

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 215, 225, 226, and 245

RIN 0584-AC21

Special Milk Program for Children, Summer Food Service Program, Child and Adult Care Food Program, and Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools: Disclosure of Children's Eligibility Information

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations for the Special Milk Program for Children, Summer Food Service Program, Child and Adult Care Food Program and the Determination of Eligibility for Free and Reduced Price Meals and Free Milk in Schools to establish new requirements. These requirements relate to the confidentiality of information about individuals who receive free and reduced price meals and free milk. The rule would protect the confidentiality of personal data, but would allow the limited disclosure and use of a participant's program eligibility information or eligibility status. That information could be used by certain education, health, and means-tested nutrition programs. The rule reflects the confidentiality provisions of the Healthy Meals for Healthy Americans Act of 1994.

DATES: To be assured of consideration, comments must be postmarked on or before November 22, 2000.

ADDRESSES: Address all comments concerning this proposed rule to Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. You also may submit comments electronically at cndproposal@fns.usda.gov. All written

submissions received will be available for public inspection in Room 1007 at the address listed above, during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Barbara Semper or Mary Jane Whitney at the above address or by telephone at 703-305-2620.

SUPPLEMENTARY INFORMATION:

Background

The Food and Nutrition Service (FNS) has had a longstanding policy that the information obtained from children's free and reduced price meal or free milk applications is confidential. Under this policy, the determining agency could only use the information on the application for program purposes. (For the purpose of this preamble, a determining agency means the State agency, school food authority, school (including a private or charter school), child care institution or Summer Food Service Program sponsor that makes the free and reduced price meal or free milk eligibility determination.) FNS applied this policy to all the Child Nutrition Programs, which include the National School Lunch Program (NSLP), Special Milk Program for Children (SMP), Summer Food Service Program (SFSP), and the Child and Adult Care Food Program (CACFP). FNS based the policy on sections 9(b)(4) and (5), 11(e), and 17(g)(2) of the National School Lunch Act (NSLA) (42 U.S.C. 1758(b)(4) and (5), 1759a(e), and 1766(g)(2)). These sections of the NSLA prohibit the overt identification of individuals who are eligible for free and reduced price meals or free milk. FNS incorporated the overt identification provision into the regulations at 7 CFR 215.13a(a) and (d)(3) for the SMP in child-care institutions; 225.6(c)(3)(ii)(C) and (F) for the SFSP; 226.23(b) and (c)(3) and (5) for the CACFP; and 245.1(b), 245.8(b), and 245.10(a)(4) for the NSLP, SBP, and SMP in schools. The policy permitted the determining agency to disclose only aggregate information, such as the number of children eligible for free and reduced price meals in an individual school. However, the determining agency could only disclose other information with the consent of children's parents or guardians.

Other programs have had increased interest in access to information about individuals who are eligible for free and

reduced price meals or free milk. In fact, several Federal agencies, such as the Department of Labor and the Department of Education, cite free and reduced price meal eligibility as an eligibility criterion for some programs that they administer. Additionally, some Federal, State, and local education programs have requested free and reduced price meal eligibility status to use for statistical and research purposes.

FNS recognized that sharing information may benefit program participants and their households. FNS issued guidance to determining agencies in June 1992 and again in August 1998 concerning multi-use applications in the NSLP, SBP or SMP. The 1998 guidance also stated that the CACFP could also use a multi-use application. Using the multi-use application approach, households can indicate interest in programs in addition to applying for free and reduced price school meals or free milk. Determining agencies that choose to use a multi-use application must include a consent statement on the free and reduced price meal and free milk application. The consent statement lists the programs or uses to which the household may indicate interest, permits children's parents or guardians to limit consent to specified uses or programs and advises households that agreeing to the disclosure of their free and reduced price eligibility is not a requirement for participation in the child nutrition programs. The parent/guardian must sign the consent indicating that they understand that the determining agency may share eligibility information with these programs. The determining agency may also use a consent form separate from the free and reduced price application.

I. What Is a Disclosure and What Is the Disclosure Statute?

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

price eligibility status or other information obtained through the free and reduced price meal or free milk eligibility process. In the CACFP, this could also include a participating adult's eligibility information.

As discussed above, determining agencies were previously prohibited from disclosing personal data unless they first obtained consent. Section 108 of Public Law 103-448, the Healthy Meals for Healthy Americans Act of 1994, amended Section 9(b)(2)(C) of the NSLA to allow, without consent, limited disclosure of eligibility information about free and reduced price meal eligibility. The statute authorizes the disclosure of participants' free and reduced price information obtained from a free and reduced price meal application or obtained through direct certification. Direct certification is the process by which program operators determine program eligibility by directly communicating with the appropriate State or local agency to obtain documentation that an individual is a member of a food stamp household or a family receiving assistance under certain State programs for the Temporary Assistance for Needy Families (TANF). The statute authorizes disclosure to:

(1) Persons directly connected with the administration or enforcement of the NSLA or the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*) (CNA) or a regulation enacted under either of those Acts;

(2) Persons directly connected with the administration or enforcement of a Federal education program;

(3) Persons directly connected with the administration or enforcement of a State health or education program (other than Medicaid) administered by the State or local education agency;

(4) Persons directly connected with the administration or enforcement of a Federal, State or local means-tested nutrition program with eligibility standards comparable to the NSLP;

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

(6) Law enforcement officials involved in investigating alleged violations of any of these programs.

The statute specifies that certain of the persons and programs listed above may have access to participants' names and eligibility status only, while other persons or programs may have access to all eligibility information. Any disclosures not authorized by the statute require the prior consent of parents or guardians. The statute also specifies a fine of not more than \$1,000 or imprisonment of not more than 1 year,

or both, for unauthorized disclosures of free and reduced price eligibility information.

Please note that although the statute allows limited disclosure, determining agencies are not required by the statute or by this proposed rulemaking to disclose eligibility information. This is a State and local decision.

II. What Programs Do the Disclosure Provisions Apply To?

The new disclosure provisions appear in the part of the NSLA that pertains to the free and reduced price meal application process for the NSLP. However, based on FNS practices and policies dealing with issues in the past and need for consistency among the Child Nutrition Programs, we are proposing to apply the confidentiality provision to information obtained in all the Child Nutrition Programs including the SBP, SMP, CACFP, and camps and enrolled sites in the SFSP. Therefore, this rule would also amend the regulations for each of these programs. The various sections to be amended are listed following the discussion of each issue addressed by this rule. The minor wording differences necessary to accommodate the terminology for the specific programs are not addressed in the preamble. School food authorities, SMP child-care institutions, CACFP institutions, and SFSP sponsors are collectively referred to as "program operators" in the preamble.

III. Does the Statute Limit the Disclosure to Eligibility Information That Program Operators Obtain From the Free and Reduced Price Meal or Free Milk Application or May Program Operators Disclose Information That They Obtain From Other Sources?

The statute refers only to the use and disclosure of information obtained from an application for free and reduced price meals or through direct certification. The statute does not refer to other information concerning program eligibility, such as information obtained through verification efforts. State agencies and school food authorities are required to verify the information on selected free and reduced price meal applications for the NSLP and the CACFP. These requirements are in sections 245.6a for the NSLP and the SBP and 226.23(h) for the CACFP. Verification may include obtaining documentation of eligibility from the applicant households and collateral contacts with third parties to confirm information provided by the household. This proposal would expand the statutory provision and treat all program eligibility information,

including verification information not originating with the free and reduced price meal application, the same as information obtained from the free and reduced price meal application. All the disclosure provisions would apply.

IV. Why Is There Need for a Proposed Rule?

The statute is clear regarding disclosure of information to specific persons and programs for some uses, but not others. For example, there may be some question as to what constitutes an education program or who are persons directly connected with the administration or enforcement of programs under the NSLA or CNA. Also, student privacy and the potential for misuse of confidential information are issues of concern. Therefore, FNS is issuing this proposal to invite comment on which persons and programs should have access within the structure provided by the statutory provisions.

On December 7, 1998, FNS issued to all State agencies guidance on the disclosure of program eligibility information under the amendments made by Public Law 103-448 to section 9(b)(2)(C) of the NSLA. This proposed rule generally reflects the content of the guidance. However, once a final rule is published it will supersede the guidance.

V. What Information May Be Disclosed Without Consent?

A. Disclosure of Aggregate Information

This proposed rule would continue to permit program operators to disclose school level aggregate information (*e.g.*, numbers of participants eligible for free meals) that does not individually identify participants to any person or program. Program operators are not required to obtain parental consent for this type of disclosure. The authority for disclosure of aggregate information would be added to sections 215.13a(g)(2), 225.15(g)(2), 226.23(i)(2), and 245.6(f)(2) by this proposed rule.

B. Disclosure of Names and Eligibility Status, As Specified in the Statute

Section 9(b)(2)(C)(iii)(II) of the NSLA specifies that information obtained from the free and reduced price application and through direct certification may be disclosed to "persons directly connected" with the administration or enforcement of certain programs. The statute only explicitly mentions eligibility information and does not specifically mention participant's names. However, while the law does not mention the disclosure of participants' names, the eligibility status would be no

different than aggregate information without the names. Thus, this proposed rule would add sections 215.13a(g)(3), 225.15(g)(3), 226.23(i)(3), and 245.6(f)(3) to permit the disclosure of only the participants' names and eligibility status to persons directly connected with the administration or enforcement of the following programs:

(1) *Federal education programs.* In section 9(b)(2)(C)(iii)(II)(aa) of the NSLA, Congress specified that eligibility status may be disclosed to "persons directly connected" with the administration or enforcement of a Federal education program. The law intends that persons directly connected with a Federal program which provides academic or vocational educational benefits to children may have access to a student's eligibility status for Child Nutrition Programs. This would include persons directly responsible for administering or enforcing program regulations under the Department of Education. The Department of Education's programs are too numerous to list, but would include such programs as Title I; TRIO Programs; migrant education; educational research projects, such as the National Assessment of Educational Progress; vocational programs under the Carl D. Perkins Vocational and Applied Technology Education Act; and enforcement activities, such as program compliance and civil rights reviews.

The statute allows the disclosure of eligibility status to educational programs under the jurisdiction of any Federal agency, not just the Department of Education. Therefore, the disclosure of eligibility status to persons directly connected to the administration or enforcement of vocational training programs under the Department of Labor, such as educational/job training programs under the Workforce Investment Act (previously the Job Training Partnership Act), and any compliance reviews under those programs would fall within the category of "Federal education programs." FNS encourages commenters to provide specific information about other Federal programs that they believe may qualify in this regard.

(2) *State health or education programs (other than Medicaid).* In section 9(b)(2)(C)(iii)(II)(bb) of the NSLA, Congress specified that eligibility status may be disclosed to "persons directly connected" with the administration or enforcement of a State health or education program administered by either a State agency or local educational agency. FNS emphasizes that the statute specifies

that these must be State health or education programs.

To assist with health insurance outreach for children from low-income households, FNS included in its prototype application for free and reduced price meals, issued August 1998, a provision under which parents may consent to the sharing of information with Medicaid and the State Children's Health Insurance Program (SCHIP). Subsequently, FNS developed and distributed to State agencies several additional prototype forms to facilitate the disclosure of children's free and reduced price meal eligibility information, with parental/guardian consent, to identify and enroll children in Medicaid and SCHIP. However, the Agricultural Risk Protection Act of 2000, (Public Law 106-224), enacted on June 20, 2000, amended Section 9(b)(2)(C) of the NSLP (42 U.S.C. 1751(b)(2)(C)) to permit limited disclosure of children's free and reduced price meal eligibility information to "a person directly connected with the administration of the State Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*) or the State children's health insurance program under title XXI of that Act (42 U.S.C. 1397aa *et seq.*)." The provision is effective October 1, 2000. Additionally, Section 263 of Public Law 106-224 requires that the Secretary promulgate regulations to implement its provisions. FNS will issue a rule to implement the authority to disclose children's free and reduced price meal eligibility information for State Medicaid and SCHIP purposes as a separate implementing rule. In the interim, FNS continues to partner with the Departments of Education and Health and Human Services to facilitate the enrollment of children in State Medicaid and SCHIP.

Currently, there is increased emphasis on developing comprehensive school health programs in recognition of the contribution proper health and well-being make in maximizing educational opportunities. State health programs administered by a State agency or local education agency that may have access to participants' eligibility status, without consent, could include alcohol and drug abuse education programs, dental, immunization and vision services, and mental health services under the sponsorship of the school.

Additionally, Congress included only State education programs and Federal education programs, as previously discussed. Therefore, no program eligibility information (including names and eligibility status) may be disclosed for local education programs without

consent. Representatives of State or local education agencies evaluating the results and compliance with student assessment programs would be covered only to the extent that the assessment programs were established at the State, not local level.

(3) *Federal, State or local means-tested nutrition programs.* Section 9(b)(2)(C)(iii)(II)(cc) of the NSLA permits the disclosure and use of eligibility status for some other Federal, State and local means-tested nutrition programs. These are programs with eligibility standards comparable to the NSLP (*i.e.*, a maximum eligibility limit of 185 percent of the Federal poverty level (\$30,895 annually for a household of four for School Year 1999-2000)). This would include the Food Stamp Program and some State and local means-tested nutrition programs as eligible recipients of eligibility status.

C. Disclosure of All Eligibility Information, As Specified in the Statute

In addition to names and eligibility status, determining agencies may disclose, without consent, any or all information concerning participation, including the information obtained from the application for free and reduced price meals or free milk, through direct certification, or through verification, to the following:

(1) *Persons directly connected with the administration or enforcement of National School Lunch Act or Child Nutrition Act programs.* Section 9(b)(2)(C)(iii)(I) permits persons directly connected with the administration or enforcement of the NSLA or CNA to have access to all information obtained from the free and reduced price meal application or direct certification. As discussed above, FNS is proposing to treat all program eligibility information the same as information obtained from the application or direct certification. Therefore, this rule would permit the disclosure of all program eligibility information to persons directly connected with the administration or enforcement of the NSLA or CNA. This means that program eligibility information may now be shared, without consent, between Child Nutrition Programs and other programs authorized under those Acts. Although, accordingly, eligibility information may now be shared with the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), this rule in no way affects the sharing of information about WIC participants. Information about WIC participants may be shared only in accordance with 7 CFR part 247. This means that program eligibility information may be shared

with another Child Nutrition Program, even if the programs are sponsored by different entities. For example, a public school may disclose information from children's free and reduced price school meal application, without consent, to a person directly connected with an organization, such as Parks and Recreation, administering a Summer Food Service Program. This provision is in sections 215.13a(g)(4)(i), 225.15(g)(4)(i), 226.23(i)(4)(i), and 245.6(f)(4)(i) of this proposed rule.

(2) *Certain law enforcement officials.* Section 9(b)(2)(C)(iii)(III)(bb) of the NSLA allows disclosure of all information obtained from the free and reduced price meal application or direct certification to Federal, State, and local law enforcement officials who are investigating alleged violations of any of the programs under the NSLA or CNA or any of the programs permitted to receive names and eligibility status. As discussed above, FNS is proposing to treat all program eligibility information the same as information obtained from the application or direct certification. Therefore, this rule would permit the disclosure of all program eligibility information, including information obtained through any verification procedures, to these law enforcement officials. This provision is in section 215.13a(g)(4)(iii), 225.15(g)(4)(iii), 226.23(i)(4)(iii), and 245.6(f)(4)(iii) of this proposed rule.

Thus, this proposal would allow disclosure of any or all program eligibility information to law enforcement officials investigating alleged violations of the Child Nutrition Programs and WIC. Also, the proposal would permit disclosure of this information to law enforcement officials who are investigating an alleged violation of a program authorized access to eligibility status under the NSLA. This could be a Federal education program, a State health or education program (other than Medicaid) administered by the State or local education agency, or other Federal, State or local means-tested nutrition programs (such as the Food Stamp Program). The statute does not authorize disclosure of any program eligibility information (other than aggregate information) to law enforcement officials investigating alleged violations of other programs or laws. For example, law enforcement officials involved in child custody cases are not authorized access under this provision. However, FNS continues to advise that if the request for information is in the form of a subpoena issued by a court or other government body possessed of subpoena power, program operators should seek

guidance from their legal counsel and the State agency.

(3) *The Comptroller General of the United States.* Section 9(b)(2)(C)(iii)(III)(aa) of the NSLA specifically authorizes the Comptroller General of the United States to have access to information obtained from the free and reduced price meal application or direct certification for audit and examination. As discussed above, FNS is proposing to treat all program eligibility information the same as information obtained from the application or direct certification. Therefore, this rule would permit the disclosure of all program eligibility information to the Comptroller General. This provision would be added to sections 215.13a(g)(4)(ii), 225.15(g)(4)(ii), 226.23(i)(4)(ii), and 245.6(f)(4)(ii) by this proposed rule.

VI. Who Are "Directly Connected Persons?"

The confidentiality provision in the NSLA permits disclosure and use of certain program eligibility information specifically to "persons directly connected with the administration or enforcement" of various statutes and programs. This rule would define "persons directly connected with the administration or enforcement" as Federal, State, and local program operators responsible for the ongoing operation of the programs or activities listed in section 9(b)(2)(C) of the NSLA and compliance officials responsible for monitoring, reviewing, auditing, or investigating a program, who are thereby authorized access to children's free and reduced price eligibility information as a specified function of those activities. It may also include contractors or grantees, who act on their behalf. Grantees and contractors, like others involved in the administration and enforcement of a program, may only use the information for program purposes.

The statute does not imply that Congress intended that programs or individuals have unlimited access to free and reduced price eligibility information. Rather, there must be a legitimate need to know in order to provide a service or carry out an activity authorized under the disclosure provision of section 9(b)(2)(C) of the NSLA. For example, persons having legitimate access may include the school principal, who has overall responsibility for specific programs within the school, which are entitled to eligibility information. Additionally, the school food service director, cafeteria manager and cafeteria staff, who are responsible for determining free and

reduced price school meal eligibility and/or verifying the information, issuing the medium of exchange for free and reduced price meals, or for counting meals served by type are persons having legitimate access to free and reduced price eligibility information. Federal, State and local reviewers responsible for reviewing or auditing compliance with the Program regulations may have access to program eligibility information for monitoring purposes. Reviews may include civil rights reviews to ensure that there is no discrimination in the food service, as well as administrative reviews or audits, such as those conducted under the Coordinated Review Effort. Release of free and reduced price eligibility information to teachers, cafeteria staff or other persons who are not involved in any program function which would necessitate knowledge about eligibility would not be entitled to that information.

Additionally, parent organizations could not have access either, since they would not be involved in the administration or enforcement of the program. The intent is to limit disclosure of program eligibility information to those who have a "need to know" program eligibility information for proper administration or enforcement of the particular program. A description of "persons directly connected" is included in proposed sections 215.13a(g)(5), 225.15(g)(6), 226.23(i)(6), and 245.6(f)(5).

VII. For What Purposes May Program Eligibility Information Be Used?

The State agency and program operator may use program eligibility information for administering or enforcing the program for which the information was obtained. In addition, any other Federal, State or local agency charged with administering or enforcing the program may use the information for that purpose. This provision would be added to §§ 215.13a(g)(6), 225.15(g)(5), 226.23(i)(5), and 245.6(f)(6).

VIII. Who Decides Whether To Disclose Program Eligibility Information?

The agency that makes the free and reduced price meal or free milk determination is the only agency that can decide to disclose program eligibility information. In most cases, this is the school food authority or school, Summer Food Service Program sponsor, or Child and Adult Care Food Program sponsor, but sometimes the State agency performs this function. This provision is at proposed §§ 215.13a(g)(1), 225.15(g)(1), 226.23(i)(1), 245.6(f)(1).

IX. What If Student Records and Other Systems Are Computerized?

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

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

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

information reside in the same database where other student information is maintained. While this rule would not forbid such arrangement, FNS wishes to emphasize that to comply with this rule, database managers, who may also be program operators, must restrict access to program eligibility information to only those individuals and uses authorized by statute and regulation.

X. Who Needs To Be Notified or May Give Consent for the Disclosure of Program Eligibility Information to Other Persons or Programs?

In general, when eligibility status or other information from the program eligibility information is shared with the persons and/or programs as authorized by the NSLA confidentiality provisions, the statute does not require that program operators first obtain consent. However, FNS believes that households should be informed of any potential disclosure of program eligibility information at the time of program application. This notice could be in the notice/letter to households that accompanies the application. It could also be on the application itself, or, for participants directly certified for free meals or milk, on the document informing the household of the participant's eligibility through direct certification. While FNS recommends that notice be given, FNS is not proposing to amend the regulations to require the notice. Different requirements apply with respect to disclosure of social security numbers as discussed later in this preamble.

XI. Consent

Determining agencies that want to disclose more information than that specifically permitted by the NSLA or for programs not specified in the NSLA provisions *must* obtain consent prior to the disclosure. For children, the consent must be given by the parent or guardian who is a member of the household or family for purposes of the free and reduced price meal or free milk application. For an adult participant in the CACFP, the consent must be given by the adult participant, unless a guardian has been appointed to act for the adult. The consent may be accomplished as part of the free and reduced price application, such as on a multi-use application, or at a later time. This approach is already authorized by the multi-use application guidance discussed earlier in the preamble. Also, the State agency or program operator may rely on a consent form initiated by the program or agency that wants to use the free and reduced price information. For example, the agency administering

a local eye care program, which provides free or low cost eye examinations to low income children may request written permission from parents/guardians to get their children's free or reduced price meal eligibility information from their children's schools. The eye care program, in this case, would be securing from the household the consent for the determining agency to release the information to the administering agency.

In the case of direct certification, school officials or the agency administering the food stamp, FDPIR, or TANF, as appropriate, may add a consent statement to the notice of eligibility for free meals or milk that is provided to the household. A household interested in obtaining the specified services or benefits would sign and return the consent to the school.

FNS wishes to emphasize that under this proposed rule, only a parent or guardian who is part of the household or family for program application purposes may provide consent to disclose. In the Child Nutrition Programs, generally the household or family is the group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit. For adults in the CACFP, it is the adult and the adult's spouse and dependent(s) residing with the adult. (See the definitions of "family" or "household" in 7 CFR 215.2(k) for the SMP in child-care institutions, 225.2 for the SFSP, 226.2 for the CACFP, and 245.2 for the SMP in schools and the SBP and NSLP). Thus, in most cases of divorce or separation, this means the custodial parent or guardian. However, if custody is shared, the parents or guardians must decide who has primary custody for purposes of making application for the program. The parent or guardian having such custody would be the only person who could provide consent to disclosure of program eligibility information.

FNS is concerned about the personal financial data at stake. This information is unlike other student records that directly concern the education of the child, and in which both parents have a direct interest. The program eligibility information in these circumstances is associated with one parent or guardian, and FNS believes that only that parent or guardian should be able to give consent to its disclosure. FNS recognizes that this is a difficult issue and is particularly interested in comments on this point.

Regardless of the document used to secure the consent, officials must

provide the household with adequate information for them to determine whether or not to give consent to the proposed disclosure. This rule would amend §§ 215.13a(g)(9), 225.15(g)(9), 226.23(i)(9), and 245.6(f)(9) to set the minimum standards for that notice. To be valid, the consent must be in writing. It must identify the information that will be shared, how the information will be used, and be signed and dated by the participant's parent or guardian (or adult applicant or participant in the CACFP). It must also state that failing to sign the consent will not affect the participant's eligibility for the program for which application is being made and that the information will not be shared by the receiving program for other than program related reasons.

Parents/guardians/adult applicants and participants must also be permitted to limit the consent to only those programs with which they wish to share information. For example, the consent could use a check-off system under which the applicant would check or initial a box to indicate that he or she wants to have information disclosed to determine eligibility for benefits from a particular program. Finally, the consent must be signed and dated by a parent or guardian (or adult applicant or participant in the CACFP). Readers should note that although any adult household member may sign the free and reduced priced meal or free milk application, the consent must be signed by the parent or guardian for the child, or by the adult applicant or participant in the CACFP or that person's guardian. Only those persons have the authority to consent to these disclosures. Information may not be disclosed to individuals or programs under any circumstances beyond that authorized by law or the implementing regulation without consent.

XII. What Is Required When Social Security Numbers Are Disclosed?

There is no statutory requirement that applicants or participants must be notified of the potential use of program eligibility information. However, the Privacy Act requires that notice be given of the intended uses of social security numbers. Thus, if a State agency or program operator intends to release social security numbers, either through the disclosures authorized in the NSLA or with specific parental consent, then section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note) requires that notice of the planned uses of the social security number be given. The easiest method is to include the planned uses in the Privacy Act statement currently required by §§ 225.15(f)(4),

226.23(e)(1)(ii)(F), and 245.6(a)(1). The only uses currently listed in the regulations and the prototype application are for the determination and verification of eligibility for program meals. Any State agency or program operator that plans to release the social security number for other purposes must amend the Privacy Act statement to reflect this. State agencies and program operators are responsible for ensuring the adequacy of their Privacy Act statement, and FNS encourages them to consult with their legal counsel. This requirement would be added to sections 215.13a(g)(7), 225.15(g)(7), 226.23(i)(7), and 245.6(f)(7) by this proposed rule.

This rule would also propose to revise the current Privacy Act notice required in Parts 225, 226, and 245 and would propose a new Privacy Act notice requirement for the SMP in child-care institutions to ensure Privacy Act compliance in that program. The Privacy Act statements required to be given at the time of application would each be revised to replace the three sentences giving detailed descriptions of the potential use of the social security number for verification with a more general statement that the number will be used in the administration and enforcement of the program. An additional Privacy Act notice is required to be given before verification (for those programs subject to verification). That notice would continue to provide the more detailed description on the potential uses of social security numbers in verification. The sections that would be revised are §§ 225.15(f)(2)(vi), 226.23(e)(1)(ii)(F), and 245.6(a)(1). The Privacy Act requirement for the SMP in child-care institutions would be added at section 215.13a(f).

XIII. Are Agreements Required Before Disclosing Program Eligibility Information?

Persons and programs to which program eligibility information is disclosed under the statute (see Section I of the preamble), may only use the information in the administration or enforcement of the programs for which the information was released. The receiving agency cannot transfer or otherwise disclose eligibility information to a third party. This rule recommends that the determining agency enter into agreements with the persons or programs receiving the information before any disclosures are made, including disclosures made with consent. This is to ensure proper use of the information.

FNS wishes to ensure that parties receiving program eligibility information (including participants' names and eligibility status) fully understand the limitations on the use of the information and the penalties for misusing the information. The agreement should identify the programs and persons receiving the information and describe the information to be disclosed and how it will be used. It should also describe how the information will be protected from unauthorized uses and disclosures and describe the penalties for unauthorized disclosure. This provision would be added to §§ 215.13a(g)(10), 225.15(g)(10), 226.23(i)(10), and 245.6(f)(10).

XIV. Are There Any Penalties for Unauthorized Disclosure or Misuse of Information?

As mandated in the statute, the proposal includes criminal penalties for any person who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by Federal law, information disclosed under these provisions. The penalties may include a fine of up to \$1,000 or imprisonment of up to 1 year or both. These penalties would be described in §§ 215.13a(g)(11), 225.15(g)(11), 226.23(i)(11), and 245.6(f)(11) of the proposed rule.

XV. Summary

FNS is proposing to amend the Child Nutrition Program regulations to permit the release of program eligibility information that is consistent with the revised provisions of the NSLA. FNS' goal is to facilitate the release of free and reduced price information to specified programs or individuals, without sacrificing the confidentiality of the individuals or their parents/guardians.

Readers should note that the law does not require State agencies and program operators to share information but provides authority for State agencies and program operators to do so. Also, program operators must continue to prevent the overt identification of children receiving free and reduced price meals or free milk. This includes following such practices as not publishing, posting or announcing the names of children eligible for free or reduced price meals or free milk. Program operators are also prohibited from making children eligible for free and reduced price meals or free milk use special serving lines or special tokens or tickets that are not made available to all students.

Executive Order 12866

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

Public Law 104-4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes a requirement for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally prepares a written statement, including a cost-benefit analysis. This is done for proposed and final rules that have "Federal mandates" which may result in expenditures of \$100 million or more in any one year by State, local, or tribal governments, in the aggregate, or by the private sector. When this statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives. It must then adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

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

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Shirley R. Watkins, Under Secretary for Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. By permitting access to certain eligibility information, this rule could reduce duplicate paperwork by certain agencies which serve low-income children and adults. The rule could streamline operations of those programs. The provisions of this rule also may enhance access to these programs by needy children. The Department of Agriculture (the Department or USDA) does not anticipate any adverse fiscal impact resulting from implementation of this rulemaking. Although there may be some burdens associated with this rule, the burdens would not be significant and would be outweighed by the benefits of sharing of information.

Executive Order 12372

The Special Milk Program, the Summer Food Service Program, and the Child and Adult Care Food Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.556, 10.559, and 10.558 respectively. These programs are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule related notice at 48 FR 29115, June 24, 1983).

Executive Order 12988

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, this notice invites the general public and other public agencies to comment on proposed information collection.

Written comments must be received on or before September 25, 2000.

Comments concerning the information collection aspects of this proposed rule should be sent to Brenda Aguilar, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC. 20503. A copy of these comments may also be sent to Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble. Commenters are asked to separate their information collection requirements comments from their comments on the remainder of this proposed rule.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full

effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulation.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: 7 CFR Part 215, Special Milk Program; 7 CFR Part 225 Summer Food Service Program; 7 CFR Part 226, Child and Adult Care Food Program; 7 CFR Part 245 Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

OMB Number: 0584-0005, 0584-0280, 0584-0055 and 0584-0026, respectively.

Expiration Date: 8/31/02, 2/28/03, 5/31/01, and 9/30/01, respectively.

Type of Request: Revision of currently approved collection.

Abstract: Under this proposal, determining agencies may disclose applicants' names and eligibility, without consent, to persons directly connected with the administration or enforcement of the following programs: Federal education programs; State health and State education programs administered by the State or local education agency; Federal, State, or local means-tested nutrition programs with eligibility standards comparable to the Child Nutrition Programs (*i.e.*, food assistance to households with income at or below 185 percent of the Federal poverty level). Additionally, State agencies and program operators may disclose all other eligibility information obtained through the free and reduced price meal or free milk eligibility process (including all information on

the application or obtained through direct certification or verification), without consent, to the following: Persons directly connected with the administration or enforcement of the programs authorized under the NSLA and CNA; the Comptroller General of the United States for audit and examination; and Federal, State or local law enforcement officials investigating alleged violations of the programs under the NSLA and CNA or investigating

violations of any of the programs authorized access to names and free and reduced price meal or free milk eligibility information. Disclosing any free and reduced price meal or free milk eligibility information to individuals and programs not authorized under the statute requires written consent. The proposed rule makes several recommendations to State agency, school food authority, SMP child-care institution, SFSP sponsor, or CACFP

institutions that intend to disclose participants eligibility information. The rule recommends (1) that these entities inform potential participants that their eligibility information may be shared with other entities; and (2) that there is an agreement between the State agency, school food authority, SMP child-care institution, SFSP sponsor, or CACFP institution and the entity that is requesting the program eligibility information.

ESTIMATED ANNUAL RECORDKEEPING AND REPORTING BURDEN

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
State agency or child care institution should enter into a written agreement with the party requesting the information:					
Total Existing State agencies	7 CFR 215.13a(g)(10)	0	0	0	0
Total Proposed State agencies	7 CFR 215.13a(g)(10)	57	1	.50	29
Total Existing Child Care Institutions	7 CFR 215.13a(g)(10)	0	0	0	0
Total Proposed Child Care Institutions	7 CFR 215.13a(g)(10)	207	1	.25	52
State agency and child care institution must give notice of any additional uses of the social security number:					
Total Existing State agencies	7 CFR 215.13a(g)(7)	0	0	0	0
Total Proposed State agencies	7 CFR 215.13a(g)(7)	57	1	.32	18
Total Existing Child Care Institutions	7 CFR 215.13a(g)(7)	0	0	0	0
Total Proposed Child Care Institutions	7 CFR 215.13a(g)(7)	207	1	.16	33
Child care institutions that plan to use or disclose information in ways not permitted must first obtain written consent from the child's parent or guardian:					
Total Existing Child Care Institutions	7 CFR 215.13a(g)(9)	0	0	0	0
Total Proposed Child Care Institutions	7 CFR 215.13a(g)(9)	207	1	.07	14
Total Existing Household	7 CFR 215.13a(g)(9)	0	0	0	0
Total Proposed Household	7 CFR 215.13a(g)(9)	14,006	1	.07	980
Total Existing:	0.				
Total Proposed:	+1,126.				
Change:	+1,126.				
State agency or sponsor should enter into a written agreement with the party requesting the information:					
Total Existing State Agency	7 CFR 225.15(g)(10)	0	0	0	0
Total Proposed State Agency	7 CFR 225.15(g)(10)	49	1	.25	12
Total Existing Sponsor	7 CFR 225.15(g)(10)	0	0	0	0
Total Proposed Sponsor	7 CFR 225.15(g)(10)	3,309	1	.25	827
State agency or sponsors must give notice of any additional uses of the social security number:					
Total Existing State Agencies	7 CFR 225.13(g)(7)	0	0	0	0
Total Proposed State Agencies	7 CFR 225.13(g)(7)	49	1	.16	8
Total Existing Sponsors	7 CFR 225.13(g)(7)	0	0	0	0
Total Proposed Sponsors	7 CFR 225.13(g)(7)	3,309	1	.16	529
State agencies and sponsors that plan to use or disclose information in ways not permitted must first obtain written consent from the child's parent or guardian:					
Total Existing State Agency	7 CFR 225.15(g)(9)	0	0	0	0
Total Proposed State Agency	7 CFR 225.15(g)(9)	49	1	.25	12
Total Existing Sponsors	7 CFR 225.15(g)(9)	0	0	0	0
Total Proposed Sponsors	7 CFR 225.15(g)(9)	3,309	1	.25	827
Total Existing Household	7 CFR 225.15(g)(9)	0	0	0	0
Total Proposed Household	7 CFR 225.15(g)(9)	72,864	1	.083	6,047
Total Existing:	0.				
Total Proposed:	+8,262.				
Change:	+8,262.				
State agency or child care institution should enter into a written agreement with the party requesting the information:					
Total Existing State Agency	7 CFR 226.23(i)(10)	0	0	0	0
Total Proposed State Agency	7 CFR 226.23(i)(10)	54	1	.25	13

ESTIMATED ANNUAL RECORDKEEPING AND REPORTING BURDEN—Continued

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Total Existing Child and Adult Day Care Institutions.	7 CFR 226.23(i)(10)	0	0	0	0
Total Proposed Child and Adult Day Care Institutions.	7 CFR 226.23(i)(10)	10,144	1	.25	2,536
State agencies and child care institution must give notice of any additional uses of the social security number:					
Total Existing State Agency	7 CFR 226.23(i)(10)	0	0	0	0
Total Proposed State Agency	7 CFR 226.23(i)(10)	54	1	.25	13
Total Existing Child Care Institutions	7 CFR 226.13(g)(7)	0	0	0	0
Total Proposed Child Care Institutions	7 CFR 226.13(g)(7)	10,144	1	.16	1,623
State agencies and child care institutions that plan to use or disclose information in ways not permitted must first obtain written consent from the child's parent or guardian:					
Total Existing State Agency	7 CFR 226.23(i)(9)	0	0	0	0
Total Proposed State Agency	7 CFR 226.23(i)(9)	54	1	.25	13
Total Existing Child and Adult Day Care Institution.	7 CFR 226.23(i)(9)	0	0	0	0
Total Proposed Child and Adult Day Care Institution.	7 CFR 226.23(i)(9)	10,144	1	.25	2,536
Total Existing Household	7 CFR 226.23(i)(9)	0	0	0	0
Total Proposed Household	7 CFR 226.23(i)(9)	687,562	1	.083	57,067
Total Existing:	0.				
Total Proposed:	+63,801.				
Change:	+63,801.				
State agency, SFA, or school should enter into a written agreement with the party requesting the information:					
Total Existing State Agency	7 CFR 245.6(f)(10)	0	0	0	0
Total Proposed State Agency	7 CFR 245.6(f)(10)	58	1	.25	14
Total Existing School Food Authorities	7 CFR 245.6(f)(10)	0	0	0	0
Total Proposed School Food Authorities	7 CFR 245.6(f)(10)	16,342	3	.25	12,256
Total Existing Schools	7 CFR 245.6(f)(10)	0	0	0	0
Total Proposed Schools	7 CFR 245.6(f)(10)	101,000	3	.25	75,750
State agencies, SFA, or school must give notice of any additional uses of the social security number:					
Total Existing State Agencies	7 CFR 245.6(f)(7)	0	0	0	0
Total Proposed State Agencies	7 CFR 245.6(f)(7)	58	1	.16	9
Total Existing School Food Authorities	7 CFR 245.6(f)(7)	0	0	0	0
Total Proposed School Food Authorities	7 CFR 245.6(f)(7)	16,342	3	.25	12,256
Total Existing Schools	7 CFR 245.6(f)(7)	0	0	0	0
Total Proposed Schools	7 CFR 245.6(f)(7)	101,000	3	.25	75,750
State agencies, SFAs, and schools that plan to use or disclose information in ways not permitted must first obtain written consent from the child's parent or guardian:					
Total Existing State Agency	7 CFR 245.6(f)(9)	0	0	0	0
Total Proposed State Agency	7 CFR 245.6(f)(9)	58	1	.25	14
Total Existing School Food Authority	7 CFR 245.6(f)(9)	0	0	0	0
Total Proposed School Food Authority	7 CFR 245.6(f)(9)	16,342	3	.25	12,256
Total Existing School	7 CFR 245.6(f)(9)	0	0	0	0
Total Proposed School	7 CFR 245.6(f)(9)	101,000	3	.25	75,750
Total Existing Household	7 CFR 245.6(f)(9)	0	0	0	0
Total Proposed Household	7 CFR 245.6(f)(9)	4,138,810	1	.07	289,716
Total Existing:	0.				
Total Proposed:	+553,771.				
Change:	+553,771.				

List of Subjects*7 CFR Part 215*

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

7 CFR Part 225

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

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and

recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 245

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

Accordingly, 7 CFR parts 215, 225, 226, and 245 are proposed to be amended as follows:

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

1. The authority citation for part 215 is revised to read as follows:

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

2. In § 215.13a, new paragraphs (f) and (g) are added to read as follows:

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

* * * * *

(f) *Is a Privacy Act notice required on the free milk application?* Each free milk application must include substantially the following statement: “Unless you include your child’s case number for the Food Stamp Program, the Food Distribution Program on Indian Reservations (or other identifier for the Food Distribution Program on Indian Reservations) or the Temporary Assistance for Needy Families Program, you must include the social security number of the adult household member signing the application or indicate that the household member does not have a social security number. This is required by section 9 of the National School Lunch Act. The social security number is not mandatory, but the application cannot be approved if a social security number is not given or an indication is not made that the signer does not have a social security number. The social security number will be used in the administration and enforcement of the program.”

(g) *May program eligibility information be used for non-program purposes or disclosed to other individuals or programs?* Certain information about children eligible for free milk may be disclosed to the individuals and programs described in this section. Additionally, program eligibility information may be disclosed to other people and programs if parental consent is given.

(1) *Who decides whether to disclose program eligibility information?* The State agency or child care institution that determines free milk eligibility is responsible for deciding whether to disclose program eligibility information.

(2) *To whom may the State agency or child care institution disclose aggregate information?* The State agency or child care institution, as appropriate, may disclose aggregate information to any party. Parental consent is not necessary, since children are not identified. For example, the State agency or child care institution may disclose aggregate information, that is the number of children eligible for free milk, but not children’s names.

(3) *To whom may the State agency or child care institution disclose participants’ names and eligibility status, without consent?* The State agency or child care institution, as appropriate, may disclose, without parental consent, children’s names and eligibility status (whether they are eligible for free milk) to persons directly connected with the administration or enforcement of the following programs:

(i) A Federal education program;

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

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

(4) *To whom may the State agency or child care institution disclose all eligibility information, without consent?* In addition to children’s names and eligibility status, the State agency or child care institution, as appropriate, may disclose, without parental consent, all eligibility information obtained through the free milk eligibility process (including all information on the application or obtained through direct certification or any verification of eligibility efforts) to the following:

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

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

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

(5) *For what purposes may program eligibility information be used?* State agencies and child-care institutions may use program eligibility information for administering or enforcing the program. Additionally, any other Federal, State, or local agency charged with administering or enforcing the program may use the information for that purpose. Individuals and programs to which program eligibility information is disclosed under this section may only use the information in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(6) *Who are “directly connected” persons?* Persons directly connected with the administration or enforcement of a program are the Federal, State, and local program operators responsible for program compliance, including their contractors, to the extent those persons have a need to know the information for program administration or enforcement. Program operators include persons responsible for the ongoing operation of the program. Compliance officials include persons responsible for monitoring, reviewing, auditing, or investigating the program. Contractors include evaluators, auditors, and others with whom State agencies and program operators may contract to assist in the administration or enforcement of their program.

(7) *May social security numbers be disclosed?* The State agency or child care institution, as appropriate, may disclose social security numbers to any programs or persons authorized to receive all program eligibility information under paragraph (g)(4) of this section or when consent is obtained. However State agencies and child care institutions that plan to disclose social security numbers must give notice of the planned use of the social security number. This notice must be in accordance with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note). The application must include substantially the following language for disclosures of social security numbers under paragraph (g)(4) of this section: “The social security number may also be disclosed to programs under the National School Lunch Act and Child Nutrition Act, the Comptroller General of the United States, and law enforcement officials for the purpose of

investigating violations of certain Federal, State, and local education, health and nutrition programs." This language is in addition to the notice required in paragraph (f) of this section. State agencies and child care institutions are responsible for drafting the appropriate notice for disclosures of social security numbers under the consent provisions of paragraph (g)(10) of this section.

(8) *When is parental consent required?* State agencies and child care institutions that plan to use or disclose information about children eligible for free milk in ways not specified in this section must obtain written consent from the child's parent or guardian prior to the use or disclosure.

(9) *Who may give consent for the disclosure of program eligibility information to other programs or persons?* Only a parent or guardian who is a member of the child's household for purposes of the free milk application may give consent to the disclosure of program eligibility information. The consent must identify the information that will be shared and how the information will be used. Additionally, the consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free milk application. There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free milk and that the individuals or programs receiving the information will not share the information with any other entity or program. Parents/guardians must also be permitted to limit the consent to only these programs with which they wish to share information.

(10) *Are agreements required before disclosing program eligibility information?* Agreements between the State agency or child care institution, as appropriate, and the individual or program receiving the information are not required. However, agreements are recommended. Before disclosing any information, the State agency or child care institution should enter into a written agreement with the party requesting the information. An agreement is not necessary for disclosures to Federal, State or local agencies evaluating or reviewing program operations or for disclosures to the Comptroller General. The agreement should:

- (i) Identify the programs or persons receiving the information;
- (ii) Describe the information to be disclosed and how the information will be used;

(iii) Describe how the information will be protected from unauthorized uses and disclosures and include the penalties for using the information for unauthorized purposes; and

(iv) Be signed by both the determining agency and the receiving party.

(11) *What are the penalties for unauthorized disclosure or misuse of information?* Any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or the regulations in this part, any information obtained under this paragraph (g) will be fined up to \$1,000 or imprisoned for up to 1 year, or both.

PART 225—SUMMER FOOD SERVICE PROGRAM

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

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

2. In § 225.15, redesignate paragraphs (g) and (h) as paragraphs (h) and (i) and add a new paragraph (g).

The addition reads as follows:

§ 225.15 Management responsibilities of sponsors.

* * * * *

(g) *May program eligibility information be used for non-program purposes or disclosed to other individuals or programs?* Certain information about children eligible for free meals may be disclosed to the individuals and programs described in this section. Additionally, program eligibility information may be disclosed to other individuals and programs if parental consent is given.

(1) *Who decides whether to disclose program eligibility information?* The State agency or sponsor that determines free meal eligibility is responsible for deciding whether to disclose program eligibility information.

(2) *To whom may the State agency or sponsor disclose aggregate information?* The State agency or sponsor, as appropriate, may disclose aggregate information to any party. Parental consent is not necessary, since children are not identified. For example, the State agency or sponsor may disclose aggregate information, that is the number of children eligible for free and reduced price meals, but not children's names.

(3) *To whom may the State agency or sponsor disclose participants' names and eligibility status?* The State agency or sponsor may disclose, without parental consent, children's names and eligibility status (whether they are

eligible for free meals) to persons directly connected with the administration or enforcement of the following programs:

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

(4) *To whom may the State agency or sponsor disclose all eligibility information, without parental consent?* In addition to children's names and eligibility status, the State agency or sponsor may disclose, without parental consent, all eligibility information obtained through the free meal eligibility process (including all information on the application or obtained through direct certification or any verification of eligibility efforts) to the following:

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

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

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

(5) *For what purposes may program eligibility information be used?* State agencies and sponsors may use program eligibility information for administering or enforcing the program. Additionally, any other Federal, State, or local agency charged with administering or enforcing the program may use the information for that purpose. Individuals and programs to which program eligibility information is disclosed under this section may only use the information in the

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

(6) *Who are "directly connected" persons?* Persons directly connected with the administration or enforcement of a program are the Federal, State, and local program operators responsible for program compliance, including their contractors, to the extent those persons have a need to know the information for program administration. Program operators include persons responsible for the ongoing operation of the program. Compliance officials include persons responsible for monitoring, reviewing, auditing, or investigating the program. Contractors include evaluators, auditors, and others with whom State agencies and program operators may contract to assist in the administration or enforcement of their program.

(7) *May social security numbers be disclosed?* The State agency or sponsor may disclose social security numbers to any programs or persons authorized to receive all program eligibility information under paragraph (g)(4) of this section or when consent is obtained. However State agencies or sponsors that plan to disclose social security numbers must give notice of the planned use of the social security number. This notice must be in accordance with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note). The application must include substantially the following language for disclosures of social security numbers under paragraph (g)(4) of this section: "The social security number may also be disclosed to programs under the National School Lunch Act and Child Nutrition Act, the Comptroller General of the United States, and law enforcement officials for the purpose of investigating violations of certain Federal, State, and local education, health and nutrition programs." This language is in addition to the notice required in paragraph (f) of this section. Determining agencies are responsible for drafting the appropriate notice for disclosures of social security numbers under the consent provisions of paragraph (g)(10) of this section.

(8) *When is parental consent required?* State agencies and sponsors that plan to use or disclose information about children eligible for free milk in ways not specified in this section must obtain written consent from the child's parent or guardian prior to the use or disclosure.

(9) *Who may give consent for the disclosure of program eligibility information to other programs or persons?* Only a parent or guardian who

is a member of the child's household for purposes of the free meal application may give consent to the disclosure of program eligibility information. The consent must identify the information that will be shared and how the information will be used. Additionally, the consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free and reduced price meal application. There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free meals and that the individuals or programs receiving the information will not share the information with any other entity or program. Parents/guardians must also be permitted to limit the consent to only these programs with which they wish to share information.

(10) *Are agreements required before disclosing program eligibility information?* Agreements between the State agency or sponsor and the individual or program receiving the information are not required. However, agreements are recommended. Before disclosing any information, the State agency or sponsor should enter into a written agreement with the party requesting the information. An agreement is not necessary for disclosures to Federal, State or local agencies evaluating or reviewing program operations or for disclosures to the Comptroller General. The agreement should:

- (i) Identify the programs or persons receiving the information;
- (ii) Describe the information to be disclosed and how the information will be used;
- (iii) Describe how the information will be protected from unauthorized uses and disclosures and include the penalties for using the information for unauthorized purposes; and
- (iv) Be signed by both the determining agency and the receiving party.

(11) *What are the penalties for unauthorized disclosure or misuse of information?* Any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or the regulations in this part, any information obtained under this paragraph (g) will be fined up to \$1,000 or imprisoned for up to 1 year, or both.

* * * * *

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16 and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765, and 1766).

- 2. In § 226.23,
 - a. Paragraph (e)(1)(ii)(F) is revised; and
 - b. A new paragraph (i) is added.
 The revision and addition read as follows:

§ 226.23 Free and reduced-price meals.

* * * * *

- (e)(1) * * *
- (ii) * * *

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

* * * * *

(i) *May program eligibility information be used for non-program purposes or disclosed to other individuals or programs?* Certain information about children eligible for free and reduced price meals may be disclosed to the individuals and programs described in this section. Additionally, program eligibility information may be disclosed to other people and programs if parental consent is given.

(1) *Who decides whether to disclose program eligibility information?* The State agency or institution that makes the free and reduced price meal determination is responsible for deciding whether to disclose program eligibility information.

(2) *To whom may the State agency or institution disclose aggregate information?* The State agency or institution may disclose aggregate information to any party. Parental consent is not necessary, since children are not identified. For example, the

State agency or institution may disclose aggregate information, that is the number of children eligible for free and reduced price meals, but not children's names.

(3) *To whom may the State agency or institution disclose participants' names and eligibility status?* The State agency or institution may disclose, without parental consent, children's names and eligibility status (whether they are eligible for free or reduced price meals) to persons directly connected with the administration or enforcement of the following programs:

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

(4) *To whom may the State agency or institution disclose all eligibility information, without parental consent?* In addition to children's names and eligibility status, the State agency or institution may disclose, without parental consent, all eligibility information obtained through the free and reduced price meal eligibility process (including all information on the application or obtained through direct certification or any verification of eligibility efforts) to the following:

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

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

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

(5) *For what purposes may program eligibility information be used?* State agencies and institutions may use program eligibility information for administering or enforcing the program. Additionally, any other Federal, State, or local agency charged with administering or enforcing the program may use the information for that purpose. Individuals and programs to which program eligibility information is disclosed under this section may only use the information in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(6) *Who are "directly connected" persons?* Persons directly connected with the administration or enforcement of a program are the Federal, State, and local program operators responsible for program compliance, including their contractors, to the extent those persons have a need to know the information for program administration. Program operators include persons responsible for the ongoing operation of the program. Compliance officials include persons responsible for monitoring, reviewing, auditing, or investigating the program. Contractors include evaluators, auditors, and others with whom State agencies and program operators may contract to assist in the administration or enforcement of their program.

(7) *May social security numbers be disclosed?* The State agency or institution may disclose social security numbers to any programs or persons authorized to receive all program eligibility information under paragraph (i)(4) of this section or when consent is obtained. However, State agencies or institutions that plan to disclose social security numbers must give notice of the planned use of the social security number. This notice must be in accordance with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note). The application must include substantially the following language for disclosures of social security numbers under paragraph (i)(4) of this section: "The social security number may also be disclosed to programs under the National School Lunch Act and Child Nutrition Act, the Comptroller General of the United States, and law enforcement officials for the purpose of investigating violations of certain Federal, State, and local education, health and nutrition programs." This language is in addition to the notice required in paragraph (e) of this section. State agencies and child care institutions are responsible to drafting the appropriate notice for disclosures of social security numbers under the

consent provisions of paragraph (i)(10) of this section.

(8) *When is parental consent required?* State agencies and child care institutions that plan to use or disclose information about children or adults eligible for free and reduced price meals in ways not specified in this section must obtain written consent from the child's parent or guardian or the adult participant or guardian prior to the use or disclosure.

(9) *Who may give consent for the disclosure of program eligibility information to other programs or persons?* Only a parent or guardian who is a member of the child's household for purposes of the free or reduced price meal application may give consent to the disclosure of program eligibility information. The consent must identify the information that will be shared and how the information will be used. Additionally, the consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free and reduced price meal application. There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free and reduced price meals and that the individuals or programs receiving the information will not share the information with any other entity or program. Parents/guardians must also be permitted to limit the consent to only these programs with which they wish to share information. For an adult applicant or participant in the CACFP, the consent must be given and signed by the adult applicant or participant, unless a guardian has been appointed to act for the adult.

(10) *Are agreements required before disclosing program eligibility information?* Agreements between the State agency or child care institution and the individual or program receiving the information are not required. However, agreements are recommended. Before disclosing any information, the State agency or child care institution should enter into a written agreement with the party requesting the information. An agreement is not necessary for disclosures to Federal, State or local agencies evaluating or reviewing program operations or for disclosures to the Comptroller General. The agreement should:

- (i) Identify the programs or persons receiving the information;
- (ii) Describe the information to be disclosed and how the information will be used;
- (iii) Describe how the information will be protected from unauthorized uses and disclosures and include the

penalties for using the information for unauthorized purposes; and

(iv) Be signed by both the State agency or child care institution and the receiving party.

(11) *What are the penalties for unauthorized disclosure or misuse of information?* Any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or the regulations in this part, any information obtained under this paragraph (i) will be fined up to \$1,000 or imprisoned for up to 1 year, or both.

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

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

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

2. In § 245.6, paragraph (a)(1) is revised and a new paragraph (f) is added.

The revision and addition read as follows:

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

(a) * * *

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

* * * * *

(f) *May program eligibility information be used for non-program purposes or disclosed to other individuals or programs?* Certain information about children eligible for free meals may be disclosed to the individuals and programs described in

this section. Additionally, program eligibility information may be disclosed to other people and programs if parental consent is given.

(1) *Who decides whether to disclose program eligibility information?* The agency that makes the free and reduced price meal or free milk eligibility determination (*i.e.*, the determining agency) is the only agency that can decide to disclose program eligibility information. In most cases, this is the school food authority, but sometimes the State agency performs this function.

(2) *To whom may the determining agency disclose aggregate information?* The State agency or school food authority may disclose aggregate information to any party. Parental consent is not necessary, since children are not identified. For example, the State agency or school food authority may disclose aggregate information, that is the number of children eligible for free and reduced price meals or free milk, but not children’s names.

(3) *To whom may the determining agency disclose participants’ names and eligibility status, without consent?* The State agency or school food authority may disclose, without parental consent, children’s names and eligibility status (whether they are eligible for free and reduced price meals or free milk) to persons directly connected with the administration or enforcement of the following programs:

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

(4) *To whom may the determining agency disclose all eligibility information, without consent?* In addition to children’s names and eligibility status, the State agency or child-care institution may disclose, without parental consent, all eligibility information obtained through the free and reduced price meal or free milk eligibility process (including all information on the application or obtained through direct certification or any verification of eligibility efforts) to the following:

(i) Persons directly connected with the administration or enforcement of programs authorized under the National School Lunch Act or the Child Nutrition Act of 1966. This means that all eligibility information obtained for the

Special Milk Program may be disclosed to persons directly connected with administering or enforcing regulations under the National School Lunch or School Breakfast Programs (parts 210 and 220, respectively, of this chapter), Child and Adult Care Food Program (part 226 of this chapter), Summer Food Service Program (part 225 of this chapter) and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (part 246 of this chapter);

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

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

(5) *Who are “directly connected” persons?* Persons directly connected with the administration or enforcement of a program are the Federal, State, and local program operators responsible for program compliance, including their contractors, to the extent those persons have a need to know the information for program administration or enforcement. Program operators include persons responsible for the ongoing operation of the program. Compliance officials include persons responsible for monitoring, reviewing, auditing, or investigating the program. Contractors include evaluators, auditors, and others with whom State agencies and program operators may contract to assist in the administration or enforcement of their program.

(6) *For what purposes may program eligibility information be used?* State agencies and school food authorities may use program eligibility information for administering or enforcing the program. Additionally, any other Federal, State, or local agency charged with administering or enforcing the program may use the information for that purpose. Individuals and programs to which program eligibility information is disclosed under this section may only use the information in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(7) *May social security numbers be disclosed?* The determining agency may disclose social security numbers to any programs or persons authorized to receive all program eligibility information under paragraph (f)(4) of this section or when consent is obtained. However State agencies and school food authorities that plan to disclose social security numbers under this paragraph (f)(7) must give notice of the planned use of the social security

number. This notice must be in accordance with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note). The application must include substantially the following language for disclosures of social security numbers under paragraph (f)(4) of this section: "The social security number may also be disclosed to programs under the National School Lunch Act and Child Nutrition Act, the Comptroller General of the United States, and law enforcement officials for the purpose of investigating violations of certain Federal, State, and local education, health and nutrition programs." This language is in addition to the notice required in paragraph (a) of this section. State agencies and school food authorities are responsible for drafting the appropriate notice for disclosures of social security numbers under the consent provisions of paragraph (f)(9) of this section.

(8) *When is parental consent required?* State agencies and school food authorities that plan to use or disclose information about children eligible for free and reduced price meals or free milk in ways not specified in this section must obtain written consent from the child's parent or guardian prior to the use or disclosure.

(9) *Who may give consent for the disclosure of program eligibility information to other programs or persons?* Only a parent or guardian who is a member of the child's household for purposes of the free and reduced price meal or free milk application may give consent to the disclosure of program eligibility information. The consent must identify the information that will be shared and how the information will be used. Additionally, the consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free and reduced price meal or free milk application. There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free and reduced price meals or free milk and that the individuals or programs receiving the information will not share the information with any other entity or program. Parents/guardians must also be permitted to limit the consent to only these programs with which they wish to share information.

(10) *Are agreements required before disclosing program eligibility information?* Agreements between the State agency or school food authority (determining agency) and the individual or program receiving the information are not required. However, agreements are recommended. Before disclosing any

information, the determining agency should enter into a written agreement with the party requesting the information. An agreement is not necessary for disclosures to Federal, State or local agencies evaluating or reviewing program operations or for disclosures to the Comptroller General. The agreement should:

- (i) Identify the programs or persons receiving the information;
- (ii) Describe the information to be disclosed and how the information will be used;
- (iii) Describe how the information will be protected from unauthorized uses and disclosures and include the penalties for using the information for unauthorized purposes; and
- (iv) Be signed by both the determining agency and the receiving party.

(11) *What are the penalties for unauthorized disclosure or misuse of information?* Any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or the regulations in this part, any information obtained under this paragraph (f) will be fined up to \$1,000 or imprisoned for up to 1 year, or both.

Dated: July 11, 2000.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 00-18631 Filed 7-24-00; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 900]

RIN 1512-AA07

Fair Play Viticultural Area (2000R-170P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury
ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area to be known as "Fair Play," located in southern El Dorado County, California, entirely within the existing "El Dorado" and "Sierra Foothills" viticultural areas. This proposal is the result of a petition filed by Brian Fitzpatrick, President of Fair Play Winery Association. Mr. Fitzpatrick believes that "Fair Play" is a widely known name for the petitioned

area, that the area is well defined, and that the area is distinguished from other areas by its soil, elevation, climate, terrain, and topography.

DATES: Written comments must be received by September 25, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221, (Attention: Notice No. 900). See "Public Participation" section of this notice if you want to comment by facsimile or e-mail.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-9347).

SUPPLEMENTARY INFORMATION:

1. Background on Viticultural Areas

What is ATF's Authority to Establish a Viticultural Area?

ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) on August 23, 1978. This decision revised the regulations in 27 CFR part 4, Labeling and Advertising of Wine, to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added 27 CFR part 9, American Viticultural Areas, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

What is the Definition of an American Viticultural Area?

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What is Required to Establish a Viticultural Area?

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical features (climate, soil,