

## § 240.9

times the value per lunch elected by the school food authority in accordance with § 240.5 of this part. For the period November 11, 1981, through the close of the month in which this part is published in the FEDERAL REGISTER, a retroactive payment shall be made, where applicable, to the school food authority of a commodity school based on the number of lunches served during that period which meet the nutritional requirements specified in § 210.10 of this chapter.

### § 240.9 Use of funds.

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

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

(c) Funds provided under this part shall be subject to 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415.

[47 FR 15982, Apr. 13, 1982, as amended at 81 FR 66494, Sept. 28, 2016]

### § 240.10 Unobligated funds.

State agencies shall release to FNS any funds paid to them under this part which are unobligated at the end of each fiscal year. Release of funds by any State agency shall be made as soon as practicable, but in any event, not

## 7 CFR Ch. II (1-1-23 Edition)

later than 30 days following demand by FNS. Release of funds shall be reflected by a related adjustment in the State agency's Letter of Credit where appropriate or payment by State check where the funds have been paid by United States Treasury Department check.

### § 240.11 Records and reports.

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

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

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

### Sec.

245.1 General purpose and scope.

245.2 Definitions.

245.3 Eligibility standards and criteria.

245.4 Exceptions for Puerto Rico and the Virgin Islands.

245.5 Public announcement of the eligibility criteria.

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

245.6a Verification requirements.

245.7 Hearing procedure for families and local educational agencies.

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

245.9 Special assistance certification and reimbursement alternatives.

245.10 Action by local educational agencies.

245.11 Second review of applications.

245.12 Action by State agencies and FNSROs.

245.13 State agencies and direct certification requirements.

245.14 Fraud penalties.

## Food and Nutrition Service, USDA

## § 245.2

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

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

### § 245.1 General purpose and scope.

(a) This part established the responsibilities of State agencies, Food and Nutrition Service Regional Offices, school food authorities or local educational agencies, as defined in § 245.2, as applicable in providing free and reduced price meals and free milk in the National School Lunch Program (7 CFR part 210), the School Breakfast Program (7 CFR part 220), the Special Milk Program for Children (7 CFR part 215), and commodity schools. Section 9 of the National School Lunch Act, as amended, and sections 3 and 4 of the Child Nutrition Act of 1966, as amended, require schools participating in any of the programs and commodity schools to make available, as applicable, free and reduced price lunches, breakfasts, and at the option of the School Food Authority for schools participating only in the Special Milk Program free milk to eligible children.

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

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

[Amdt. 6, 39 FR 30337, Aug. 22, 1974, as amended by Amdt. 10, 41 FR 28783, July 13, 1976; 47 FR 31852, July 23, 1982; 72 FR 63792, Nov. 13, 2007]

### § 245.2 Definitions.

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

*Categorically eligible* means considered income eligible for free meals or free milk, as applicable, based on documentation that a child is a member of a *Family*, as defined in this section, and one or more children in that family are

receiving assistance under *SNAP*, *FDPIR* or the *TANF* program, as defined in this section. A *Foster child*, *Homeless child*, a *Migrant child*, a *Head Start child* and a *Runaway child*, as defined in this section, are also categorically eligible. Categorical eligibility and automatic eligibility may be used synonymously.

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

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

*Direct certification* means determining a child is eligible for free meals or free milk, as applicable, based on documentation obtained directly from the appropriate State or local agency or individuals authorized to certify that the child is a member of a household receiving assistance under *SNAP*, as defined in this section; is a member of a household receiving assistance under *FDPIR* or under the *TANF* program, as defined in this section; a *Foster child*, *Homeless child*, a *Migrant child*, a *Head Start child* and a *Runaway child*, as defined in this section.

*Disclosure* means reveal or use individual children's program eligibility information obtained through the free and reduced price meal or free milk eligibility process for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche, electronic communication or any other means.

*Documentation* means:

## § 245.2

## 7 CFR Ch. II (1–1–23 Edition)

(1) The completion of a free and reduced price school meal or free milk application which includes:

(i) For households applying on the basis of income and household size, names of all household members; income received by each household member, identified by source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security and other cash income); the signature of an adult household member; and the last four digits of the social security number of the adult household member who signs the application or an indication that the adult does not possess a social security number; or

(ii) For a child who is receiving assistance under *SNAP*, *FDPIR* or *TANF*, as defined in this section, the child's name and appropriate *SNAP* or *TANF* case number or *FDPIR* case number or other *FDPIR* identifier and signature of an adult household member.

(2) In lieu of completion of the free and reduced price meal application:

(i) Information obtained from the State or local agency responsible for administering *SNAP*, *FDPIR* or *TANF*, as defined in this section. Documentation for these programs includes the name of the child; a statement certifying that the child is a member of a household receiving assistance under *SNAP*, *FDPIR* or *TANF*, as defined in this section; information in sufficient detail to match the child attending school in the local educational agency with the name of a child who is a member of one of the applicable programs as defined in this section; the signature of the official from the applicable program who is authorized to provide such documentation on behalf of that program and the date that the official signed the certification statement;

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

(iii) Information from the local educational agency, such as enrollment information or information from applica-

tions submitted for free or reduced price meals, or from *SNAP*, *FDPIR* or *TANF* program officials that indicate there are children in a *Family*, as defined in this section, who were not documented as receiving assistance under *SNAP*, *FDPIR* or *TANF*, in order to extend categorical eligibility to such children as found in §245.6(b)(7). Documentation for these purposes is the information discussed in paragraph (2)(i) of this definition, plus a written statement by a local educational agency official briefly explaining how the presence of additional children in the family was determined.

(iv) Information obtained from an official responsible for determining if a child is a *Foster child*, a *Homeless child*, a *Migrant child*, a *Head Start child*, or a *Runaway child*, as defined in the section. Documentation for these children includes the name of the child; a statement certifying that the child has been determined eligible for that program or is enrolled in the Head Start Program; information in sufficient detail to match the child attending school in the local educational agency with the name of a child who has been determined eligible for that program or is enrolled in an eligible Head Start Program; the signature of the official from the program who is authorized to provide such documentation on behalf of that program and the date that the official signed the certification statement. Documentation may also be a list of children, a computer match, or a court document that includes this information.

(v) When a signature is impracticable to obtain, such as in a computer match, the local educational agency shall have a method to ensure that a responsible official can attest to the accuracy of the information provided.

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

*FDPIR* means the food distribution program for households on Indian reservations operated under part 253 of this title.

*FNS* means the Food and Nutrition Service, United States Department of Agriculture.

## Food and Nutrition Service, USDA

## § 245.2

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

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

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

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

*Head Start child* means a child enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 *et seq.*)

*Homeless child* means a child identified as lacking a fixed, regular and adequate nighttime residence, as specified under section 725(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)) by the local educational agency liaison, director of a homeless shelter or other individual identified by FNS.

*Household* means "family" as defined in this section.

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

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

*Local educational agency* means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for,

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

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

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

*Migrant child* means a child identified as meeting the definition of migrant in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399) by the State or local Migrant Education Program coordinator or the local educational liaison, or other individual identified by FNS.

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

## § 245.3

## 7 CFR Ch. II (1–1–23 Edition)

Administration and consistent with State and local standards for such milk.

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

*Operating day* means a day that reimbursable meals are offered to eligible students under the National School Lunch Program or School Breakfast Program.

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

*Runaway child* means a child identified as a runaway receiving assistance under a program under the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*) by the local educational liaison, or other individual in accordance with guidance issued by FNS.

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

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

*SNAP* means the Supplemental Nutrition Assistance Program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*) and operated under parts 271 and 283 of this chapter.

*SNAP household* means any individual or group of individuals currently certified to receive assistance as a household from *SNAP*.

*Special Assistance Certification and Reimbursement Alternatives* means the three optional alternatives for free and reduced price meal application and claiming procedures in the National School Lunch Program and School Breakfast Program which are available to those School Food Authorities with schools in which at least 80 percent of the enrolled children are eligible for free or reduced price meals, or schools which are currently, or who will be serving all children free meals.

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

*TANF* means the State funded program under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995. This program is commonly referred to as Temporary Assistance for Needy Families, although States may refer to the program by another name.

*Verification* means confirmation of eligibility for free or reduced price benefits under the National School Lunch Program or School Breakfast Program. Verification shall include confirmation of income eligibility and, at State or local discretion, may also include confirmation of any other information required in the application which is defined as *Documentation* in § 245.2. Such verification may be accomplished by examining information provided by the household such as wage stubs, or by other means as specified in § 245.6a(a)(7). If a SNAP or TANF case number or a FDPIR case number or other identifier is provided for a child, verification for such child shall only include confirmation that the child is a member of a household receiving SNAP, TANF or FDPIR benefits. Verification may also be completed through direct contact with one or more of the public agencies as specified in § 245.6a(g).

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

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 245.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### § 245.3 Eligibility standards and criteria.

(a) Each State agency, or FNSRO where applicable, shall by July 1 of each year announce family-size income standards to be used by local educational agencies, as defined in § 245.2, under the jurisdiction of such State agency, or FNSRO where applicable, in

## Food and Nutrition Service, USDA

## § 245.4

making eligibility determinations for free or reduced price meals and for free milk. Such family size income standards for free and reduced price meals and for free milk shall be in accordance with Income Eligibility Guidelines published by the Department by notice in the FEDERAL REGISTER.

(b) Each participating local educational agency and all participating schools under its jurisdiction must adhere to the eligibility criteria specified in this part. Local educational agencies must include these eligibility criteria in their policy statement as required under § 245.10 and it must be publicly announced in accordance with the provisions of § 245.5. Additionally, each State agency, or FNSRO where applicable, must require that local educational agencies accept as income eligible for free meals and free milk, children who are categorically eligible for those benefits based on documentation of eligibility, as specified in § 245.6 (b).

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

elected to provide free milk, or is a commodity-only school.

(Sec. 8, Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1758); sec. 5, Pub. L. 95-627, 92 Stat. 3619 (42 U.S.C. 1772); 42 U.S.C. 1785, 1766, 1772, 1773(e), sec. 203, Pub. L. 96-499, 94 Stat. 2599; secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1772, 1784, 1760; sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[Amdt. 8, 40 FR 57207, Dec. 8, 1975; 40 FR 58281, Dec. 16, 1975, as amended by Amdt. 10, 41 FR 28783, July 13, 1976; Amdt. 13, 44 FR 33049, June 8, 1979; 47 FR 31852, July 23, 1982; 72 FR 63793, Nov. 13, 2007; 76 FR 22800, Apr. 25, 2011]

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

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

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

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

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

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

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

(f) Until the results of the triennial statistical survey are available, the factor for fund withdrawal will be

## § 245.5

## 7 CFR Ch. II (1–1–23 Edition)

based on the most recently established percentages. The Department shall make retroactive adjustments to the States' Letter of Credit, if appropriate, for the year of the survey;

(g) If any school in these States wishes to charge a student for meals, the State agency, School Food Authority and school shall comply with all the applicable provisions of this part and parts 210, 215 and 220 of this chapter.

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

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

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

(a) After the State agency, or FNSRO where applicable, notifies the local educational agency (as defined in § 245.2) that its criteria for determining the eligibility of children for free and reduced price meals and for free milk have been approved, the local educational agency (as defined in § 245.2) shall publicly announce such criteria: *Provided however*, that no such public announcement shall be required for boarding schools, residential child care institutions (see § 210.2 of this chapter, definition of *Schools*), or a school which includes food service fees in its tuition, where all attending children are provided the same meals or milk. Such announcements shall be made at the beginning of each school year or, if notice of approval is given thereafter, within 10 days after the notice is received. The public announcement of such criteria, as a minimum, shall include the following:

(1) Except as provided in § 245.6(b), a letter or notice and application distributed on or about the beginning of each school year, to the parents of all children in attendance at school. The letter or notice shall contain the following information:

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

participating in the free milk option, the eligibility criteria for *free* milk benefits;

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

(iii) An explanation that an application for free or reduced price benefits cannot be approved unless it contains complete information as described in paragraph (1)(i) of the definition of *Documentation* in § 245.2;

(iv) An explanation that households with children who are members of currently certified SNAP, FDPIR or TANF households may submit applications for these children with the abbreviated information described in paragraph (2)(ii) of the definition of *Documentation* in § 245.2;

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

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

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

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

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

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

(xi) A statement to the effect that the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) participants may be eligible for free or reduced price meals.

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

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

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

[Amdt. 8, 40 FR 57207, Dec. 8, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 245.5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

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

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

(1) *Household applications.* The State agency or local educational agency must provide a form that permits a household to apply for all children in that household who attend schools in the same local educational agency. The local educational agency must provide newly enrolled students with an application and determine eligibility promptly. The local educational agency cannot require the household to submit an application for each child attending its schools. The application shall be clear and simple in design and the information requested therein shall

be limited to that required to demonstrate that the household does, or does not, meet the eligibility criteria for free or reduced price meals, respectively, or for free milk, provided by the local educational agency.

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

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

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

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

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

(ii) The source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income). Other cash income includes cash amounts received or withdrawn from any source, including savings, investments, trust accounts, and



other resources which are available to pay for a child's meals or milk.

(6) *Household members and social security numbers.* The application must require applicants to provide the names of all household members. In addition, the last four digits of the social security number of the adult household member who signs the application must be provided. If the adult member signing the application does not possess a social security number, the household must so indicate. However, if application is being made for a child(ren) who is a member of a household receiving assistance under the SNAP, or is in a FDPIR or TANF household, the application shall enable the household to provide the appropriate SNAP or TANF case number or FDPIR case number or other FDPIR identifier in lieu of names of all household members, household income information and social security number.

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

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

(A) "The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free or reduced-price meals. You must include the last four digits of the social security number of the adult household member who signs the application. The last four digits of the social security number are not required when you list a Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations

(FDPIR) case number or other FDPIR identifier for your child or when you indicate that the adult household member signing the application does not have a social security number. We will use your information to determine if your child is eligible for free or reduced-price meals, and for administration and enforcement of the lunch and breakfast programs. We MAY share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs, auditors for program reviews, and law enforcement officials to help them look into violations of program rules."

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

(ii) When either the State agency or the local educational agency plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in paragraph (h) of this section, must be added to this statement. State agencies and local educational agencies are responsible for drafting the appropriate statement.

(9) *Attesting to information on the application.* The application must also include a statement, immediately above the space for signature, that the person signing the application certifies that all information furnished in the application is true and correct, that the application is being made in connection with the receipt of Federal funds, that school officials may verify the information on the application, and that deliberate misrepresentation of the information may subject the applicant to prosecution under applicable State and Federal criminal statutes. Applicants must attest to changes in information as specified in this paragraph (b), if changes are voluntarily reported in writing during the eligibility period.

(b) *Direct certification.* In lieu of requiring a household to complete the free and reduced price meal or free milk application, as specified in paragraph (a) of this section, the local educational agency must certify children

as eligible for free meals or free milk in accordance with paragraph (b)(1)(i) of this section or may certify children as eligible for free meals or free milk in accordance with paragraph (b)(2) of this section. If a household also submits an application for directly certified children, the direct certification eligibility determination will take precedence.

(1) *Mandatory direct certification of children in SNAP households.* (i) All local educational agencies conducting eligibility determinations must directly certify children who are members of a household receiving assistance under *SNAP*, as defined in §245.2, in School Year 2008–2009, which begins on July 1, 2008, and each subsequent school year.

(ii) Schools participating only in the Special Milk Program authorized under part 215 of this chapter may directly certify children for that program but are not required to conduct direct certification with *SNAP*. In addition, residential child care institutions, as defined in paragraph (c) of the definition of *School* in §210.2 of this chapter, that do not have non-residential children are also not required to conduct direct certification with *SNAP*.

(iii) Beginning in School Year 2012–2013, direct certification shall be conducted using a data matching technique only and letters to household for direct certification may be used only as an additional means to notify households of children's eligibility based on receipt of *SNAP* benefits. The last period that letters to households may be used as the primary method for direct certification is School Year 2011–12.

(iv) Each State agency must enter into an agreement with the State agency conducting eligibility determinations for *SNAP*. The agreement must specify the procedures that will be used to facilitate the direct certification of children who are members of a household receiving assistance under *SNAP*, as defined in §245.2. The agreement must address procedures to comply with the requirements of paragraphs (b)(3) through (b)(9) of this section. Direct certification must allow for notifying parents that their children have been determined eligible for free meals

or free milk, as applicable, and that no further application is required. Such agreements must address how phase-out of non-electronic matches as the primary method for conducting direct certification for *SNAP* will be completed by School Year 2012–2013. The agreement shall be maintained by the State agency.

(v) Local educational agencies and schools currently operating Provision 2 or Provision 3 in non-base years, or the community eligibility provision, as permitted under §245.9, are required to conduct a data match between Supplemental Nutrition Assistance Program records and student enrollment records at least once annually. State agencies may conduct data matching on behalf of LEAs and exempt LEAs from this requirement.

(2) *Children who may be directly certified.* The local educational agency may directly certify children for free meals or free milk based on documentation received from the appropriate State or local agency that administers *FDPIR* or *TANF*, as defined in §245.2, when that agency indicates that the children are members of a household receiving assistance under one of these programs. In addition, the local educational agency may directly certify children for free meals or free milk based on documentation from the appropriate State or local agency or other appropriate individual, as specified by FNS, that the child is a *Foster child*, a *Homeless child*, a *Migrant*, a *Runaway child*, or a *Head Start child*, as defined in §245.2.

(3) *Frequency of direct certification contacts with SNAP.* (i) Until School Year 2011–2012, local educational agencies must conduct direct certification activities with *SNAP* at least at the beginning of the school year.

(ii) (A) Beginning in School Year 2011–2012, at a minimum, all local educational agencies must conduct direct certification as follows:

(1) At or around the beginning of the school year;

(2) Three months after the initial effort; and

(3) Six months after the initial effort.

(B) The information used shall be the most recent available.

(iii) The names of all newly enrolled children and all children not certified for free meals shall be submitted for the direct certification required in paragraph (b)(3)(ii)(B) and paragraph (b)(3)(ii)(C) of this section. Newly enrolled children must be provided with application materials in order to alleviate a delay in receipt of free meals or free milk if direct certification for these children cannot be completed promptly upon enrollment.

(iv) State agencies are encouraged to conduct direct certification more frequently to obtain information about newly enrolled children or children who may be newly certified for that program's benefits.

(4) *Frequency of direct certification with other programs.* Local educational agencies opting to conduct direct certification activities with FDPIR or TANF should conduct such activities at or around the beginning of the school year. Obtaining information about foster, homeless, migrant, or runaway children or Head Start enrollees should be done, at a minimum, at or around the beginning of the school year and when newly enrolled children or children newly eligible for those programs are being certified.

(5) *Direct certification documentation.* (i) The required documentation for direct certification is provided in paragraph (2) of the definition of *Documentation* in § 245.2.

(ii) (A) Beginning in School Year 2012–2013, direct certification with SNAP shall be conducted using a data matching technique only. Letters to households for direct certification may be used only as an additional means to notify households of children's eligibility based on receipt of SNAP benefits. The last period that letters to households may be used as the primary method for direct certification is School Year 2011–2012. While such notices cannot be the primary method used by a state to document receipt of SNAP, the local educational agency shall accept such a letter if presented by a household.

(B) Letters or other documents may be used as the primary method for direct certification to document receipt of FDPIR or TANF benefits.

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

(6) *Officials who can provide documentation for direct certification.* (i) The local educational agency must accept documentation from officials of the State or local agency that administers SNAP, certifying that a child is a member of a household receiving assistance under SNAP as defined in § 245.2, or officials of the State or local agency that administers FDPIR or TANF, as defined in § 245.2, certifying that a child is a member of a household receiving assistance under one of those programs.

(ii) For a *Foster child*, as defined in § 245.2, an official document indicating the status of the child as a foster child from an appropriate State or local agency or a court where the foster child received placement may provide appropriate documentation. In the case of a child who is a *Homeless child*, as defined in § 245.2, the director of a homeless shelter or the local educational liaison for homeless children and youth may provide the appropriate documentation. The Migrant Education Program coordinator or the local educational liaison, as applicable, may provide the supporting documentation for a *Migrant child*, as defined in § 245.2. For a *Head Start child*, as defined in § 245.2, an official from that program may supply the documentation indicating enrollment in the Head Start program. Once the appropriate official has provided the direct certification documentation to the local educational agency, the child must have free benefits made available as soon as possible but no later than three operating days after the date the local educational agency receives the direct certification documentation.

(7) *Extension of eligibility to all children in a family.* If any child is identified as a member of a household receiving assistance under SNAP, FDPIR, or

## Food and Nutrition Service, USDA

## § 245.6

TANF, all children in the *Family*, as defined in §245.2, shall be categorically eligible for free meals or free milk. This applies to children identified through direct certification or through a free and reduced price application.

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

(9) *Confidential nature of direct certification information.* Information about children or their households obtained through the direct certification process must be kept confidential and is subject to the limitations on disclosure of information in section 9 of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1758. Therefore, information that a household is receiving benefits from SNAP, FDIPIR or TANF or that a child is participating in another program which makes children categorically eligible for free school meals or free milk must be used solely for the purposes of direct certification for determining children's eligibility for free school meals or free milk and as otherwise permitted under §245.6(f).

(10) *Notification to families.* For children who are directly certified, local educational agencies are not required to provide application materials and notice to parents informing them of the availability of free and reduced price meal benefits, as specified in §245.5(a), when that information is distributed by mail, individualized student packets, or other method which prevents overt identification of children eligible for direct certification.

(c) *Determination of eligibility—(1) Duration of eligibility.* Except as otherwise specified in paragraph (c)(3) of this section, eligibility for free or reduced price meals, as determined through an approved application or by direct certification, must remain in effect for the entire school year and for up to 30 operating days into the subsequent school year. The local educational agency must determine household eli-

gibility for free or reduced price meals either through direct certification or the application process at or about the beginning of the school year. The local educational agency must determine eligibility for free or reduced price meals when a household submits an application or, if feasible, through direct certification, at any time during the school year.

(2) *Use of prior year's eligibility status.* Prior to the processing of applications or the completion of direct certification procedures for the current school year, children from households with approved applications or documentation of direct certification on file from the preceding year, shall be offered reimbursable free and reduced price meals or free milk, as appropriate. The local educational agency must extend eligibility to newly enrolled children when other children in their household (as defined in §245.2) were approved for benefits the previous year. However, applications and documentation of direct certification from the preceding year shall be used only to determine eligibility for the first 30 operating days following the first operating day at the beginning of the school year, or until a new eligibility determination is made in the current school year, whichever comes first. At the State agency's discretion, students who, in the preceding school year, attended a school operating a special assistance certification and reimbursement alternative (as permitted in §245.9)) may be offered free reimbursable meals for up to 30 operating days or until a new eligibility determination is made in the current school year, whichever comes first.

(3) *Exceptions for year-long duration of eligibility—(i) Voluntary reporting of changes.* Households are not required to report changes in circumstances during the school year, but a household may voluntarily contact the local educational agency to report any changes. If the household voluntarily reports a change in income or in program participation that would result in loss of categorical eligibility, the local educational agency may only reduce benefits if the household requests the reduction in writing, for example, by submitting a new application.

## § 245.6

## 7 CFR Ch. II (1–1–23 Edition)

(ii) Households must attest to changes in information as specified in § 245.6(a)(9). In addition, benefits cannot be reduced by information received through other sources without the written consent of the household, except for information received through verification.

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

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

(5) *Categorical eligibility*—(i) *SNAP, FDPIR, TANF* When a household submits an application containing the required SNAP, FDPIR or TANF documentation, as defined under *Documentation* in § 245.2, all children in that household shall be categorically eligible for free meals or free milk. Additionally, when the local educational agency obtains confirmation of eligibility for these programs through direct certification, all children who are identified as members of a *Family*, as defined in § 245.2, shall be categorically eligible for free meals or milk.

(ii) *Foster, homeless, migrant, and runaway children and Head Start enrollees.* Upon receipt of *Documentation*, as defined in paragraph (2)(ii) and (2)(iv) of the definition in § 245.2, the local educational agency must approve such children for free benefits without further application.

(6) *Notice of approval*—(i) *Income applications.* The local educational agency must notify the household of the children's eligibility and provide the eligible children the benefits to which they are entitled within 10 operating days of

receiving the application from the household.

(ii) *Direct Certification.* Households approved for benefits based on information provided by the appropriate State or local agency responsible for the administration of the SNAP, FDPIR or TANF must be notified, in writing, that their children are eligible for free meals or free milk, that no application for free and reduced price school meals or free milk is required. The notice of eligibility must also inform the household that the parent or guardian must notify the local educational agency if they do not want their children to receive free benefits. However, when the parent or guardian transmits a notice of eligibility provided by the SNAP, FDPIR or TANF office, the local educational agency is not required to provide a separate notice of eligibility. The local educational agency must notify, in writing, households with children who are approved on the basis of documentation that they are *Categorically eligible*, as defined in § 245.2, that their children are eligible for free meals or free milk, and that no application is required.

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

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

(i) The reason for the denial of benefits, e.g. income in excess of allowable limits or incomplete application;

(ii) Notification of the right to appeal;

## Food and Nutrition Service, USDA

## § 245.6

(iii) Instructions on how to appeal; and

(iv) A statement reminding parents that they may reapply for free or reduced price benefits at any time during the school year.

(8) *Appeals of denied benefits.* A family that wishes to appeal an application that was denied may do so in accordance with the procedures established by the local educational agency as required by § 245.7. However, prior to initiating the hearing procedure, the family may request a conference to provide the opportunity for the family and local educational agency officials to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request for a conference shall not in any way prejudice or diminish the right to a fair hearing. The local educational authority shall promptly schedule a fair hearing, if requested.

(d) *Households that fail to apply.* After the letter to parents and the applications have been disseminated, the local educational agency may determine, based on information available to it, that a child for whom an application has not been submitted meets the local educational agency's eligibility criteria for free and reduced price meals or for free milk. In such a situation, the local educational agency shall complete and file an application for such child setting forth the basis of determining the child's eligibility. When a local educational agency has obtained a determination of individual family income and family-size data from other sources, it need not require the submission of an application for any child from a family whose income would qualify for free or reduced price meals or for free milk under the local educational agency's established criteria. In such event, the School Food Authority shall notify the family that its children are eligible for free or reduced price meals or for free milk. Nothing in this paragraph shall be deemed to provide authority for the local educational agency to make eligibility determinations or certifications by categories or groups of children.

(e) *Recordkeeping.* The local educational agency must maintain docu-

mentation substantiating eligibility determinations on file for 3 years after the date of the fiscal year to which they pertain, except that if audit findings have not been resolved, the documentation must be maintained as long as required for resolution of the issues raised by the audit.

(f) *Disclosure of children's free and reduced price meal or free milk eligibility information to education and certain other programs and individuals without parental consent.* The State agency or local educational agency, as appropriate, may disclose aggregate information about children eligible for free and reduced price meals or free milk to any party without parental notification and consent when children cannot be identified through release of the aggregate data or by means of deduction. Additionally, the State agency or local educational agency also may disclose information that identifies children eligible for free and reduced price meals or free milk to persons directly connected with the administration or enforcement of the programs and the individuals specified in this paragraph (f) without parent/guardian consent. The State agency or local educational agency that makes the free and reduced price meal or free milk eligibility determination is responsible for deciding whether to disclose children's free and reduced price meal or free milk eligibility information.

(1) *Persons authorized to receive eligibility information.* Only persons directly connected with the administration or enforcement of a program or activity listed in paragraphs (f)(2) or (f)(3) of this section may have access to children's eligibility information, without parental consent. Persons considered directly connected with administration or enforcement of a program or activity listed in paragraphs (f)(2) or (f)(3) of this section are Federal, State, or local program operators responsible for the ongoing operation of the program or activity or responsible for program compliance. Program operators may include persons responsible for carrying out program requirements and monitoring, reviewing, auditing, or investigating the program. Program operators may include contractors, to the extent those persons have a need to

know the information for program administration or enforcement. Contractors may include evaluators, auditors, and others with whom Federal or State agencies and program operators contract with to assist in the administration or enforcement of their program in their behalf.

(2) *Disclosure of children's names and eligibility status only.* The State agency or local educational agency, as appropriate, may disclose, without parental consent, children's names and eligibility status (whether they are eligible for free or reduced price meals or free milk) to persons directly connected with the administration or enforcement of:

- (i) A Federal education program;
- (ii) A State health program or State education program administered by the State or local education agency;
- (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); or
- (iv) A third party contractor assisting in verification of eligibility efforts by contacting households who fail to respond to requests for verification of their eligibility.

(3) *Disclosure of all eligibility information in addition to eligibility status.* In addition to children's names and eligibility status, the State agency or local educational agency, as appropriate, may disclose, without parental consent, all eligibility information obtained through the free and reduced price meals or free milk eligibility process (including all information on the application or obtained through direct certification) to:

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

(4) *Use of free and reduced price meal or free milk eligibility information by other programs other than Medicaid or the State Children's Health Insurance Program (SCHIP).* State agencies and local educational agencies may use free and reduced price meal or free milk eligibility information for administering or enforcing the National School Lunch, Special Milk or School Breakfast Programs (Parts 210, 215 and 220, respectively, of this chapter). Additionally, any other Federal, State, or local agency charged with administering or enforcing these programs may use the information for that purpose. Individuals and programs to which children's free and reduced price meal eligibility information has been disclosed under this section may use the information only in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(g) *Disclosure of children's eligibility information to Medicaid and/or SCHIP, unless parents decline.* Children's free or reduced price meal or free milk eligibility information only may be disclosed to Medicaid or SCHIP when both the State agency and the local educational agency so elect, the parent/guardian does not decline to have their eligibility information disclosed and the other provisions described in paragraph (i) of this section are met. Provided that both the State agency and local educational agency opt to allow the disclosure of eligibility information to Medicaid and/or SCHIP, the State agency or local educational agency, as appropriate, may disclose children's names, eligibility status

## Food and Nutrition Service, USDA

## § 245.6

(whether they are eligible for free or reduced price meals or free milk), and any other eligibility information obtained through the free and reduced price meal or free milk application or obtained through direct certification to persons directly connected with the administration of Medicaid or SCHIP. Persons directly connected to the administration of Medicaid and SCHIP are State employees and persons authorized under Federal and State Medicaid and SCHIP requirements to carry out initial processing of Medicaid or SCHIP applications or to make eligibility determinations for Medicaid or SCHIP.

(1) The State agency must ensure that:

(i) The child care institution and health insurance program officials have a written agreement that requires the health insurance program agency to use the eligibility information to seek to enroll children in Medicaid and SCHIP; and

(ii) Parents/guardians are notified that their eligibility information may be disclosed to Medicaid or SCHIP and given an opportunity to decline to have their children's eligibility information disclosed, prior to any disclosure.

(2) *Use of children's free and reduced price meal eligibility information by Medicaid/SCHIP.* Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal or free milk eligibility information may use the information to seek to enroll children in Medicaid or SCHIP. The Medicaid and SCHIP enrollment process may include targeting and identifying children from low-income households who are potentially eligible for Medicaid or SCHIP for the purpose of seeking to enroll them in Medicaid or SCHIP. No further disclosure of the information may be made. Medicaid and SCHIP agencies and health insurance program operators also may verify children's eligibility in a program under the Child Nutrition Act of 1966 or the Richard B. Russell National School Lunch Act.

(h) *Notifying households of potential uses and disclosures of children's eligibility information.* Households must be informed that the information they provide on the free and reduced price

meal or free milk application will be used to determine eligibility for free and reduced price meals or free milk and that eligibility information may be disclosed to other programs.

(1) For disclosures to programs, other than Medicaid or SCHIP, that are permitted access to children's eligibility information, without parent/guardian consent, the State agency or local educational agency, as appropriate, must notify parents/guardians at the time of application that their children's free and reduced price meal or free milk eligibility information may be disclosed. The State agency or local educational agency, as appropriate, must add substantially the following statement to the statement required under paragraph (a)(8)(i) of this section, "We may share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs; auditors for program reviews; and law enforcement officials to help them look into violations of program rules." For children determined eligible through direct certification, the notice of potential disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals or free milk through direct certification.

(2) For disclosure to Medicaid or SCHIP, the State agency or local educational agency, as appropriate, must notify parents/guardians that their children's free and reduced price meal or free milk eligibility information will be disclosed to Medicaid and/or SCHIP unless the parent/guardian elects not to have their information disclosed. Additionally, the State agency or local educational agency, as appropriate, must give parents/guardians an opportunity to elect not to have their information disclosed to Medicaid or SCHIP. Only the parent or guardian who is a member of the household or family for purposes of the free and reduced price meal or free milk application may decline the disclosure of eligibility information to Medicaid or SCHIP. The notification must inform parents/guardians that they are not required to consent to the disclosure, that the information, if disclosed, will be used to identify children eligible for



and to seek to enroll children in a health insurance program, and that their decision will not affect their children's eligibility for free and reduced price meals or free milk. The notification may be included in the letter/notice to parents/guardians that accompanies the free and reduced price meal or free milk application, on the application itself or in a separate notice provided to parents/guardians. The notice must give parents/guardians adequate time to respond. The State agency or local educational agency, as appropriate, must add substantially the following statement to the statement required under paragraph (a)(8)(i) of this section, "We may share your information with Medicaid or the State Children's Health Insurance Program, unless you tell us not to. The information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP." For children determined eligible through direct certification, the notice of potential disclosure and opportunity to decline the disclosure may be included in the document informing parents/guardians of their children's eligibility for free meal or free milk through direct certification.

(i) *Other disclosures.* State agencies and local educational agencies that plan to use or disclose information about children eligible for free or 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. 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 free and reduced price meal eligibility information.

(1) The consent must identify the information that will be shared and how the information will be used.

(2) 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.

(3) There must be a statement informing parents and guardians that failing to sign the consent will not af-

fect the child's eligibility for free or 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.

(4) Parents/guardians must be permitted to limit the consent only to those programs with which they wish to share information.

(j) *Agreements with programs/individuals receiving children's free and reduced price meal or free milk eligibility information.* (1) An agreement with programs or individuals receiving free and reduced price meal or free milk eligibility information is recommended for programs other than Medicaid or SCHIP. The agreement or MOU should include information similar to that required for disclosures to Medicaid and SCHIP specified in paragraph (j)(2) of this section.

(2) The State agency or school food authorities, as appropriate, must have a written agreement with the State or local agency or agencies administering Medicaid or SCHIP prior to disclosing children's free and reduced price meal or free milk eligibility information. At a minimum, the agreement must:

(i) Identify the health insurance program or health agency receiving children's eligibility information;

(ii) Describe the information that will be disclosed;

(iii) Require that the Medicaid or SCHIP agency use the information obtained and specify that the information must be used to seek to enroll children in Medicaid or SCHIP;

(iv) Require that the Medicaid or SCHIP agency describe how they will use the information obtained;

(v) Describe how the information will be protected from unauthorized uses and disclosures;

(vi) Describe the penalties for unauthorized disclosure; and

(vii) Be signed by both the Medicaid or SCHIP program or agency and the State agency or child care institution, as appropriate.

(k) *Penalties for unauthorized disclosure or misuse of information.* In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch

## Food and Nutrition Service, USDA

## § 245.6a

Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.

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

[35 FR 14065, Sept. 4, 1970]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 245.6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### § 245.6a Verification requirements.

(a) *Definitions*—(1) *Eligible programs*. For the purposes of this section, the following programs qualify as programs for which a case number may be provided in lieu of income information and that may be used for direct verification purposes:

(i) *SNAP*, as defined in 245.2;

(ii) The Food Distribution Program on Indian Reservations (FDPIR) as defined in § 245.2; and

(iii) A State program funded under the program of block grants to States for temporary assistance for needy families (TANF) as defined in § 245.2.

(2) *Error prone application*. For the purposes of this section, “error prone application” means an approved household application that indicates monthly income within \$100 or annual income within \$1,200 of the applicable income eligibility limit for free or for reduced meals.

(3) *Non-response rate*. For the purposes of this section, “non-response rate” means the percentage of approved household applications for which verification information was not obtained by the local educational agency after verification was attempted. The non-response rate is reported on the FNS-742 in accordance with paragraph (h) of this section.

(4) *Official poverty line*. For the purposes of this section, “official poverty line” means that described in section 1902(1)(2)(A) of the Social Security Act (42 U.S.C. 1396a(1)(2)(A)).

(5) *Sample size*. For the purposes of this section, “sample size” means the number of approved applications that a

local educational agency is required to verify based on the number of approved applications on file as of October 1 of the current school year.

(6) *School year*. For the purposes of this section, a school year means a period of 12 calendar months beginning July 1 of any year and ending June 30 of the following year.

(7) *Sources of information*. For the purposes of this section, sources of information for verification may include written evidence, collateral contacts, and systems of records as follows:

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

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

(iii) Agency records to which the State agency or local educational agency may have access are not considered collateral contacts. Information concerning income, household size, or SNAP, FDPIR, or TANF eligibility, maintained by other government agencies to which the State agency, the local educational agency, or school can

legally gain access, may be used to confirm a household's income, size, or receipt of benefits. Information may also be obtained from individuals or agencies serving foster, homeless, migrant, or runaway children, as defined in §245.2. Agency records may be used for verification conducted after the household has been notified of its selection for verification or for the direct verification procedures in paragraph (g) of this section.

(iv) Households which dispute the validity of income information acquired through collateral contacts or a system of records shall be given the opportunity to provide other documentation.

(b) *Deadline and extensions for local educational agencies*—(1) *Deadline*. The local education agency must complete the verification efforts specified in paragraph (c) of this section not later than November 15 of each school year.

(2) *Deadline extensions*. (i) The local educational agency may request an extension of the November 15 deadline, in writing, from the State agency. The State agency may approve an extension up to December 15 of the current school year due to natural disaster, civil disorder, strike or other circumstances that prevent the local educational agency from timely completion of verification activities.

(ii) In the case of natural disaster, civil disorder or other local conditions, USDA may substitute alternatives for the verification deadline in paragraph (b)(1) of this section.

(3) *Beginning verification activities*. The local educational agency may conduct verification activity once it begins the application approval process for the current school year and has approved applications on file. However, the final required sample size must be based on the number of approved applications on file as of October 1.

(c) *Verification requirement*—(1) *General*. The local educational agency must verify eligibility of children in a sample of household applications approved for free and reduced price meal benefits for that school year.

(i) A State may, with the written approval of FNS, assume responsibility for complying with the verification requirements of this section on behalf of its local educational agencies. When

assuming such responsibility, States may qualify, if approved by FNS, to use one of the alternative sample sizes provided for in paragraph (c)(4) of this section if qualified under paragraph (d) of this section.

(ii) An application must be approved if it contains the essential documentation specified in the definition of *Documentation* in §245.2 and, if applicable, the household meets the income eligibility criteria for free or reduced price benefits. Verification efforts must not delay the approval of applications.

(2) *Exceptions from verification*. Verification is not required in residential child care institutions; in schools in which FNS has approved special cash assistance claims based on economic statistics regarding per capita income; or in schools in which all children are served with no separate charge for food service and no special cash assistance is claimed. Local educational agencies in which all schools participate in the special assistance certification and reimbursement alternatives specified in §245.9 shall meet the verification requirement only in those years in which applications are taken for all children in attendance. Verification of eligibility is not required of households if all children in the household are determined eligible based on documentation provided by the State or local agency responsible for the administration of the SNAP, FDPIR or TANF or if all children in the household are determined to be foster, homeless, migrant, or runaway, as defined in §245.2.

(3) *Standard sample size*. Unless eligible for an alternative sample size under paragraph (d) of this section, the sample size for each local educational agency shall equal the lesser of:

(i) Three (3) percent of all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; or

(ii) 3,000 error prone applications approved by the local educational agency for the school year, as of October 1 of the school year.

(iii) Local educational agencies shall not exceed the standard sample size in paragraphs (c)(3)(i) or (c)(3)(ii) of this

section, as applicable, and, unless eligible for one of the alternative sample sizes provided in paragraph (c)(4) of this section, the local educational agency shall not use a smaller sample size than those in paragraphs (c)(3)(i) or (c)(3)(ii) of this section, as applicable.

(iv) If the number of error-prone applications exceeds the required sample size, the local educational agency shall select the required sample at random, i.e., each application has an equal chance of being selected, from the total number of error-prone applications.

(4) *Alternative sample sizes.* If eligible under paragraph (d) of this section for an alternative sample size, the local educational agency may use one of the following alternative sample sizes:

(i) *Alternative One.* The sample size shall equal the lesser of:

(A) 3,000 of all applications selected at random from applications approved by the local educational agency as of October 1 of the school year; or

(B) Three (3) percent of all applications selected at random from applications approved by the local educational agency as of October 1 of the school year.

(ii) *Alternative Two.* The sample size shall equal the lesser of the sum of:

(A) 1,000 of all applications approved by the local educational agency as of October 1 of the school year, selected from error prone applications or

(B) One (1) percent of all applications approved by the local educational agency as of October 1 of the school year, selected from error prone applications PLUS

(C) The lesser of:

(1) 500 applications approved by the local educational agency as of October 1 of the school year that provide a case number in lieu of income information showing participation in an eligible program as defined in paragraph (a)(1) of this section; or

(2) One-half ( $\frac{1}{2}$ ) of one (1) percent of applications approved by the local educational agency as of October 1 of the school year that provide a case number in lieu of income information showing participation in an eligible program as defined in paragraph (a)(1) of this section.

(5) *Completing the sample size.* When there are an insufficient number of error prone applications or applications with case number to meet the sample sizes provided for in paragraphs (c)(3) or (c)(4) of this section, the local educational agency shall select, at random, additional approved applications to comply with the specified sample size requirements.

(6) *Local conditions.* In the case of natural disaster, civil disorder, strike or other local conditions as determined by FNS, FNS may substitute alternatives for the sample size and sample selection criteria in paragraphs (c)(3) and (c)(4) of this section.

(7) *Verification for cause.* In addition to the required verification sample, local educational agencies must verify any questionable application and should, on a case-by-case basis, verify any application for cause such as an application on which a household reports zero income or when the local educational agency is aware of additional income or persons in the household. Any application verified for cause is not considered part of the required sample size. If the local educational agency verifies a household's application for cause, all verification procedures in this section must be followed.

(d) *Eligibility for alternative sample sizes—*(1) *State agency oversight.* At a minimum, the State agency shall establish a procedure for local educational agencies to designate use of an alternative sample size and may set a deadline for such notification. The State agency may also establish criteria for reviewing and approving the use of an alternative sample size, including deadlines for submissions.

(2) *Lowered non-response rate.* Any local educational agency is eligible to use one of the alternative sample sizes in paragraph (c)(4) of this section for any school year when the non-response rate for the preceding school year is less than twenty percent.

(3) *Improved non-response rate.* A local educational agency with more than 20,000 children approved by application as eligible for free or reduced price meals as of October 1 of the school year is eligible to use one of the alternative sample sizes in paragraph (c)(4) of this section for any school year when the

non-response rate for the preceding school year is at least ten percent below the non-response rate for the second preceding school year.

(4) *Continuing eligibility for alternative sample sizes.* The local educational agency must annually determine if it is eligible to use one of the alternative sample sizes provided in paragraph (c)(4) of this section. If qualified, the local educational agency shall contact the State agency in accordance with procedures established by the State agency under paragraph (d)(1) of this section.

(e) *Activities prior to household notification*—(1) *Confirmation of a household's initial eligibility.* (i) Prior to conducting any other verification activity, an individual, other than the individual who made the initial eligibility determination, shall review for accuracy each approved application selected for verification to ensure that the initial determination was correct. If the initial determination was correct, the local educational agency shall verify the approved application. If the initial determination was incorrect, the local educational agency must:

(A) If the eligibility status changes from reduced price to free, make the increased benefits immediately available and notify the household of the change in benefits; the local educational agency will then verify the application;

(B) If the eligibility status changes from free to reduced price, first verify the application and then notify the household of the correct eligibility status after verification is completed and, if required, send the household a notice of adverse action in accordance with paragraph (j) of this section; or

(C) If the eligibility status changes from free or reduced price to paid, send the household a notice of adverse action in accordance with paragraph (j) of this section and do not conduct verification on this application and select a similar application (for example, another error-prone application) to replace it.

(ii) The requirements in paragraph (e)(1)(i) of this section are waived if the local educational agency is using a technology-based system that demonstrates a high level of accuracy in

processing an initial eligibility determination based on the income eligibility guidelines for the National School Lunch Program. Any local educational agency that conducts a confirmation review of all applications at the time of certification meets this requirement. The State agency may request documentation to support the accuracy of the local educational agency's system. If the State agency determines that the technology-based system is inadequate, it may require that the local educational agency conduct a confirmation review of each application selected for verification.

(2) *Replacing applications.* The local educational agency may, on a case-by-case basis, replace up to five percent of applications selected and confirmed for verification. Applications may be replaced when the local educational agency determines that the household would be unable to satisfactorily respond to the verification request. Any application removed shall be replaced with another approved application selected on the same basis (i.e., an error-prone application must be substituted for a withdrawn error-prone application).

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

(i) They are required to submit the requested information to verify eligibility for free or reduced-price meals, by the date determined by the local educational agency.

## Food and Nutrition Service, USDA

## § 245.6a

(ii) They may, instead, submit proof that the children receive SNAP, FDPIR, or TANF assistance, as explained in paragraph (f)(3) of this section.

(iii) They may, instead, request that the local educational agency contact the appropriate officials to confirm that their children are foster, homeless, migrant, or runaway, as defined in § 245.2.

(iv) Failure to cooperate with verification efforts will result in the termination of benefits.

(2) *Documentation timeframe.* Households selected and notified of their selection for verification must provide documentation of income. The documentation must indicate the source, amount and frequency of all income and can be for any point in time between the month prior to application for school meal benefits and the time the household is requested to provide income documentation.

(3) *SNAP FDPIR or TANF recipients.* On applications where households have furnished SNAP or TANF case numbers or FDPIR case numbers or other FDPIR identifiers, verification shall be accomplished by confirming with the SNAP, FDPIR, or TANF office that at least one child who is eligible because a case number was furnished, is a member of a household participating in one of the eligible programs in paragraph (a)(1) of this section. The household may also provide a copy of "Notice of Eligibility" for the SNAP, FDPIR or the TANF Program or equivalent official documentation issued by the SNAP, FDPIR or TANF office which confirms that at least one child who is eligible because a case number was provided is a member of a household receiving assistance under the SNAP, FDPIR or the TANF program. An identification card for these programs is not acceptable as verification unless it contains an expiration date. If it is not established that at least one child is a member of a household receiving assistance under the SNAP, FDPIR or the TANF program (in accordance with the timeframe in paragraph (f)(2) of this section), the procedures for adverse action specified in paragraph (j) of this section must be followed.

(4) *Household cooperation.* If a household refuses to cooperate with efforts to verify, eligibility for free or reduced price benefits shall be terminated in accordance with paragraph (j) of this section. Households which refuse to complete the verification process and which are consequently determined ineligible for such benefits shall be counted toward meeting the local educational agency's required sample of verified applications.

(5) *Telephone assistance.* The local educational agency shall provide a telephone number to households selected for verification to call free of charge to obtain information about the verification process. The telephone number must be prominently displayed on the letter to households selected for verification.

(6) *Followup attempts.* The local educational agency shall make at least one attempt to contact any household that does not respond to a verification request. The attempt may be through a telephone call, e-mail, mail or in person and must be documented by the local educational agency. Non-response to the initial request for verification includes no response and incomplete or ambiguous responses that do not permit the local educational agency to resolve the children's eligibility for free or reduced price meal and milk benefits. The local educational agency may contract with another entity to conduct followup activity in accordance with § 210.21 of this chapter, the use and disclosure of information requirements of the Richard B. Russell National School Lunch Act and this section.

(7) *Eligibility changes.* Based on the verification activities, the local educational agency shall make appropriate modifications to the eligibility determinations made initially. The local educational agency must notify the household of any change. Households must be notified of any reduction in benefits in accordance with paragraph (j) of this section. Households with reduced benefits or that are longer eligible for free or reduced price meals must be notified of their right to reapply at any time with documentation of income or participation in one of the eligible programs in paragraph (a)(1) of this section.

(g) *Direct verification.* Local educational agencies may conduct direct verification activities with the eligible programs defined in paragraph (a)(1) of this section and with the public agency that administers the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), (Medicaid), and under title XXI of the Social Security Act (42 U.S.C. 1397aa *et seq.*), the State Children's Health Insurance Program (SCHIP) as defined in § 245.2. Records from the public agency may be used to verify income and program participation. The public agency's records are subject to the timeframe in paragraph (g)(5) of this section. Direct verification must be conducted prior to contacting the household for documentation.

(1) *Names submitted.* The local educational agency must only submit the names of school children certified for free or reduced price meal benefits or free milk to the agency administering an eligible program, the Medicaid program or the SCHIP program. Names and other identifiers of adult or non-school children must not be submitted for direct verification purposes.

(2) *Eligible programs.* If information obtained through direct verification of an application for free or reduced price meal benefits indicates a child is participating in one of the eligible programs in paragraph (a)(1) of this section, no additional verification is required.

(3) *States with Medicaid Income Limits of 133%.* In States in which the income eligibility limit applied in the Medicaid program or in SCHIP is not more than 133% of the official poverty line or in States that otherwise identify households that have income that is not more than 133% of the official poverty line, records from these agencies may be used to verify eligibility. If information obtained through direct verification with these programs verifies the household's eligibility status, no additional verification is required.

(4) *States with Medicaid Income Limits between 133%–185%.* In States in which the income eligibility limit applied in the Medicaid program or in SCHIP exceeds 133% of the official poverty line, direct verification information must

include either the percentage of the official poverty line upon which the applicant's Medicaid participation is based or Medicaid income and Medicaid household size in order to determine that the applicant is either at or below 133% of the Federal poverty line, or is between 133% and 185% of the Federal poverty line. Verification for children approved for free meals is complete if Medicaid data indicates that the percentage is at or below 133% of the Federal poverty line. Verification for children approved for reduced price meals is complete if Medicaid data indicates that the percentage is at or below 185% of the Federal poverty line. If information obtained through direct verification with these programs verifies eligibility status, no additional verification is required.

(5) *Documentation timeframe.* For the purposes of direct verification, documentation must be the most recent available but such documentation must indicate eligibility for participation or income within the 180-day period ending on the date of application. In addition, local educational agencies may use documentation, which must be within the 180-day period ending on the date of application, for any one month or for all months in the period from the month prior to application through the month direct verification is conducted. The information provided only needs to indicate eligibility for participation in the program at that point in time, not that the child was certified for that program's benefits within the 180-day period.

(6) *Incomplete information.* If it is the information provided by the public agency does not verify eligibility, the local educational agency must conduct verification in accordance with paragraph (f) of this section. In addition, households must be able to dispute the validity of income information acquired through direct verification and shall be given the opportunity to provide other documentation.

(h) *Verification reporting and record-keeping requirements.* By February 1, each local educational agency must report information related to its annual statutorily required verification activity, which excludes verification conducted in accordance with paragraph

## Food and Nutrition Service, USDA

## § 245.7

(c)(7) of this section, to the State agency in accordance with guidelines provided by FNS. These required data elements will be specified by FNS. Contingent upon new funding to support this purpose, FNS will also require each local educational agency to collect and report the number of students who were terminated as a result of verification but who were reinstated as of February 15th. The first report containing this data element would be required in the school year beginning July 1, 2005 and each school year thereafter. State agencies may develop paper or electronic reporting forms to collect this data from local educational agencies, as long as all required data elements are collected from each local educational agency. Local educational agencies shall retain copies of the information reported under this section and all supporting documents for a minimum of 3 years. All verified applications must be readily retrievable on an individual school basis and include all documents submitted by the household for the purpose of confirming eligibility, reproductions of those documents, or annotations made by the determining official which indicate which documents were submitted by the household and the date of submission. All relevant correspondence between the households selected for verification and the school or local educational agency must be retained. Local educational agencies are encouraged to collect and report any or all verification data elements before the required dates.

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

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

shall be the day the notice is sent. The notice shall advise the household of:

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

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

[48 FR 12510, Mar. 25, 1983, as amended at 49 FR 26034, June 26, 1984; 52 FR 19275, May 22, 1987; 55 FR 19240, May 9, 1990; 56 FR 32950, July 17, 1991; 56 FR 33861, July 24, 1991; 64 FR 50744, Sept. 20, 1999; 64 FR 72474, Dec. 28, 1999; 66 FR 48328, Sept. 20, 2001; 68 FR 53489, Sept. 11, 2003; 72 FR 63795, Nov. 13, 2007; 73 FR 76859, Dec. 18, 2008; 76 FR 22802, Apr. 25, 2011; 78 FR 12230, Feb. 22, 2013; 78 FR 13453, Feb. 28, 2013]

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

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

(1) A family can appeal from a decision made by the local educational agency with respect to an application the family has made for free or reduced price meals or for free milk, and

(2) The local educational agency can challenge the continued eligibility of any child for a free or reduced price meal or for free milk. The hearing procedure shall provide for both the family and the local educational agency:

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

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

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

(iv) That the hearing shall be held with reasonable promptness and convenience, and that adequate notice



## § 245.8

## 7 CFR Ch. II (1–1–23 Edition)

shall be given as to the time and place of the hearing;

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

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

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

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

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

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

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

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

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

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

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

[Amdt. 6, 39 FR 30339, Aug. 22, 1974, as amended at 47 FR 746, Jan. 7, 1982; 48 FR 12511, Mar. 25, 1983; 72 FR 63796, Nov. 13, 2007]

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

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

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

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

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

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

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

[Amdt. 6, 39 FR 30339, Aug. 22, 1974, as amended at 72 FR 63796, Nov. 13, 2007]

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

(a) *Provision 1.* A Local educational agency of a school having at least 80 percent of its enrolled children determined eligible for free or reduced price meals may, at its option, authorize the school to reduce annual certification

## Food and Nutrition Service, USDA

## § 245.9

and public notification for those children eligible for *free meals* to once every two consecutive school years. This alternative shall be known as provision 1 and the following requirements shall apply:

(1) A Local educational agency of a school operating under provision 1 requirements shall publicly notify in accordance with § 245.5, parents of enrolled children who are receiving free meals once every two consecutive school years, and shall publicly notify in accordance with § 245.5, parents of all other enrolled children on an annual basis.

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

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

(b) *Provision 2.* A local educational agency may certify children for free and reduced price meals for up to 4 consecutive school years in the schools which serve meals at no charge to all enrolled children; provided that public notification and eligibility determinations are in accordance with §§ 245.5 and 245.3, respectively, during the base year as defined in paragraph (b)(6) of this section. The Provision 2 base year is the first year, and is included in the 4-year cycle. The following requirements apply:

(1) *Meals at no charge.* Participating schools must serve reimbursable meals, as determined by a point of service observation, or as otherwise approved under part 210 of this chapter, to all participating children at no charge.

(2) *Cost differential.* The local educational agency of a school participating in Provision 2 must pay, with funds from non-Federal sources, the difference between the cost of serving lunches and/or breakfasts at no charge to all participating children and Federal reimbursement.

(3) *Meal counts.* During the base year, even though meals are served to participating students at no charge, schools must take daily meal counts of

reimbursable student meals by type (free, reduced price, and paid) at the point of service, or as otherwise approved under part 210 of this chapter. During the non-base years, participating Provision 2 schools must take total daily meal counts (not by type) of reimbursable student meals at the point of service, or as otherwise approved under part 210 of this chapter. For the purpose of calculating reimbursement claims in the non-base years, local educational agencies must establish school specific monthly or annual claiming percentages, as follows:

(i) *Monthly percentages.* In any given Provision 2 school, the monthly meal counts of the actual number of meals served by type (free, reduced price, and paid) during the base year must be converted to monthly percentages for each meal type. For example, the free lunch percentage is derived by dividing the monthly total number of reimbursable free lunches served by the total number of reimbursable lunches served in the same month (free, reduced price and paid). The percentages for the reduced price and paid lunches are calculated using the same method as the above example for free lunches. These three percentages, calculated at the end of each month of the first school year, are multiplied by the corresponding monthly lunch count total of all reimbursable lunches served in the second, third and fourth consecutive school years, and applicable extensions, in order to calculate reimbursement claims for free, reduced price and paid lunches each month. The free, reduced price and paid percentages for breakfasts and, as applicable, snacks, are calculated using the same method; or

(ii) *Annual percentages.* In any given Provision 2 school, the actual number of all reimbursable meals served by type (free, reduced price, and paid) during the base year must be converted to an annual percentage for each meal type. For example, the free lunch percentage is derived by dividing the annual total number of reimbursable free lunches served by the annual total number of reimbursable lunches served for all meal types (free, reduced price

and paid). The percentages for the reduced price and paid lunches are calculated using the same method as the above example for free lunches. These three percentages, calculated at the end of the base year, are multiplied by the total monthly lunch count of all reimbursable lunches served in each month of the second, third and fourth consecutive school years, and applicable extensions, in order to calculate reimbursement claims for free, reduced price and paid lunches each month. The free, reduced price and paid percentages for breakfasts and, as applicable, snacks, are calculated using the same method for each type of meal service.

(4) *Local educational agency claims review process.* During the Provision 2 base year (not including a streamlined base year under paragraph (c)(2)(iii) of this section), local educational agencies are required to review the lunch count data for each school under its jurisdiction to ensure the accuracy of the monthly Claim for Reimbursement in accordance with § 210.8(a)(2) of this chapter. During non-base years and streamlined base years, local educational agencies must compare each Provision 2 school's total daily meal counts to the school's total enrollment, adjusted by an attendance factor. The local educational agency must promptly follow-up as specified in § 210.8(a)(4) of this chapter when the claims review suggests the likelihood of lunch count problems. When a school elects to operate Provision 2 only in the School Breakfast Program, local educational agencies must continue to comply with the claims review requirements of § 210.8(a)(2) of this chapter for the National School Lunch Program.

(5) *Verification.* Except as otherwise specified in § 245.6a(a)(5), local educational agencies are required to conduct verification in accordance with § 245.6a. When a school elects to participate under Provision 2 or for all of the meal programs in which it participates (breakfast 7 CFR part 220 and/or lunch 7 CFR part 210), the applications from that school are excluded from the local educational agency's required verification sample size and are exempt from verification during non-base years.

(6) *Base year.* For purposes of this paragraph (b), the term *base year* means the last school year for which eligibility determinations were made and meal counts by type were taken or the school year in which a school conducted a streamlined base year as authorized under paragraph (c)(2)(iii) of this section. Schools shall offer reimbursable meals to all students at no charge during the Provision 2 base year except as otherwise specified in paragraph (b)(6)(ii) of this section.

(i) *Duration of the base year.* The base year must begin at the start of the school year or as otherwise specified in paragraph (b)(6)(ii) of this section.

(ii) *Delayed implementation.* At State agency discretion, schools may delay implementation of Provision 2 for a period of time not to exceed the first claiming period of the school year in which the base year is established. Schools implementing this option may conduct standard meal counting and claiming procedures, including charging students eligible for reduced price and paid meals, during the first claiming period of the school year. Such schools must submit claims reflecting the actual number of meals served by type. In subsequent years, such schools shall convert the actual number of reimbursable meals served by type (free, reduced price and paid) during the remaining claiming periods of the base year, in which meals were served at no charge to all participating students, to an annual percentage for each type of meal. The annual claiming percentages must be applied to the total number of reimbursable meals served during the first claiming period in all non-base years of operation for that cycle and any extensions.

(c) *Extension of Provision 2.* At the end of the initial cycle, and each subsequent 4-year cycle, the State agency may allow a school to continue under Provision 2 for another 4 years using the claiming percentages calculated during the most recent base year if the local educational agency can establish, through available and approved socioeconomic data, that the income level of the school's population, as adjusted for inflation, has remained stable, declined or has had only negligible improvement since the base year.

(1) *Extension criteria.* Local educational agencies must submit to the State agency available and approved socioeconomic data to establish whether the income level of a school's population, as adjusted for inflation, remained constant with the income level of the most recent base year.

(i) *Available and approved sources of socioeconomic data.* Pre-approved sources of socioeconomic data which may be used by local educational agencies to establish the income level of the school's population are: local data collected by the city or county zoning and economic planning office; unemployment data; local SNAP certification data including direct certification; Food Distribution Program on Indian Reservations data; statistical sampling of the school's population using the application or equivalent income measurement process; and, Temporary Assistance for Needy Families data (provided that the eligibility standards were the same or more restrictive in the base year as the current year with allowance for inflation). To grant an extension using pre-approved socioeconomic data sources, State agencies must review and evaluate the socioeconomic data submitted by the local educational agency to ensure that it is reflective of the school's population, provides equivalent data for both the base year and the last year of the current cycle, and demonstrates that the income level of the school's population, as adjusted for inflation, has remained stable, declined or had only negligible improvement. If the local educational agency wants to establish the income level of the school's population using alternate sources of socioeconomic data, the use of such data must be approved by the Food and Nutrition Service. Data from alternate sources must be reflective of the school's population, be equivalent data for both the base year and the last year of the current cycle, and effectively measure whether the income level of the school's population, as adjusted for inflation, has remained stable, declined or had only negligible improvement.

(ii) *Negligible improvement.* The change in the income level of the school's population shall be considered negligible if there is a 5 percent or less improve-

ment, after adjusting for inflation, over the base year in the level of the socioeconomic indicator which is used to establish the income level of the school's population.

(2) *Extension not approved.* The State agency shall not approve an extension of Provision 2 procedures in those schools for which the available and approved socioeconomic data does not reflect the school's population, is not equivalent data for the base year and the last year of the current cycle, or shows over 5 percent improvement, after adjusting for inflation, in the income level of the school's population. Such schools shall:

(i) *Return to standard meal counting and claiming.* Return to standard meal counting and claiming procedures;

(ii) *Establish a new base year.* Establish a new Provision 2 base year by taking new free and reduced price applications, making new free and reduced price eligibility determinations, and taking point of service counts of free, reduced price and paid meals for the first year of the new cycle. For these schools, the new Provision 2 cycle will be 4 years. Schools electing to establish a Provision 2 base year shall follow procedures contained in paragraph (b) of this section;

(iii) *Establish a streamlined base year.* With prior approval by the State agency, establish a streamlined base year by providing reimbursable meals to all participating students at no charge and developing either enrollment based or participation based claiming percentages.

(A) *Enrollment based percentages.* In accordance with guidance established by the Food and Nutrition Service, establish a new Provision 2 base year by determining program eligibility on the basis of household size and income, and direct certification if applicable, for a statistically valid proportion of the school's enrollment as of October 31, or other date approved by the State agency. The statistically valid measurement of the school's enrollment must be obtained during the first year of the new cycle and meet the requirements of paragraph (m) of this section. Using the data obtained, enrollment based claiming percentages representing a proportion of the school's population

eligible for free, reduced price and paid benefits shall be developed and applied to total daily meal counts of reimbursable meals at the point of service, or as otherwise approved under part 210 of this chapter. For schools electing to participate in Provision 2, these percentages shall be used for claiming reimbursement for each year of the new cycle and any extensions; or

(B) *Participation based percentages.* In accordance with guidance established by the Food and Nutrition Service, establish a new Provision 2 base year by determining program eligibility on the basis of household size and income, and direct certification if applicable, for a statistically valid proportion of participating students established over multiple operating days. The statistically valid measurement of the school's student participation must be obtained during the first year of the new cycle and meet the requirements of paragraph (m) of this section. Using the data obtained, participation based claiming percentages representing a proportion of the school's participating students which are eligible for free, reduced price and paid benefits shall be developed and applied to total daily meal counts of reimbursable meals at the point of service or as otherwise approved under part 210 of this chapter. These percentages shall be used for claiming reimbursement for each year of the new cycle and any extensions; or

(iv) *Establish a Provision 3 base year.* Schools may convert to Provision 3 using the procedures contained in paragraphs (e)(2)(ii) or (e)(2)(iii) of this section.

(d) *Provision 3.* A local educational agency of a school which serves all enrolled children in that school reimbursable meals at no charge during any period for up to 4 consecutive school years may elect to receive Federal cash reimbursement and commodity assistance at the same level as the total Federal cash and commodity assistance received by the school during the last year that eligibility determinations for free and reduced price meals were made and meals were counted by type (free, reduced price and paid) at the point of service, or as otherwise authorized under part 210 of this chapter. Such cash reimbursement and commodity

assistance will be adjusted for each of the 4 consecutive school years pursuant to paragraph (d)(4) of this section. For purposes of this paragraph (d), the term base year means the last complete school year for which eligibility determinations were made and meal counts by type were taken or the school year in which a school conducted a streamlined base year as authorized under paragraph (e)(2)(iii) of this section. The base year must begin at the start of a school year. Reimbursable meals may be offered to all students at no charge or students eligible for reduced price and paid meal benefits may be charged for meals during a Provision 3 base, *except that* schools conducting a Provision 3 streamlined base year must provide reimbursable meals to all participating students at no charge in accordance with paragraph (e)(2)(iii) of this section. The Provision 3 base year immediately precedes, and is not included in, the 4-year cycle. This alternative shall be known as Provision 3, and the following requirements shall apply:

(1) *Meals at no charge.* Participating schools must serve reimbursable meals, as determined by a point of service observation, or as otherwise authorized under part 210 of this chapter, to all participating children at no charge during non-base years of operation or as specified in paragraph (e)(2)(iii) of this section, if applicable.

(2) *Cost differential.* The local educational agency of a school participating in Provision 3 must pay, with funds from non-Federal sources, the difference between the cost of serving lunches and/or breakfasts at no charge to all participating children and Federal reimbursement.

(3) *Meal counts.* Participating schools must take total daily meal counts of reimbursable meals served to participating children at the point of service, or as otherwise authorized under part 210 of this chapter, during the non-base years. Such meal counts must be retained at the local level in accordance with paragraph (h) of this section. State agencies may require the submission of the meal counts on the local educational agency's monthly Claim for Reimbursement or through other means. In addition, local educational

agencies must establish a system of oversight using the daily meal counts to ensure that participation has not declined significantly from the base year. If participation declines significantly, the local educational agency must provide the school with technical assistance, adjust the level of financial assistance received through the State agency or return the school to standard eligibility determination and meal counting procedures, as appropriate. In residential child care institutions, the State agency may approve implementation of Provision 3 without the requirement to obtain daily meal counts of reimbursable meals at the point of service if:

(i) The State agency determines that enrollment, participation and meal counts do not vary; and

(ii) There is an approved mechanism in place to ensure that students will receive reimbursable meals.

(4) *Annual adjustments.* The State agency or local educational agency shall make annual adjustments for enrollment and inflation to the total Federal cash and commodity assistance received by a Provision 3 school in the base year. The adjustments shall be made for increases and decreases in enrollment of children with access to the program(s). The annual adjustment for enrollment shall be based on the school's base year enrollment as of October 31 compared to the school's current year enrollment as of October 31. Another date within the base year may be used if it is approved by the State agency, and provides a more accurate reflection of the school's enrollment or accommodates the reporting system in effect in that State. If another date is used for the base year, the current year date must correspond to the base year date of comparison. State agencies may, at their discretion, make additional adjustments to a participating school's enrollment more frequently than once per school year. If more frequent enrollment is calculated, it must be applied for both upward and downward adjustments. The annual adjustment for inflation shall be effected through the application of the current year rates of reimbursement. To the extent that the number of operating days in the current school year differs

from the number of operating days in the base year, and the difference affects the number of meals, a prorata adjustment shall also be made to the base year level of assistance, as adjusted by enrollment and inflation. Upward and downward adjustments to the number of operating days shall be made. Such adjustment shall be effected by either:

(i) Multiplying the average daily meal count by type (free, reduced price and paid) by the difference in the number of operating days between the base year and the current year and adding/subtracting that number of meals from the Claim for Reimbursement, as appropriate. In developing the average daily meal count by type for the current school year, schools shall use the base year data adjusted by enrollment; or

(ii) Multiplying the dollar amount otherwise payable (i.e., the base year level of assistance, as adjusted by enrollment and inflation) by the ratio of the number of operating days in the current year to the number of operating days in the base year.

(5) *Reporting requirements.* The State agency shall submit to the Department on the monthly FNS-10, Report of School Programs Operations, the number of meals, by type (i.e., monthly meal counts by type for the base year, as adjusted); or the number of meals, by type, constructed to reflect the adjusted levels of cash assistance. State agencies may employ either method to effect payment of reimbursement for Provision 3 schools.

(6) *Local educational agency claims review process.* During the Provision 3 base year (not including a streamlined base year under paragraph (e)(2)(iii) of this section), local educational agencies are required to review the lunch count data for each school under its jurisdiction to ensure the accuracy of the monthly Claim for Reimbursement in accordance with §210.8(a)(2) of this chapter. During non-base years and streamlined base years, local educational agencies must conduct their own system of oversight or compare each Provision 3 school's total daily meal counts to the school's total enrollment, adjusted by an attendance factor. The local educational agency

must promptly follow-up as specified in §210.8(a)(4) of this chapter when the claims review suggests the likelihood of lunch count problems. When a school elects to operate Provision 3 only in the School Breakfast Program, local educational agencies must continue to comply with the claims review requirements of §210.8(a)(2) of this chapter for the National School Lunch Program.

(7) *Verification.* Except as otherwise specified in §245.6a(a)(5), local educational agencies are required to conduct verification in accordance with §245.6a. When a school elects to participate under Provision 3 for all of the meal programs in which it participates (breakfast 7 CFR part 220 and/or lunch 7 CFR part 210), the applications from that school are excluded from the local educational agency's required verification sample size and are exempt from verification during non-base years.

(e) *Extension of Provision 3.* At the end of the initial cycle, and each subsequent 4-year cycle, the State agency may allow a school to continue under Provision 3 for another 4 years without taking new free and reduced price applications and meal counts by type. State agencies may grant an extension of Provision 3 if the local educational agency can establish, through available and approved socioeconomic data, that the income level of the school's population, as adjusted for inflation, has remained stable, declined, or has had only negligible improvement since the most recent base year.

(1) *Extension criteria.* Local educational agencies must submit to the State agency available and approved socioeconomic data to establish whether the income level of the school's population, as adjusted for inflation, remained constant with the income level of the most recent base year.

(i) *Available and approved sources of socioeconomic data.* Pre-approved sources of socioeconomic data which may be used by local educational agencies to establish the income level of the school's population are: local data collected by the city or county zoning and economic planning office; unemployment data; local SNAP certification data including direct certification; Food Distribution Program on

Indian Reservations data; statistical sampling of the school's population using the application process; and Temporary Assistance for Needy Families data (provided that the eligibility standards were the same or more restrictive in the base year as the current year with allowance for inflation). To grant an extension using pre-approved socioeconomic data sources, State agencies must review and evaluate the socioeconomic data submitted by the local educational agency to ensure that it is reflective of the school's population, provides equivalent data for both the base year and the last year of the current cycle, and demonstrates that the income level of the school's population, as adjusted for inflation, has remained stable, declined or had only negligible improvement. If the local educational agency wants to establish the income level of the school's population using alternate sources of data, the use of such data must be approved by the Food and Nutrition Service. Data from alternate sources must be reflective of the school's population, be equivalent data for both the base year and the last year of the current cycle, and effectively measure whether the income level of the school's population, as adjusted for inflation, has remained stable, declined or had only negligible improvement.

(ii) *Negligible improvement.* The change in the income level of the school population shall be considered negligible if there is a 5 percent or less improvement, after adjusting for inflation, over the base year in the level of the socioeconomic indicator which is used to establish the income level of the school's population.

(2) *Extension not approved.* Schools for which the available and approved socioeconomic data does not reflect the school's population, is not equivalent data for the base year and the last year of the current cycle, or shows over 5 percent improvement after adjusting for inflation, shall not be approved for an extension. Such schools must elect one of the following options:

(i) *Return to standard meal counting and claiming.* Return to standard meal counting and claiming procedures;

(ii) *Establish a new base year.* Establish a new Provision 3 base year by

taking new free and reduced price applications, making new free and reduced price eligibility determinations, and taking point of service counts of free, reduced price and paid meals for the first year of the new cycle. Schools electing to establish a Provision 3 base year shall follow procedures contained in paragraph (d) of this section;

(iii) *Establish a streamlined base year.* With prior approval by the State agency, establish a streamlined base year by providing reimbursable meals to all participating students at no charge and developing either enrollment based or participation based claiming percentages.

(A) *Enrollment based percentages.* In accordance with guidance established by the Food and Nutrition Service, establish a new Provision 3 base year by determining program eligibility on the basis of household size and income, and direct certification if applicable, for a statistically valid proportion of the school's enrollment as of October 31, or other date approved by the State agency. The statistically valid measurement of the school's enrollment must be obtained during the first year of the new cycle and meet the requirements of paragraph (m) of this section. Using the data obtained, enrollment based claiming percentages representing a proportion of the school's population eligible for free, reduced price and paid benefits shall be developed and applied to total daily meal counts of reimbursable meals at the point of service, or as otherwise approved under part 210 of this chapter. For schools electing to participate in Provision 3, the streamlined base year level of assistance will be adjusted for enrollment, inflation and, if applicable, operating days, for each subsequent year of the new cycle and any extensions; or

(B) *Participation based percentages.* In accordance with guidance established by the Food and Nutrition Service, establish a new Provision 3 base year by determining program eligibility on the basis of household size and income, and direct certification if applicable, for a statistically valid proportion of participating students established over multiple operating days. The statistically valid measurement of the school's student participation must be

obtained during the first year of the new cycle and meet the requirements of paragraph (m) of this section. Using the data obtained, participation based claiming percentages representing a proportion of the school's participating students which are eligible for free, reduced price and paid benefits shall be developed and applied to total daily meal counts of reimbursable meals at the point of service or as otherwise approved under part 210 of this chapter. For schools electing to participate in Provision 3, the streamlined base year level of assistance as described in this paragraph (e)(2)(iii)(B) will be adjusted for enrollment, inflation and, if applicable, operating days, for each subsequent year of the new cycle and any extensions; or

(iv) *Establish a Provision 2 base year.* Schools may convert to Provision 2 using the procedures contained in paragraphs (c)(2)(ii) or (c)(2)(iii) of this section.

(f) *Community eligibility.* The community eligibility provision is an alternative reimbursement option for eligible high poverty local educational agencies. Each CEP cycle lasts up to four years before the LEA or school is required to recalculate their reimbursement rate. LEAs and schools have the option to recalculate sooner, if desired. A local educational agency may elect this provision for all of its schools, a group of schools, or an individual school. Participating local educational agencies must offer free breakfasts and lunches for the length of their CEP cycle, not to exceed four successive years, to all children attending participating schools and receive meal reimbursement based on claiming percentages, as described in paragraph (f)(4)(v) of this section.

(1) *Definitions.* For the purposes of this paragraph,

(i) *Enrolled students* means students who are enrolled in and attending schools participating in the community eligibility provision and who have access to at least one meal service (breakfast or lunch) daily.

(ii) *Identified students* means students with access to at least one meal service who are not subject to verification as prescribed in § 245.6a(c)(2). Identified students are students approved for free



meals based on documentation of their receipt of benefits from SNAP, TANF, the Food Distribution Program on Indian Reservations, or Medicaid where applicable (where approved by USDA to conduct matching with Medicaid data to identify children eligible for free meals). The term identified students also includes homeless children, migrant children, runaway children, or Head Start children (approved for free school meals without application and not subject to verification), as these terms are defined in § 245.2. In addition, the term includes foster children certified for free meals through means other than an application for free and reduced price school meals. The term does not include students who are categorically eligible based on submission of an application for free and reduced price school meals.

(iii) *Identified student percentage* means a percentage determined by dividing the number of identified students as of a specified period of time by the number of enrolled students as defined in paragraph (f)(1)(i) of this section as of the same period of time and multiplying the quotient by 100. The identified student percentage may be determined by an individual participating school, a group of participating schools in the local educational agency, or in the aggregate for the entire local educational agency if all schools participate, following procedures established in FNS guidance.

(2) *Implementation.* A local educational agency may elect the community eligibility provision for all schools, a group of schools, or an individual school. Community eligibility may be implemented for one or more 4-year cycles.

(3) *Eligibility criteria.* To be eligible to participate in the community eligibility provision, a local educational agency (except a residential child care institution, as defined under the definition of “School” in § 210.2), group of schools, or school must meet the eligibility criteria set forth in this paragraph.

(i) *Minimum identified student percentage.* A local educational agency, group of schools, or school must have an identified student percentage of at least 40 percent, as of April 1 of the

school year prior to participating in the community eligibility provision, unless otherwise specified by FNS. Individual schools participating in a group may have less than 40 percent identified students, provided that the average identified student percentage for the group is at least 40 percent.

(ii) *Lunch and breakfast program participation.* A local educational agency, group of schools, or school must participate in the National School Lunch Program and School Breakfast Program, under parts 210 and 220 of this title, for the duration of the 4-year cycle. Schools that operate on a limited schedule, where it is not operationally feasible to offer both lunch and breakfast, may elect CEP with FNS approval.

(iii) *Compliance.* A local educational agency, group of schools, or school must comply with the procedures and requirements specified in paragraph (f)(4) of this section to participate in the community eligibility provision.

(4) *Community eligibility provision procedures—(i) Election documentation and deadline.* A local educational agency, group of schools, or school that intends to elect the community eligibility provision for the following year for one or more schools must submit to the State agency documentation demonstrating the LEA, group of schools, or school meets the identified student percentage, as specified under paragraph (f)(3)(i) of this section. Such documentation must be submitted no later than June 30 and must include, at a minimum, the counts of identified students and enrolled students as of April 1 of the school year prior to CEP implementation.

(ii) *State agency review of election documentation.* The State agency must review the identified student percentage documentation submitted by the local educational agency to confirm that the local educational agency, group of schools, or school meets the minimum identified student percentage, participates in the National School Lunch Program and School Breakfast Program, and has a record of administering the meal program in accordance with program regulations, as indicated by the most recent administrative review.

(iii) *Meals at no cost.* A local educational agency must ensure participating schools offer reimbursable breakfasts and lunches at no cost to all students attending participating schools during the 4-year cycle, and count the number of reimbursable breakfasts and lunches served to students daily.

(iv) *Household applications.* A local educational agency, group of schools, or school must not collect applications for free and reduced price school meals on behalf of children in schools participating in the community eligibility provision. Any local educational agency seeking to obtain socioeconomic data from children receiving free meals under this section must develop, conduct, and fund this effort entirely separate from, and not under the auspices of, the National School Lunch Program or School Breakfast Program.

(v) *Free and paid claiming percentages.* Reimbursement is based on free and paid claiming percentages applied to the total number of reimbursable lunches and breakfasts served each month, respectively. Reduced price students are accounted for in the free claiming percentage, eliminating the need for a separate percentage.

(A) To determine the free claiming percentage, multiply the applicable identified student percentage by a factor of 1.6. The product of this calculation may not exceed 100 percent. The difference between the free claiming percentage and 100 percent represents the paid claiming percentage. The applicable identified student percentage means:

(1) In the first year of participation in the community eligibility provision, the identified student percentage as of April 1 of the prior school year.

(2) In the second, third, and fourth year of the 4-year cycle, LEAs may choose the higher of the identified student percentage as of April 1 of the prior school year or the identified student percentage as of April 1 of the year prior to the current 4-year cycle. LEAs and schools may begin a new 4-year cycle with a higher identified student percentage based on data as of the most recent April 1, as specified in paragraph (viii).

(B) To determine the number of lunches to claim for reimbursement, multiply the free claiming percentage as described in this paragraph by the total number of reimbursable lunches served to determine the number of free lunches to claim for reimbursement. The paid claiming percentage is multiplied by the total number of reimbursable lunches served to determine the number of paid lunches to claim for reimbursement. In the breakfast meal service, the free and paid claiming percentages are multiplied by the total number of reimbursable breakfasts served to determine the number of free and paid breakfasts to claim for reimbursement. For any claim, if the total number of meals claimed for free and paid reimbursement does not equal the total number of meals served, the paid category must be adjusted so that all served meals are claimed for reimbursement.

(vi) *Multiplier factor.* A 1.6 multiplier must be used for an entire 4-year cycle to calculate the percentage of lunches and breakfasts to be claimed at the Federal free rate.

(vii) *Cost differential.* If there is a difference between the cost of serving lunches and breakfasts at no cost to all participating children and the Federal assistance provided, the local educational agency must pay such difference with non-Federal sources of funds. Expenditure of additional non-Federal funds is not required if all operating costs are covered by the Federal assistance provided.

(viii) *New 4-year cycle.* To begin a new 4-year cycle, local educational agencies or schools must establish a new identified student percentage as of April 1 prior to the 4-year cycle. If the local educational agency, group of schools, or school meet the eligibility criteria set forth in paragraph (f)(3) of this section, a new 4-year cycle may begin.

(ix) *Grace year.* A local educational agency, group of schools, or school with an identified student percentage of less than 40 percent but equal to or greater than 30 percent as of April 1 of the fourth year of a community eligibility cycle may continue using community eligibility for a grace year that

continues the 4-year cycle for one additional, or fifth, year. If the local educational agency, group of schools, or school regains the 40 percent threshold as of April 1 of the grace year, the State agency may authorize a new 4-year cycle for the following school year. If the local educational agency, group of schools, or school does not regain the required threshold as of April 1 of the grace year, they must return to collecting household applications in the following school year in accordance with paragraph (j) of this section. Reimbursement in a grace year is determined by multiplying the identified student percentage at the local educational agency, group of schools, or school as of April 1 of the fourth year of the 4-year CEP cycle by the 1.6 multiplier.

(5) *Identification of potential community eligibility schools.* No later than April 15 of each school year, each local educational agency must submit to the State agency a list(s) of schools as described in this paragraph. The State agency may exempt local educational agencies from this requirement if the State agency already collects the required information. The list(s) must include:

- (i) Schools with an identified student percentage of at least 40 percent;
- (ii) Schools with an identified student percentage that is less than 40 percent but greater than or equal to 30 percent; and
- (iii) Schools currently in year 4 of the community eligibility provision with an identified student percentage that is less than 40 percent but greater than or equal to 30 percent.

(6) *State agency notification requirements.* No later than April 15 of each school year, the State agency must notify the local educational agencies described in this paragraph about their community eligibility status. Each State agency must notify:

- (i) Local educational agencies with an identified student percentage of at least 40 percent district wide, of the potential to participate in community eligibility in the subsequent year; the estimated cash assistance the local educational agency would receive; and the procedures to participate in community eligibility.

- (ii) Local educational agencies with an identified student percentage that is less than 40 percent district wide but greater than or equal to 30 percent, that they may be eligible to participate in community eligibility in the subsequent year if they meet the eligibility requirements set forth in paragraph (f)(3) of this section as of April 1.

- (iii) Local educational agencies currently using community eligibility district wide, of the options available in establishing claiming percentages for next school year.

- (iv) Local educational agencies currently in year 4 with an identified student percentage district wide that is less than 40 percent but greater than or equal to 30 percent, of the grace year eligibility.

(7) *Public notification requirements.* By May 1 of each school year, the State agency must make the following information readily accessible on its Web site in a format prescribed by FNS:

- (i) The names of schools identified in paragraph (f)(5) of this section, grouped as follows: Schools with an identified student percentage of least 40 percent, schools with an identified student percentage of less than 40 percent but greater than or equal to 30 percent, and schools currently in year 4 of the community eligibility provision with an identified student percentage that is less than 40 percent but greater than or equal to 30 percent.

- (ii) The names of local educational agencies receiving State agency notification as required under paragraph (f)(6) of this section, grouped as follows: Local educational agencies with an identified student percentage of at least 40 percent district wide, local educational agencies with an identified student percentage that is less than 40 percent district wide but greater than or equal to 30 percent, local educational agencies currently using community eligibility district wide, and local educational agencies currently in year 4 with an identified student percentage district wide that is less than 40 percent but greater than or equal to 30 percent.

- (iii) The State agency must maintain eligibility lists as described in paragraphs (i) and (ii) of this section until

## Food and Nutrition Service, USDA

## § 245.9

such time as new lists are made available annually by May 1.

(8) *Notification data.* For purposes of fulfilling the requirements in paragraphs (f)(5) and (6) of this section, the State agency must:

(i) Obtain data representative of the current school year, and

(ii) Use the identified student percentage as defined in paragraph (f)(1) of this section. If school-specific identified student percentage data are not readily available by school, use direct certifications as a percentage of enrolled students, *i.e.*, the percentage derived by dividing the number of students directly certified under § 245.6(b) by the number of enrolled students as defined in paragraph (f)(1) as an indicator of potential eligibility. If direct certification data are used, the State agency must clearly indicate that the data provided does not fully reflect the number of identified students.

(iii) If data are not as of April 1 of the current school year, ensure the data includes a notation that the data are intended for informational purposes and do not confer eligibility for community eligibility. Local educational agencies must meet the eligibility requirements specified in paragraph (f)(3) of this section to participate in community eligibility.

(9) *Other uses of the free claiming percentage.* For purposes of determining a school's or site's eligibility to participate in a Child Nutrition Program, a community eligibility provision school's free claiming percentage, *i.e.*, the product of the school's identified student percentage multiplied by 1.6, serves as a proxy for free and reduced price certification data.

(g) *Policy statement requirement.* A local educational agency that elects to participate in the special assistance provisions or the community eligibility provision set forth in this section must:

(1) Amend its Free and Reduced Price Policy Statement, specified in § 245.10 of this part, to include a list of all schools participating in each of the special assistance provisions specified in this section. The following information must also be included for each school:

(i) The initial school year of implementing the special assistance provision;

(ii) The school years the cycle is expected to remain in effect;

(iii) The school year the special assistance provision must be reconsidered; and

(iv) The available and approved data that will be used in reconsideration, as applicable.

(2) Certify that the school(s) meet the criteria for participating in each of the special assistance provisions, as specified in paragraphs (a), (b), (c), (d), (e) or (f) of this section, as appropriate.

(h) *Recordkeeping.* Local educational agencies that elect to participate in the special assistance provisions set forth in this section must retain implementation records for each of the participating schools. Failure to maintain sufficient records will result in the State agency requiring the school to return to standard meal counting and claiming procedures and/or fiscal action. Recordkeeping requirements include, as applicable:

(1) *Base year records.* A local educational agency shall ensure that records as specified in §§ 210.15(b) and 220.7(e) of this chapter which support subsequent year earnings are retained for the base year for schools under Provision 2 and Provision 3. In addition, records of enrollment data for the base year must be retained for schools under Provision 3. Such base year records must be retained during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement which employed the base year data. Local educational agencies that conduct a streamlined base year must retain all records related to the statistical methodology and the determination of claiming percentages. Such records shall be retained during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement which employed the streamlined base year data. In either case, if audit findings have not been resolved, base year records must be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

(2) *Non-base year records.* Local educational agencies that are granted an extension of a provision must retain records of the available and approved socioeconomic data which is used to determine the income level of the school's population for the base year and year(s) in which extension(s) are made. In addition, State agencies must also retain records of the available and approved socioeconomic data which is used to determine the income level of the school's population for the base year and year(s) in which extensions are made. Such records must be retained at both the local educational agency level and at the State agency during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last monthly Claim for Reimbursement which employed base year data. If audit findings have not been resolved, records must be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit. In addition, for schools operating under Provision 2, a local educational agency must retain non-base year records pertaining to total daily meal count information, edit checks and on-site review documentation. For schools operating under Provision 3, a local educational agency must retain non-base year records pertaining to total daily meal count information, the system of oversight or edit checks, on-site review documentation, annual enrollment data and the number of operating days, which are used to adjust the level of assistance. Such records shall be retained for three years after submission of the final monthly Claim for Reimbursement for the fiscal year.

(3) *Records for the community eligibility provision.* Local educational agencies must ensure records are maintained, including: data used to calculate the identified student percentage, annual selection of the identified student percentage, total number of breakfasts and lunches served daily, percentages used to claim meal reimbursement, non-Federal funding sources used to cover any excess meal costs, and school-level information provided to the State agency for publication, if applicable. Documentation must be made available at any reasonable time for re-

view and audit purposes. Such records shall be retained during the period the community eligibility provision is in effect, including all extensions, plus three fiscal years after the submission of the last Claim for Reimbursement which was based on the data. In any case, if audit findings have not been resolved, these records must be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(i) *Availability of documentation.* Upon request, the local educational agency must make documentation available for review or audit to document compliance with the requirements of this section. Depending on the certification or reimbursement alternative used, such documentation includes, but is not limited to, enrollment data, participation data, identified student percentages, available and approved socioeconomic data that was used to grant an extension, if applicable, or other data. In addition, upon request from FNS, local educational agencies under Provision 2 or Provision 3, or State agencies must submit to FNS all data and documentation used in granting extensions including documentation as specified in paragraphs (c) and (e) of this section. Data used to establish a new cycle for the community eligibility provision must also be available for review.

(j) *Restoring standard meal counting and claiming.* Under Provisions 1, 2, or 3 or community eligibility provision, a local educational agency may restore a school to standard notification, certification, and counting and claiming procedures at any time during the school year or for the following school year if standard procedures better suit the school's program needs. If standard procedures are restored during a school year, the local educational agency must offer all students reimbursable, free meals for a period of at least 30 operating days following the date of restoration of standard procedures or until a new eligibility determination is made, whichever comes first. Prior to the change taking place, but no later than June 30, the local educational agency must:

## Food and Nutrition Service, USDA

## § 245.9

(1) Notify the State agency of the intention to stop participating in a special assistance certification and reimbursement alternative under this section and seek State agency guidance and review regarding the restoration of standard operating procedures.

(2) Notify the public and meet the certification and verification requirements of §§ 245.6 and 245.6a in affected schools.

(k) *Puerto Rico and Virgin Islands.* A local educational agency in Puerto Rico and the Virgin Islands, where a statistical survey procedure is permitted in lieu of eligibility determinations for each child, may: Maintain their standard procedures in accordance with § 245.4, select Provision 2 or Provision 3, or elect the community eligibility provision provided the applicable eligibility requirements as set forth in paragraphs (a) through (f) of this section are met. For the community eligibility provision, current direct certification data must be available to determine the identified student percentage.

(l) *Transferring eligibility for free meals during the school year.* For student transfers during the school year within a local educational agency, a student's access to free, reimbursable meals under the special assistance certification and reimbursement alternatives specified in this section must be extended by a receiving school using standard counting and claiming procedures for up to 10 operating school days or until a new eligibility determination for the current school year is made, whichever comes first. For student transfers between local educational agencies, this requirement applies not later than July 1, 2019. At the State agency's discretion, students who transfer within or between local educational agencies may be offered free reimbursable meals for up to 30 operating days or until a new eligibility determination for the current school year is made, whichever comes first.

(m) *Statistical income measurements.* Statistical income measurements that are used under this section to establish enrollment or participation base claiming percentages must comply with the standards outlined as follows:

(1) For enrollment based claiming percentages, statistical income measurements must meet the following standards:

(i) The sample frame shall be limited to enrolled students who have access to the school meals program;

(ii) A sample of enrolled students shall be randomly selected from the sample frame;

(iii) The response rate to the survey shall be at least 80 percent;

(iv) The number of households that complete the survey shall be sufficiently large so that it can be asserted with 95 percent confidence that the true percentage of students who are enrolled in the school, have access to the school meals program, and are eligible for free meals is within plus or minus 2.5 percentage points of the point estimate determined from the sample; and

(v) To minimize statistical bias, data from all households that complete the survey must be used when calculating the enrollment based claiming percentages for paragraphs (c)(2)(iii)(A) and (e)(2)(iii)(A) of this section.

(2) For participation based claiming percentages, statistical income measurements must meet the following standards:

(i) The sample frame must be limited to students participating in the meal program for which the participation based claiming percentages are being developed;

(ii) The sample frame must represent multiple operating days, as established through guidance, in the meal program for which the participation based claiming percentages are being developed;

(iii) A sample of participating students shall be randomly selected from the sample frame;

(iv) The response rate to the survey shall be at least 80 percent;

(v) The number of households that complete the survey shall be sufficiently large so that it can be asserted with 95 percent confidence that the true percentage of participating students who are eligible for free meals is within plus or minus 2.5 percentage points of the point estimate determined from the sample; and,

(vi) To minimize statistical bias, data from all households that complete

## § 245.10

## 7 CFR Ch. II (1–1–23 Edition)

the survey must be used when calculating the participation based claiming percentages for paragraphs (c)(2)(iii)(B) and (e)(2)(iii)(B) of this section.

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

[Amdt. 19, 45 FR 67287, Oct. 10, 1980, as amended by Amdt. 23, 47 FR 14135, Apr. 2, 1982; 66 FR 48328, Sept. 20, 2001; 76 FR 22802, Apr. 25, 2011; 81 FR 50206, July 29, 2016]

### § 245.10 Action by local educational agencies.

(a) Each local educational agency of a school desiring to participate in the National School Lunch Program, School Breakfast Program, or to provide free milk under the Special Milk Program, or to become a commodity-only school shall submit for approval to the State agency a free and reduced price policy statement. Once approved, the policy statement shall be a permanent document which may be amended as necessary, except as specified in paragraph (c) of this section. Such policy statement, as a minimum, shall contain the following:

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

(2) An assurance that for children who are not categorically eligible for free and reduced price benefits the local educational agency will determine eligibility for free and reduced price meals or free milk in accordance with the current Income Eligibility Guidelines.

(3) The specific procedures the local educational agency will use in accepting applications from families for free and reduced price meals or for free milk. Additionally, the local educational agency must include the specific procedures it will use for obtaining documentation for determining children's eligibility through direct certification, in lieu of an application. Local educational agencies shall also provide households that are directly certified with a notice of eligibility, as specified in § 245.6(c)(2) and shall include in their policy statement a copy of such notice.

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

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

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

(c) Each local educational agency shall amend its permanent free and reduced price policy statement to reflect substantive changes. Any amendment to a policy shall be approved by the State agency prior to implementation, or as provided in paragraph (e) of this section. Each year, if a local educational agency does not have its policy statement approved by the State agency, or FNSRO where applicable, by October 15, reimbursement shall be suspended for any meals or milk served until such time as the local educational agency's free and reduced price policy statement has been approved by the State agency, or FNSRO where applicable. Furthermore, no commodities donated by the Department shall be used in any school after October 15, until such time as the local educational agency's free and reduced price policy statement has been approved by the State agency, or FNSRO where applicable. Once the local educational agency's free and reduced price policy statement has been approved, reimbursement may be allowed, at the discretion of the State agency, or FNSRO where applicable, for eligible meals and milk served during the period of suspension.

(d) If any free and reduced price policy statement submitted for approval by any local educational agency to the State agency, or FNSRO where applicable, is determined to be not in compliance with the provisions of this part, the local educational agency shall submit a policy statement that does meet

## Food and Nutrition Service, USDA

## § 245.11

the provisions within 30 days after notification by the State agency, or FNSO where applicable.

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

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

[35 FR 14065, Sept. 4, 1970, as amended at 38 FR 14958, June 7, 1973; Amdt. 6, 39 FR 30339, Aug. 22, 1974; Amdt. 8, 40 FR 57208, Dec. 8, 1975; Amdt. 13, 44 FR 33049, June 8, 1979; 47 FR 746, Jan. 7, 1982; 48 FR 12511, Mar. 25, 1983; 64 FR 50744, Sept. 20, 1999; 64 FR 72474, Dec. 28, 1999; 72 FR 63796, Nov. 13, 2007; 76 FR 22802, Apr. 25, 2011]

### § 245.11 Second review of applications.

(a) *General.* On an annual basis not later than the end of each school year,

State agencies must identify local educational agencies demonstrating a high level of, or risk for, administrative error associated with certification processes and notify the affected local educational agencies that they must conduct a second review of applications beginning in the following school year. The second review of applications must be completed prior to notifying the household of the eligibility or ineligibility of the household for free or reduced price meals.

(b) *State agency requirements*—(1) *Selection criteria.* Local educational agencies subject to a second review must include:

(i) *Administrative review certification errors.* All local educational agencies with 10 percent or more of the certification/benefit issuances in error, as determined by the State agency during an administrative review; and

(ii) *State agency discretion.* Local educational agencies not selected under paragraph (b)(1)(i) that are at risk for certification error, as determined by the State agency.

(2) *Reporting requirement.* Beginning March 15, 2015, and every March 15 thereafter, each State agency must submit a report, as specified by FNS, describing the results of the second reviews conducted by each local educational agency in their State. The report must provide information about applications reviewed in each local educational agency and include:

(i) The number of free and reduced price applications subject to a second review;

(ii) The number of reviewed applications for which the eligibility determination was changed;

(iii) The percentage of reviewed applications for which the eligibility determination was changed; and

(iv) A summary of the types of changes that were made.

(3) State agencies must provide technical assistance to ameliorate certification related problems at local educational agencies determined to be at risk for certification.

(c) *Local educational agency requirements.* Beginning July 1, 2014, and each July 1 thereafter, local educational agencies selected by the State agency



to conduct a second review of applications must ensure that the initial eligibility determination for each application is reviewed for accuracy prior to notifying the household of the eligibility or ineligibility of the household for free and reduced price meals. The second review must be conducted by an individual or entity who did not make the initial determination. This individual or entity is not required to be an employee of the local educational agency but must be trained on how to make application determinations. All individuals or entities who conduct a second review of applications are subject to the disclosure requirements set forth in § 245.6(f) through (k).

(1) *Timeframes.* The second review of initial determinations must be completed by the local educational agency in a timely manner and must not result in a delay in notifying the household, as set forth in § 245.6(c)(6)(i).

(2) *Duration of requirement to conduct a second review of applications.* Selected local educational agencies must conduct a second review of applications annually until the State agency determines that local educational agency-provided documentation provided in accordance with paragraph (c)(3) of this section or data obtained by the State agency during an administrative review, demonstrates that no more than 5 percent of reviewed applications required a change in eligibility determination.

(3) *Reporting requirement.* Each local educational agency required to conduct a second review of applications must annually submit to the State agency, on a date established by the State agency, the following information as of October 31st:

- (i) The number of free and reduced price applications subject to a second review;
- (ii) The number of reviewed applications for which the eligibility determination was changed;
- (iii) The percentage of reviewed applications for which the eligibility determination was changed; and
- (iv) A summary of the types of changes that were made.

[79 FR 7054, Feb. 6, 2014]

**§ 245.12 Action by State agencies and FNSROs.**

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

(1) As necessary, each State agency or FNSRO, as applicable, shall issue a prototype free and reduced price policy statement and any other instructions to ensure that each local educational agency as defined in § 245.2 is fully informed of the provisions of this part. If the State elects to establish for all schools a maximum price for reduced price lunches that is less than 40 cents, the State shall establish such price in its prototype policy. Such State shall then receive the adjusted national average factor provided for in § 210.4(b);

(2) Prescribe and publicly announce by July 1 of each fiscal year, in accordance with § 245.3(a), family-size income standards. Any standards prescribed by FNSRO with respect to nonprofit private schools shall be developed by FNSRO after consultation with the State agency.

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

(b) State agencies, and FNSRO where applicable, shall review the policy statements submitted by school-food authorities for compliance with the provisions of this part and inform the school-food authorities of any necessary changes or amendments required in any policy statement to bring such statement into compliance. They shall notify school-food authorities in writing of approval of their policy statements and shall direct them to distribute promptly the public announcements required under the provisions of § 245.5.

(c) Each State agency, or FNSRO where applicable, shall instruct local educational agencies under their jurisdiction that they may not alter or amend the eligibility criteria set forth

## Food and Nutrition Service, USDA

## § 245.12

in an approved policy statement without advance approval of the State agency, or FNSRO where applicable.

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

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

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

(g) The State agency must notify FNS whether the TANF Program in their State is comparable to or more restrictive than the State's Aid to Families with Dependent Children Program that was in effect on June 1, 1995. Automatic eligibility and direct certification for TANF households is allowed only in States in which FNS has been assured that the TANF standards are comparable to or more restrictive than the program it replaced. State agencies must inform FNS when there is a change in the State's TANF Program that would no longer make households participating in TANF automatically eligible for free school meals.

(h) The State agency shall take action to ensure the proper implementation of Provisions 1, 2, and 3. Such action shall include:

(1) *Notification.* Notifying school food authorities of schools implementing Provision 2 and/or 3 that each Provi-

sion 2 or Provision 3 school must return to standard eligibility determination and meal counting procedures or apply for an extension under Provision 2 or 3. Such notification must be in writing, and be sent no later than February 15, or other date established by the State agency, of the fourth year of a school's current cycle;

(2) *Return to standard procedures.* Returning the school to standard eligibility determination and meal counting procedures and fiscal action as required under §210.19(c) of this chapter if the State agency determines that records were not maintained; and

(3) *Technical assistance.* Providing technical assistance, adjustments to the level of financial assistance for the current school year, and returning the school to standard eligibility determination and meal counting procedures, as appropriate, if a State agency determines at any time that:

(i) The school or school food authority has not correctly implemented Provision 1, Provision 2 or Provision 3;

(ii) Meal quality has declined because of the implementation of the provision;

(iii) Participation in the program has declined over time;

(iv) Eligibility determinations or the verification procedures were incorrectly conducted; or

(v) Meal counts were incorrectly taken or incorrectly applied.

(4) *State agency recordkeeping.* State agencies shall retain the following information annually for the month of October and, upon request, submit to FNS:

(i) The number of schools using Provision 1, Provision 2 and Provision 3 for NSLP;

(ii) The number of schools using Provision 2 and Provision 3 for SBP only;

(iii) The number of extensions granted to schools using Provision 2 and Provision 3 during the previous school year;

(iv) The number of extensions granted during the previous year on the basis of SNAP/FDPIR data;

(v) The number of extensions granted during the previous year on the basis of Temporary Assistance for Needy Families (TANF) data;

(vi) The number of extensions granted during the previous year on the

## § 245.13

basis of local data collected by a city or county zoning and/or economic planning office;

(vii) The number of extensions granted during the previous year on the basis of applications collected from enrolled students;

(viii) The number of extensions granted during the previous year on the basis of statistically valid surveys of enrolled students; and

(ix) The number of extensions granted during the previous year on the basis of alternate data as approved by the State agency's respective FNS Regional Office.

(5) *State agency approval.* Prior to approval for participation under Provision 2 or Provision 3, State agencies shall ensure school and/or school food authority program compliance as required under §§210.19(a)(4) and 220.13(k) of this chapter.

(i) No later than February 1, 2013, and by February 1st each year thereafter, each State agency must collect annual verification data from each local educational agency as described in §245.6a(h) and in accordance with guidelines provided by FNS. Each State agency must analyze these data, determine if there are potential problems, and formulate corrective actions and technical assistance activities that will support the objective of certifying only those children eligible for free or reduced price meals. No later than March 15, 2013, and by March 15th each year thereafter, each State agency must report to FNS, in a consolidated electronic file by local educational agency, the verification information that has been reported to it as required under §245.6a(h), as well as any ameliorative actions the State agency has taken or intends to take in local educational agencies with high levels of applications changed due to verification. State agencies are encouraged to collect and report any or all verification data elements before the required dates.

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

[35 FR 14065, Sept. 4, 1970. Redesignated at 79 FR 7054, Feb. 6, 2014]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §245.12, see the List of CFR Sections Affected, which appears in the

## 7 CFR Ch. II (1-1-23 Edition)

Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### § 245.13 State agencies and direct certification requirements.

(a) *Direct certification requirements.* State agencies are required to meet the direct certification performance benchmarks set forth in paragraph (b) of this section for directly certifying children who are members of households receiving assistance under SNAP. A State agency that fails to meet the benchmark must develop and submit to FNS a continuous improvement plan (CIP) to fully meet the requirements of this paragraph and to improve direct certification for the following school year in accordance with the provisions in paragraphs (e), (f), and (g) of this section.

(b) *Direct certification performance benchmarks.* State agencies must meet performance benchmarks for directly certifying for free school meals children who are members of households receiving assistance under SNAP. The performance benchmarks are as follows:

(1) 80% for the school year beginning July 1, 2011;

(2) 90% for the school year beginning July 1, 2012; and

(3) 95% for the school year beginning July 1, 2013, and for each school year thereafter.

(c) *Data elements required for direct certification rate calculation.* Each State agency must provide FNS with specific data elements each year, as follows:

(1) *Data Element #1*—The number of children who are members of households receiving assistance under SNAP that are directly certified for free school meals as of the last operating day in October, collected and reported in the same manner and timeframes as specified in §245.11(i).

(2) *Data Element #2*—The unduplicated count of children ages 5 to 17 years old who are members of households receiving assistance under SNAP at any time during the period July 1 through September 30. This data element must be provided by the SNAP State agency, as required under 7 CFR 272.8(a)(5), and reported to FNS and to the State agency administering the NSLP in the State by December 1st

## Food and Nutrition Service, USDA

## § 245.15

each year, in accordance with guidelines provided by FNS.

(3) *Data Element #3*—The count of the number of children who are members of households receiving assistance under SNAP who attend a school operating under the provisions of 7 CFR 245.9 in a year other than the base year or that is exercising the community eligibility provision (CEP). The proxy for this data element must be established each school year through the State's data matching efforts between SNAP records and student enrollment records for these special provision schools that are operating in a non-base year or that are exercising the CEP. Such matching efforts must occur in or close to October each year, but no later than the last operating day in October. However, States that have special provision schools exercising the CEP may alternatively choose to include, for these schools, the count from the SNAP match conducted as of April 1 of the same calendar year, whether or not it was used in the CEP claiming percentages. State agencies must report this aggregated data element to FNS by December 1 each year, in accordance with guidelines provided by FNS.

(d) *State notification*. For each school year, FNS will notify State agencies that fail to meet the direct certification performance benchmark.

(e) *Continuous improvement plan required*. A State agency having a direct certification rate with SNAP that is less than the direct certification performance benchmarks set forth in paragraph (b) of this section must submit to FNS for approval, within 90 days of notification, a CIP in accordance with paragraph (f) of this section.

(f) *Continuous improvement plan required components*. CIPs must include, at a minimum:

(1) The specific measures that the State will use to identify more children who are eligible for direct certification, including improvements or modifications to technology, information systems, or databases;

(2) A multiyear timeline for the State to implement these measures;

(3) Goals for the State to improve direct certification results for the following school year; and

(4) Information about the State's progress toward implementing other direct certification requirements, as provided in FNS guidance.

(g) *Continuous improvement plan implementation*. A State must maintain its CIP and implement it according to the timeframes in the approved plan.

[78 FR 12230, Feb. 22, 2013. Redesignated at 79 FR 7054, Feb. 6, 2014; 81 FR 50210, July 29, 2016]

### § 245.14 Fraud penalties.

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

(1) If such funds, assets, or property are of a value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five years of both; or

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

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

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

[Amdt. 14, 44 FR 37901, June 29, 1979, as amended at 64 FR 50744, Sept. 20, 1999. Redesignated at 78 FR 12230, Feb. 22, 2013, and further redesignated at 79 FR 7054, Feb. 6, 2014]

### § 245.15 Information collection/record-keeping—OMB assigned control numbers.

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

**Pt. 246**

**7 CFR Ch. II (1–1–23 Edition)**

[72 FR 68985, Dec. 6, 2007, as amended at 73 FR 11312, Mar. 3, 2008. Redesignated at 78 FR 12230, Feb. 22, 2013, and further redesignated at 79 FR 7054, Feb. 6, 2014]

AUTHORITY: 42 U.S.C. 1786.

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

EDITORIAL NOTE: Nomenclature changes to part 246 appear at 76 FR 35097, June 16, 2011.

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

**Subpart A—General**

**Subpart A—General**

Sec.

246.1 General purpose and scope.

246.2 Definitions.

246.3 Administration.

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

246.4 State plan.

246.5 Selection of local agencies.

246.6 Agreements with local agencies.

**Subpart C—Participant Eligibility**

246.7 Certification of participants.

246.8 Nondiscrimination.

246.9 Fair hearing procedures for participants.

**Subpart D—Participant Benefits**

246.10 Supplemental foods.

246.11 Nutrition education.

**Subpart E—State Agency Provisions**

246.12 Food delivery methods.

246.13 Financial management system.

246.14 Program costs.

246.15 Program income other than grants.

246.16 Distribution of funds.

246.16a Infant formula and authorized foods cost containment.

246.17 Closeout procedures.

246.18 Administrative appeal of State agency actions.

**Subpart F—Monitoring and Review**

246.19 Management evaluation and monitoring reviews.

246.20 Audits.

246.21 Investigations.

**Subpart G—Miscellaneous Provisions**

246.22 Administrative appeal of FNS decisions.

246.23 Claims and penalties.

246.24 Procurement and property management.

246.25 Records and reports.

246.26 Other provisions.

246.27 Program information.

246.28 OMB control numbers.

**§ 246.1 General purpose and scope.**

This part announces regulations under which the Secretary of Agriculture shall carry out the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program). Section 17 of the Child Nutrition Act of 1966, as amended, states in part that the Congress finds that substantial numbers of pregnant, postpartum and breastfeeding women, infants and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. The purpose of the Program is to provide supplemental foods and nutrition education, including breastfeeding promotion and support, through payment of cash grants to State agencies which administer the Program through local agencies at no cost to eligible persons. The Program shall serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other harmful substance abuse, and to improve the health status of these persons. The program shall be supplementary to SNAP; any program under which foods are distributed to needy families in lieu of SNAP benefits; and receipt of food or meals from soup kitchens, or shelters, or other forms of emergency food assistance.

[50 FR 6121, Feb. 13, 1985, as amended at 54 FR 51294, Dec. 14, 1989; 58 FR 11506, Feb. 26, 1993; 76 FR 59888, Sept. 28, 2011]

**§ 246.2 Definitions.**

For the purpose of this part and all contracts, guidelines, instructions, forms and other documents related hereto, the term:

2 *CFR* part 200, means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The