.2(a-4) and, if applicable, the household meets the income eligibility criteria for free or reduced price benefits. When written evidence or collateral contacts are the primary sources of information, the School Food Authority shall require the submission of income information for the most recent full month that is available. However, when using a system of records, the School Food Authority may choose a recent month to verify and the entire sample may be verified for the same month. Households which dispute the validity of income information acquired through systems of records shall be given the opportunity to produce more recent income information.

(2) *Notification of selection.* Households selected to provide verification shall be provided written notice that their applications have been selected for verification and that they are required, by such date as determined by the school food authority, to submit the requested verification information to confirm eligibility for free or reduced price meals. These households shall be advised of the type or types of information and/or documents acceptable to the school. This information must include a social security number for each adult household member or an indication that such member does not have one. School food authorities shall inform selected households that:

(i) Section 9 of the National School Lunch Act requires that unless the child's food stamp or AFDC case number is provided, households selected for verification must provide the social security number of each adult household member;

(ii) In lieu of providing a social security number, an adult household member may indicate that he/she does not possess one;

(iii) Provision of a social security number is not mandatory but if a social security number is not provided for each adult household member or an indication is not made that he/she does not possess one, benefits will be terminated;

(iv) The social security numbers may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application and continued eligibility for the program. These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps or AFDC benefits, contacting the State employment security office to determine the amount of benefits received and checking the documentation produced by household members to prove the amount of income received. These efforts may result in a loss or reduction of benefits, administrative claims or legal actions if incorrect information was reported; and

(v) This information must be provided to the attention of each adult household member disclosing his/her social security number. State agencies and school food authorities shall ensure that the notice complies with section 7 of Pub. L. 93-579 (Privacy Act of 1974). These households shall be provided with the name and phone number of a school official who can assist in the verification effort. Selected households shall also be informed that, in lieu of any information that would otherwise be required, they can submit proof of current food stamp or AFDC Program certification as described in paragraph (a)(3) of this section to verify the free meal eligibility of a child

who is a member of a food stamp household or AFDC assistance unit. All households selected for verification shall be advised that failure to cooperate with verification efforts will result in the termination of benefits.

(3) *Food stamp of AFDC recipients.* On applications where households have furnished food stamp or AFDC case numbers, verification shall be accomplished either by confirming with the local food stamp or welfare office that each child, for whom application was made and a number provided, is a member of a currently certified food stamp household or AFDC assistance unit; or by obtaining from the household a copy of a current "Notice of Eligibility" for Food Stamp or AFDC Program benefits or equivalent official documentation issued by the food stamp or welfare office which confirms that the child is a member of a currently certified food stamp household or AFDC assistance unit. An identification card for either program is *not* acceptable as verification unless it contains an expiration date. If it is not established that the child is a member of a currently certified food stamp household or AFDC assistance unit, the procedures for adverse action specified at §245.6a(e) shall be followed. The notification of forthcoming termination of benefits provided to such households shall include a request for household income information and for written evidence which confirms household income to assist those households in establishing continued eligibility for free meal benefits.

(4) *Household cooperation.* If a household refuses to cooperate with efforts to verify, eligibility for free or reduced price benefits shall be terminated in accordance with §245.6a(e). Households which refuse to complete the verification process and which are consequently determined ineligible for such benefits shall be counted toward meeting the School Food Authority's required sample of verified households.

(5) *Exceptions from verification.* Verification efforts are not required in residential child care institutions; schools in which FCS has approved special cash assistance claims based on economic statistics regarding per capita income; or schools in which all children are

served with no separate charge for food service and no special cash assistance is claimed. School Food Authorities in which all schools participate in the Special Assistance Certification and Reimbursement Alternatives specified in §245.9 shall meet the verification requirement only in those years in which applications are taken for all children in attendance.

(b) *Sources of information.* Sources of information for verification may include written evidence, collateral contacts, and systems of records.

(1) *Written evidence.* Written evidence shall be used as the primary source of information for verification. Written evidence includes written confirmation of a household's circumstances, such as wage stubs, award letters, and letters from employers. Whenever written evidence is insufficient to confirm income information on the application or current eligibility, the school may require collateral contacts.

(2) *Collateral contact.* Collateral contact is a verbal confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made by person or by phone. The verifying official may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the verifying official. If the verifying official designates a collateral contact, the contact shall not be made without providing written or oral notice to the household. At the time of this notice, the household shall be informed that it may consent to the contact or provide acceptable verification in another form. If the household refuses to choose one of these options, its eligibility shall be terminated in accordance with the normal procedures for failure to cooperate with verification efforts. Collateral contacts could include employers, social service agencies, and migrant agencies.

(3) *Agency records.* Agency records to which the State agency or School Food Authority may have access are not considered collateral contacts. Information concerning income, household size or food stamp/AFDC eligibility maintained by other government agencies to which the State agency, School Food Authority, or school can legally

gain access may be used to confirm a household's income, size or receipt of benefits. One possible source could be wage and benefit information maintained by the State employment agency, if that information is available. The use of any information derived from other agencies must be used with the applicable safeguards concerning disclosure.

(c) *Verification recordkeeping.* School Food Authorities verifying applications shall maintain on file for review a description of the verification to be accomplished beginning School Year 1983-84. The description shall include:

(1) A summary of the verification efforts including the techniques to be used;

(2) the total number of applications on file by October 31;

(3) the percentage or number of applications verified;

(4) all verified applications must be readily retrievable by school and include all documents submitted by the household in an effort to confirm eligibility, reproductions of those documents, or annotations made by the determining official which indicate which documents were submitted by the household and the date of submission;

(5) documentation of any changes in eligibility and the reasons for the changes; and

(6) all relevant correspondences between the household selected for verification and the school food authority/school.

(d) *Nondiscrimination.* The verification efforts shall be applied without regard to race, sex, color, national origin, age, or handicap.

(e) *Adverse action.* If verification activities fail to confirm eligibility for free or reduced price benefits or should the household fail to cooperate with verification efforts, the school or School Food Authority shall reduce or terminate benefits, as applicable, as follows: Ten days advance notification shall be provided to households that are to receive a reduction or termination of benefits, prior to the actual reduction or termination. The first day of the 10 day advance notice period shall be the day the notice is sent. The notice shall advise the household of:

(1) The change; (2) the reasons for the change; (3) notification of the right to appeal and when the appeal must be filed to ensure continued benefits while awaiting a hearing and decision; (4) instructions on how to appeal; and (5) the right to reapply at any time during the school year. The reasons for ineligibility shall be properly documented and retained on file at the School Food Authority.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[48 FR 12510, Mar. 25, 1983, as amended at 49 FR 26034, June 26, 1984; 52 FR 19275, May 22, 1987; 55 FR 19240, May 9, 1990; 56 FR 32950, July 17, 1991; 56 FR 33861, July 24, 1991]

**§ 245.7 Hearing procedure for families and School Food Authorities.**

(a) Each School Food Authority of a school participating in the National School Lunch Program, School Breakfast Program or the Special Milk Program or of a commodity only school shall establish a hearing procedure under which:

(1) A family can appeal from a decision made by the School Food Authority with respect to an application the family has made for free or reduced price meals or for free milk, and (2) the School Food Authority can challenge the continued eligibility of any child for a free or reduced price meal or for free milk. The hearing procedure shall provide for both the family and the School Food Authority:

(i) A simple, publicly announced method to make an oral or written request for a hearing;

(ii) An opportunity to be assisted or represented by an attorney or other person;

(iii) An opportunity to examine, prior to and during the hearing, any documents and records presented to support the decision under appeal;

(iv) That the hearing shall be held with reasonable promptness and convenience, and that adequate notice shall be given as to the time and place of the hearing;

(v) An opportunity to present oral or documentary evidence and arguments supporting a position without undue interference;

(vi) An opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(vii) That the hearing shall be conducted and the decision made by a hearing official who did not participate in making the decision under appeal or in any previously held conference;

(viii) That the decision of the hearing official shall be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record;

(ix) That the parties concerned and any designated representative shall be notified in writing of the decision of the hearing official;

(x) That a written record shall be prepared with respect to each hearing, which shall include the challenge or the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons therefor, and a copy of the notification to the parties concerned of the decision of the hearing official; and

(xi) That the written record of each hearing shall be preserved for a period of 3 years and shall be available for examination by the parties concerned or their representatives at any reasonable time and place during that period.

(b) *Continuation of benefits.* When a household disagrees with an adverse action which affects its benefits and requests a fair hearing, benefits shall be continued as follows while the household awaits the hearing and decision:

(1) Households that have been approved for benefits and that are subject to a reduction or termination of benefits later in the same school year shall receive continued benefits if they appeal the adverse action within the 10 day advance notice period; and

(2) Households that are denied benefits upon application shall not receive benefits.

(44 U.S.C. 3506; sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[Amdt. 6, 39 FR 30339, Aug. 22, 1974, as amended at 47 FR 746, Jan. 7, 1982; 48 FR 12511, Mar. 25, 1983]

**§245.8 Nondiscrimination practices for children eligible to receive free and reduced price meals and free milk.**

School Food Authorities of schools participating in the National School Lunch Program, School Breakfast Program or Special Milk Program or of commodity only schools shall take all actions that are necessary to insure compliance with the following nondiscrimination practices for children eligible to receive free and reduced price meals or free milk:

(a) The names of the children shall not be published, posted or announced in any manner;

(b) There shall be no overt identification of any of the children by the use of special tokens or tickets or by any other means;

(c) The children shall not be required to work for their meals or milk;

(d) The children shall not be required to use a separate dining area, go through a separate serving line, enter the dining area through a separate entrance or consume their meals or milk at a different time;

(e) When more than one lunch or breakfast or type of milk is offered which meets the requirements prescribed in §210.10, §210.15a, §220.8 or §215.2(1) of this chapter, the children shall have the same choice of meals or milk that is available to those children who pay the full price for their meal or milk.

[Amdt. 6, 39 FR 30339, Aug. 22, 1974]

**§245.9 Special assistance certification and reimbursement alternatives.**

(a) A School Food Authority of a school having at least 80 percent of its enrolled children determined eligible for free or reduced price meals may, at its option, authorize the school to reduce annual certification and public notification for those children eligible for *free meals* to once every two consecutive school years. This alternative shall be known as provision 1 and the following requirements shall apply:

(1) A School Food Authority of a school operating under provision 1 requirements shall publicly notify in accordance with §245.5, parents of enrolled children who are receiving free meals once every two consecutive

school years, and shall publicly notify in accordance with §245.5, parents of all other enrolled children on an annual basis.

(2) The 80 percent enrollment eligibility for this alternative shall be based on the school's March enrollment data of the previous school year, or on other comparable data.

(3) A School Food Authority of a school operating under provision 1, shall count the number of free, reduced price and paid meals served to children in that school as the basis for monthly reimbursement claims.

(b) A School Food Authority of a school which serves all enrolled children in that school free meals may publicly notify and certify children in accordance with §245.5 for free and reduced price meals for up to three consecutive school years; provided that eligibility determinations shall be in accordance with §245.3, during the first school year. This alternative shall be known as provision 2 and the following requirements shall apply:

(1) Except for assistance properly made available under parts 210, 220, 240, and 250 and by other legislation, a School Food Authority of a school operating under provision 2 requirements agrees to pay with funds from other than Federal sources for:

(i) Meals served to children not eligible, as determined by §245.3, for free or reduced price meals, and

(ii) The differential between the per meal cost and Federal reimbursement received for each free or reduced price meal, respectively, served to children eligible to receive such meals under applicable program regulations.

(2) For the purpose of calculating reimbursement claims in the second and third consecutive school years the monthly meal counts of the actual number of meals served by type—free, reduced price, and paid—shall be converted each month to percentages for each meal type. These percentages shall be derived by dividing the monthly total number of meals served of one meal type (e.g. free meals) by the total number of meals served in the same month for all meal types (free, reduced price and paid meals). The percentages for the reduced price meal and paid meal types shall be calculated exactly

as the above example for free meals. These three percentages calculated at the end of each month of the first school year, shall be multiplied by the corresponding monthly meal count total of all meal types served in the second and third consecutive school years in order to calculate reimbursement claims for free, reduced price and paid meals each month.

(c) A School Food Authority shall submit a list of all schools participating in either provision 1 or provision 2 and the initial year of implementation in their Free and Reduced Price Meal Policy Statement. This Statement shall include certification of meeting the eligibility requirements as set forth in paragraph (a) or (b) of this section.

(d) The School Food Authority upon request shall make documentation including enrollment data, participation data or other data available for monitoring purposes.

(e) A School Food Authority may return to standard notification and application procedures in the following school year if standard procedures better suit the school's program needs.

(f) Puerto Rico and the Virgin Islands, where a statistical survey procedure is permitted in lieu of eligibility determinations for each child, may either maintain their standard procedures in accordance with §245.4, or may opt for these provisions provided the eligibility requirements as set forth in paragraphs (a) and (b) of this section are met.

(g) Schools currently operating under provision 1 or provision 2 of the Special Assistance interim rule published May 18, 1979 (44 FR 29027), may complete their second or third consecutive school year under the interim requirements, after which, §245.9 shall be in effect. For all other schools, the final rule shall be effective upon publication.

(Sec. 9, Pub. L. 95-166, 91 Stat. 1336 (42 U.S.C. 1759a); secs. 805, and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1773))

[Amdt. 19, 45 FR 67287, Oct. 10, 1980, as amended by Amdt. 23, 47 FR 14135, Apr. 2, 1982]

#### **§245.10 Action by School Food Authorities.**

(a) Each School Food Authority of a school desiring to participate in the National School Lunch Program, School Breakfast Program, or to provide free milk under the Special Milk Program, or to become a commodity-only school shall submit for approval to the State agency a free and reduced price policy statement. Such policy statement, as a minimum, shall contain the following:

(1) The official or officials designated by the school food authority to make eligibility determinations on its behalf for free and reduced price meals or for free milk;

(2) The family-size income guidelines to be used by schools under their jurisdiction in determining the eligibility of children for free and reduced price meals or for free milk in accordance with the provisions of §245.3.

(3) The specific procedures the school food authority will use in accepting applications from families for free and reduced price meals or for free milk.

(4) A description of the method or methods to be used to collect payments from those children paying the full price of the meal or milk, or a reduced price of a meal, which will prevent the overt identification of the children receiving a free meal or free milk or a reduced price meal, and

(5) An assurance that the school will abide by the hearing procedure set forth in §245.7 and the nondiscrimination practices set forth in §245.8.

(b) The policy statement submitted by each school food authority shall be accompanied by a copy of the application form to be used by the school and of the proposed letter or notice to parents.

(c) Each year, if a School Food Authority does not have its policy statement approved by the State agency, or FCSRO where applicable, by October 15, reimbursement shall be suspended for any meals or milk served until such time as the School Food Authority's free and reduced price policy statement has been approved by the State agency, or FCSRO where applicable. Furthermore, no commodities donated by the Department shall be used in any school after October 15, until such time as the

School Food Authority's free and reduced price policy statement has been approved by the State agency, or FCSRO where applicable. Once the School Food Authority's free and reduced price policy statement has been approved, reimbursement may be allowed, at the discretion of the State agency, or FCSRO where applicable, for eligible meals and milk served during the period of suspension.

(d) If any free and reduced price policy statement submitted for approval by any School Food Authority to the State agency, or FCSRO where applicable, is determined to be not in compliance with the provisions of this part, the School Food Authority shall submit a policy statement that does meet the provisions within 30 days after notification by the State agency, or FCSRO where applicable.

(e) When revision of a School Food Authority's approved free and reduced price policy statement is necessitated because of a change in the family-size income standards of the State agency, or FCSRO where applicable, or because of other program changes, the School Food Authority shall have 60 days from the date the State agency announces the change in which to have its revised policy statement approved by the State agency, or FCSRO where applicable. In the event that a School Food Authority's proposed revised free and reduced price policy statement has not been submitted to, and approved by, the State agency, or FCSRO where applicable, within 60 days following the public announcement by the State agency, reimbursement shall be suspended for any meals or milk served after the end of the 60-day period. No commodities donated by the Department shall be used in any school after the end of the 60-day period, until such time as the School Food Authority's free and reduced price policy statement has been approved by the State agency, or FCSRO where applicable. Reimbursement may be allowed at the discretion of the State agency, or FCSRO where applicable, for eligible meals and milk served during the period of suspension once the School Food Authority's free and reduced price policy statement has been approved by the State agency, or FCSRO where applica-

ble. Pending approval of a revision of a policy statement, the existing statement shall remain in effect.

(Sec. 8, Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1758); sec. 5, Pub. L. 95-627, 92 Stat. 3619 (42 U.S.C. 1772); 44 U.S.C. 3506; sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[35 FR 14065, Sept. 4, 1970, as amended at 38 FR 14958, June 7, 1973; Amdt. 6, 39 FR 30339, Aug. 22, 1974; Amdt. 8, 40 FR 57208, Dec. 8, 1975; Admt. 13, 44 FR 33049, June 8, 1979; 47 FR 746, Jan. 7, 1982; 48 FR 12511, Mar. 25, 1983]

#### **§245.11 Action by State agencies and FCSROs.**

(a) Each State agency, or FCSRO where applicable, shall, for schools under its jurisdiction:

(1) Issue an annual prototype free and reduced price policy statement and any other instructions necessary to assure that School Food Authorities are fully informed of the provisions of this part. If the State elects to establish for all schools a maximum price for reduced price lunches that is less than 40 cents, the State shall establish such price in its prototype policy. Such State shall then receive the adjusted national average factor provided for in §210.4(b); (2) prescribe and publicly announce by July 1 of each fiscal year, in accordance with §245.3(a), family-size income standards. Any standards prescribed by FCSRO with respect to nonprofit private schools shall be developed by FCSRO after consultation with the State agency.

(a-1) When a revision of the family-size income standards of the State agency, or FCSRO where applicable, is necessitated because of a change in the Secretary's income poverty guidelines or because of other program changes, the State agency shall publicly announce its revised family-size income standards no later than 30 days after the Secretary has announced such change.

(b) State agencies, and FCSRO where applicable, shall review the policy statements submitted by school-food authorities for compliance with the provisions of this part and inform the school-food authorities of any necessary changes or amendments required in any policy statement to bring such statement into compliance. They shall notify school-food authorities in

writing of approval of their policy statements and shall direct them to distribute promptly the public announcements required under the provisions of § 245.5.

(c) Each State agency, or FCSRO where applicable, shall instruct School Food Authorities under their jurisdiction that they may not alter or amend the eligibility criteria set forth in an approved policy statement without advance approval of the State agency, or FCSRO where applicable.

(d) Not later than 10 days after the State agency, or FCSRO where applicable, announces its family-size income standards, it shall notify School Food Authorities in writing of any amendment to their free and reduced price policy statements necessary to bring the family-sized income criteria into conformance with the State agency's or FCSRO's family-size income standards.

(e) Except as provided in § 245.10, the State agency, or FCSRO where applicable, shall neither disburse any funds, nor authorize the distribution of commodities donated by the Department to any school unless the school food authority has an approved free and reduced price policy statement on file with the State Agency, or FCSRO where applicable.

(f) Each State agency, or FCSRO where applicable, shall, in the course of its supervisory assistance, review and evaluate the performance of School Food Authorities and of schools in fulfilling the requirements of this part, and shall advise School Food Authorities of any deficiencies found and any corrective action required to be taken.

(Secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1758, 1759(a), 1773, 1778))

[35 FR 14065, Sept. 4, 1970, as amended at 38 FR 14958, June 7, 1973; Amdt. 8, 40 FR 57208, Dec. 8, 1975; 44 FR 1364, Jan. 5, 1979; 46 FR 51368, Oct. 20, 1981; 48 FR 12511, Mar. 25, 1983; 52 FR 19276, May 22, 1987]

**§ 245.12 Fraud penalties.**

(a) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part, whether received directly or indirectly from the Department, shall—

(1) If such funds, assets, or property are of a value of \$100 or more, be fined not more than \$10,000 or imprisoned not more than five years of both; or

(2) If such funds, assets, or property are of a value of less than \$100, be fined not more than \$1,000 or imprisoned not more than one year or both.

(b) Whoever receives, conceals, or retains to his use or gain funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties provided in paragraph (a) of this section.

(Sec. 10(a), Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 14, Pub. L. 95-627, 92 Stat. 3625-3626)

[Amdt. 14, 44 FR 37901, June 29, 1979]

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

(a) State agencies shall require School Food Authorities of schools selected for participation in the Department of Health, Education, and Welfare Public School Civil Rights Survey to gather information on the race and ethnic background of children for whom applications for free and reduced price meals are filed.

(b) To comply with the provisions of § 245.13(a) of this part, State agencies at their discretion may permit such School Food Authorities the option of requesting parents on application forms to voluntarily identify the race or ethnic background of their child for whom application is being made. Parents' provision of this information is purely voluntary and failure to provide this information will not affect the eligibility for benefits of the child for whom application is made. School Food Authorities shall develop alternative means of providing racial and ethnic data for applicants when such information is not voluntarily provided by parents on the application.

(c) School Food Authorities for such survey schools which are granted the option by the State agency and wish to request that the parents voluntarily identify the race or ethnic background of their children on the application

form shall include the following statement on the letter to parents: "A survey is being conducted in your child's school to collect racial and ethnic data on applicants. This information is voluntary and will not affect your child's eligibility. This information is being collected to be sure everyone receives school meals on a fair basis, without regard to race, color, or national origin." Such schools shall also include the following statement on the application: "Please check in the space provided the racial or ethnic identity of your child(ren). This information is voluntary and will not affect your child's eligibility. This information is being collected only to be sure that everyone receives school meals on a fair basis, without regard to race, color, or national origin." Schools which provide for racial and ethnic identification data collection of applicants by means other than parental self-identification need not include the above statements on the application or parental letter.

(d) Participation in the survey shall not affect reimbursement or individual eligibility for program participation or benefits. The data collected shall be confidential and shall be used solely to determine the equitable distribution of benefits without regard to race, color, or national origin.

(Sec. 602, Pub. L. 88-352, 78 Stat. 252 (42 U.S.C. 2000d-1))

[45 FR 1000, Jan. 4, 1980]

**§245.14 Information collection/record-keeping—OMB assigned control numbers.**

7 CFR section where requirements are described	Current OMB control number
245.3 (a), (b) .....	0584-0026
245.4 .....	0584-0026
245.5 (a), (b) .....	0584-0026
245.6 (a), (b), (c), (e) .....	0584-0026
245.7(a) .....	0584-0026
245.9 (a), (b), (c) .....	0584-0026
245.10 (a), (d), (e) .....	0584-0026
245.11 (a), (a-1), (b), (c), (d), (f) .....	0584-0026
245.13(a)-c) .....	0584-0026

[50 FR 53258, Dec. 31, 1985]

**PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN**

**Subpart A—General**

- Sec.
- 246.1 General purpose and scope.
- 246.2 Definitions.
- 246.3 Administration.

**Subpart B—State and Local Agency Eligibility**

- 246.4 State Plan.
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**Subpart C—Participant Eligibility**

- 246.7 Certification of participants.
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- 246.9 Fair hearing procedures for participants.

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- 246.10 Supplemental foods.
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**Subpart E—State Agency Provisions**

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**Subpart F—Monitoring and Review**

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- 246.25 Records and reports.
- 246.26 Other provisions.
- 246.27 Program information.
- 246.28 OMB control numbers.

AUTHORITY: 42 U.S.C. 1786.

SOURCE: 50 FR 6121, Feb. 13, 1985, unless otherwise noted.