



Billing Code: 3410-30-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 245

RIN 0584-AE17

National School Lunch Program: Independent Review of Applications Required by the Healthy, Hunger-Free Kids Act of 2010

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule requires certain local educational agencies participating in the National School Lunch Program to conduct an independent review of initial eligibility determinations for free and reduced price school meals. Additionally, this final rule requires each affected local educational agency to submit to the relevant State agency the results of the reviews including the number and percentage of reviewed applications for which the eligibility determinations changed and the type of change made. State agencies are required to submit to the Food and Nutrition Service, a report describing the results of the second reviews in their State. These changes respond to amendments made to the Richard B. Russell National School Lunch Act by section 304 of the Healthy, Hunger-Free Kids Act of 2010 which requires that local educational agencies demonstrating high levels of, or a high risk for, administrative error associated with certification, verification, and other administrative processes, have an individual or entity independently review the initial eligibility determinations for free and reduced price

school meals for accuracy prior to sending out household notifications of eligibility or ineligibility. This final rule is expected to reduce administrative errors in eligibility determinations for free and reduced price school meals.

DATES: This final rule is effective [insert date that is 30 days after publication in the Federal Register]

FOR FURTHER INFORMATION CONTACT: William Wagoner or Jessica Saracino, School Programs Branch, Child Nutrition Policy and Program Development Division, Food and Nutrition Service at (703) 305-2590.

SUPPLEMENTARY INFORMATION:

I. Background

The Healthy, Hunger-Free Kids Act of 2010 (P.L. 111-296) (the HHFKA), enacted December 13, 2010, made changes to the free and reduced price process for determining children's eligibility for free and reduced price meal benefits in an effort to strengthen rules governing certification.

Section 304 of the HHFKA amended section 22 of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1769c(b)) to require local educational agencies (LEAs) that demonstrate high levels of, or a high risk for, administrative error associated with certification, verification, and other administrative processes, as determined by the Secretary, to have an individual or entity independently review the initial eligibility determinations for free and reduced price school meals for accuracy prior to notifying households of eligibility or ineligibility.

The Department has determined that, given the results of Food and Nutrition Service (FNS) studies demonstrating the presence of administrative error during the certification process, this final rule should focus on administrative errors that occur during certification of eligibility. For purposes of this final rule, certification includes both benefit issuance and updating student eligibility for program benefits on rosters used to claim meals to the extent the State agency identifies problems in the benefit delivery process during an administrative review. A subsequent rulemaking may address administrative error associated with verification and other administrative processes.

The Department published a proposed rule on September 13, 2012 (77 FR 56565), which proposed amending 7 CFR 210 and 245 to include criteria for identifying LEAs that must conduct an independent or “second” review of applications; requirements for the second review of applications, including timeframes and duration of second reviews; and requirements for reporting review results. The proposed rule invited public comment for a 60-day period, beginning September 13, 2012, and ending November 13, 2012. During the comment period, FNS received 65 comments on the proposed rule: 29 comments from LEAs, 27 comments from individuals, 7 from State agencies and 2 from advocacy organizations.

II. Discussion of Public Comments, Policy Changes and FNS Response

Following an analysis of comments, this rule adopts, as final, the provisions of the proposed rule, with revisions as described below. The finalized provisions include criteria for identifying LEAs that must conduct a second review of applications; requirements for the second

review of applications, including timeframes and duration of second reviews; and requirements for reporting results.

LEA Selection Criteria

Criteria in the Proposed Rule

The proposed rule at 7 CFR 245.11(a) would have required State agencies to annually identify LEAs that demonstrate high levels of, or a high risk for, administrative error associated with the certification process and to notify those LEAs that they must conduct a second review of applications.

Proposed 7 CFR 245.11(b) would have established four criteria to assist State agencies in identifying LEAs with high levels of, or high risk for, administrative error. The proposed criteria follow:

1. All LEAs subject to a follow-up administrative review due to certification, benefit issuance, or updating eligibility status violations of Performance Standard 1.
2. All LEAs at risk for a follow-up administrative review because they claim between 5–10 percent of the free and reduced price lunches incorrectly for the review period due to errors of certification, benefit issuance or updating of eligibility status.
3. All LEAs establishing a new Provision 2 or 3 base year in the following school year.
4. Of the LEAs scheduled for an administrative review the following year, the State agency must select those LEAs not selected under criteria 1-3 that are at risk for certification error, as determined by the State agency.

The final rule makes a number of revisions to the proposed criteria as described below.

Public Comments and Policy Changes Related to Proposed LEA Criteria

Criterion 1

Under the proposed Criterion 1, a second review of applications would have been required for all LEAs subject to a follow-up administrative review due to certification, benefit issuance, or updating eligibility status violations of Performance Standard 1. Under the administrative review process in effect at the time the proposed rule was issued, the Coordinated Review Effort, a follow-up administrative review was required if the LEA exceeded the follow-up review thresholds. For Performance Standard 1, a follow up review was required if 10 percent or more of the free and reduced price lunches claimed for the review period were claimed incorrectly due to errors of certification, benefit issuance or updating eligibility status.

Since publication of the proposed rule, FNS has updated the administrative review process, as required by amendments to the NSLA by section 207 of the HHFKA. The updated administrative review streamlines and makes a number of changes to the administrative review, including eliminating the requirement to conduct a follow-up review and the corresponding follow-up review thresholds upon which Criterion 1 was based. FNS will issue a proposed rulemaking to address the changes in the administrative review process. However, most State agencies have been approved to follow the requirements of the updated administrative review process for School Year 2013-14, in advance of the formal rulemaking. A few State agencies are still following the Coordinated Review Effort process.

To accommodate the anticipated elimination of the follow-up review/review threshold for States under the updated administrative review process, the final rule requires a second review of

applications in all LEAs with 10 percent or more of the certification/benefit issuances in error, as determined by the State agency under an administrative review. This change is expected to update Criterion 1 while identifying those LEAs with essentially the same level of errors in the certification and benefit issuance process, as proposed. Both State agencies currently following the new administrative review procedures and those under the Coordinated Review Effort are able to identify these error levels through their reviews.

FNS received one comment regarding the needs of small LEAs under Criterion 1. The comment noted that a small LEA with only 10 certifications would be required to conduct a second review if only one certification/benefit issuance is in error.

While FNS understands the concern of this comment, the second review requirements are not expected to place an undue burden on LEAs with a small number of applications. The second review requirement is expected to result in better outcomes during an administrative review for these LEAs. Therefore, the final rule does not exempt any LEAs from the second review requirement.

Criterion 2

Under the proposed Criterion 2, a second review of applications would have been required for all LEAs which claimed between 5-10 percent of the free and reduced price lunches incorrectly due to errors of certification, benefit issuance or updating eligibility status, as determined by an administrative review.

Several commenters expressed confusion about which LEAs were to be selected under criterion 2. One State suggested that this LEA selection criterion be folded into criterion 4 and that selecting at-risk LEAs should be left to State discretion.

FNS agrees with comments that proposed criterion 2 may be confusing for States and can be folded into criterion 4, State discretion. Therefore, this final rule at 7 CFR 245.11(b)(1)(ii) leaves the determination of which LEAs are “at risk” for certification errors to the discretion of the State agency. In identifying at-risk LEAs, State agencies are strongly encouraged to include those LEAs with between 5-10 percent of the certification/benefit issuances in error, as determined by the State agency under an administrative review.

Criterion 3

Proposed Criterion 3 would have required a second review of applications in LEA’s establishing a new Provision 2 or 3 base year. The proposal responded to findings from FNS’ 2007 Access, Participation, Eligibility, and Certification (APEC) study, which included national estimates of the amounts and rates of erroneous payments in the NSLP and SBP. The APEC study found that schools in Provisions 2 or 3 base years, on average, experience higher erroneous payments rates than other schools (1.75 times higher for NSLP), making them at high-risk for administrative error associated with certification.

However, since publication of the proposed rule, FNS issued guidance on Provision 2 and 3 base years, SP 59-2013, “Review of Provision 2/3 Base Year”. The guidance requires State agencies to conduct a review of base year certification and benefit issuance documentation for any LEA requesting approval to participate in the NSLP using Provision 2 or 3.

The new requirement contained in SP 59-2013 makes a criterion singling out Provision 2/3 base year schools unnecessary, and for this reason Criterion 3 is not included in the final rule. It should be noted that Provision 2/3 schools in their base year could still be subject to a second review of applications if their LEA is selected under other criteria. This would be in addition to the State review of all base year applications.

Criterion 4

Proposed Criterion 4 would have allowed State agencies to select LEAs that are not identified in the above criteria, and that the State agency identifies as at risk for certification error, and are scheduled for an administrative review the following year.

In regards to criterion 4, it was suggested that FNS eliminate the limitation on State agency discretion that would require LEAs to be selected to conduct the second review only if they are scheduled for an administrative review the following year. The comments argued that if a State agency determines that an LEA is at risk for certification error, the State agency should be permitted to require a second review of applications regardless of the LEA's position in the review cycle.

FNS agrees that criterion 4 should be expanded to capture all at risk LEAs, not just those LEAs that are scheduled for an administrative review the following year, and this final rule removes the limitation from Criterion 4 at 7 CFR 245.11(b)(1)(ii).

Finalized LEA Selection Criteria

In summary, in response to comments on the proposed criteria and changes to the administrative review process, this rule finalizes at 7 CFR 245.11(b)(1) two criteria for the selection of LEAs demonstrating a high level of, or at risk for, certification errors:

1. All LEAs with 10 percent or more of the certification/benefit issuances in error as determined by the State agency during an administrative review; and

2. LEAs not selected under Criterion 1 that are at risk for certification error, as determined by the State agency. State agencies are strongly encouraged to include those LEAs with between 5-10 percent of the certification/benefit issuances in error, as determined by the State agency under an administrative review.

LEAs with Electronic Systems

In the proposed rule, FNS asked for comment on whether the second review of applications requirement should be required of those LEAs that have electronic systems to review applications. A majority of comments state that these LEAs should be required to conduct a second review if they meet the LEA selection criteria, arguing that whether the calculations are manual or electronic, if an incorrect amount is entered into the system, the potential for error still exists.

FNS agrees that LEAs that meet the selection criteria should be required to conduct a second review of applications, regardless of whether the LEA has an electronic system in place to review applications. Therefore, an exemption for LEAs with electronic systems is not included in this final rule.

LEA Requirements

Timeframes

As required by amendments made to the NSLA by the HHFKA, the proposed rule would have required the second review of applications by identified LEAs to be conducted in a timely manner and not result in the delay of an eligibility determination for more than 10 operating days after the date the application is submitted. Once the review of eligibility has been completed, the household must be notified immediately.

FNS received one comment on this requirement from an advocacy group. The group argued that a second review of applications will make meeting the 10 day timeline for eligibility determinations difficult for LEAs. While FNS understands the concerns of this group, FNS does not have discretion to modify this requirement specifically imposed pursuant to the amendments made by the HHFKA. Therefore, it is finalized at 7 CFR 245.11(c)(1).

In addition, the proposed rule would have changed the timeframes for application approval for all LEAs, not simply those affected by the second review of applications requirements. Under the proposal, the Department would have established a regulatory requirement that all LEAs 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. This change would have conformed the regulations with longstanding guidance and was intended to make the certification process consistent for both LEAs that are required to conduct a second review of applications and those that are not. FNS did not receive comments on this change, and it will be finalized in this rule at 7 CFR 245.6(c)(6)(i).

One advocate suggested that FNS take this rulemaking as an opportunity to allow the certification for free and reduced price meals to take effect for claiming and household charging purposes on the date on which the application was submitted regardless of when the decision is made or family is notified.

FNS agrees that this is an important clarification to make regarding the eligibility certification process and is most appropriately addressed through guidance. On December 3, 2013, FNS issued SP 11-2014 “Effective Date of Free or Reduced Price Meal Eligibility Determinations.” This memorandum provides clarification on the flexibility available to LEA officials for establishing the effective date of eligibility for children certified for free or reduced price meals based on household applications. Therefore, FNS is not including this change in the final rule.

Second Review Duration

Under proposed 7 CFR 245.11(c)(2), LEAs selected for a second review would have been required to conduct a second review of applications each year, until the State agency determines that the LEA is no longer demonstrating a high level of, or is no longer at risk for, administrative error associated with the certification process. For LEAs selected for a second review of applications using Criteria 1, 2, or 4, second reviews would be required until such time as the LEA provided the State agency with documentation demonstrating that no more than 5 percent of reviewed applications required a change in eligibility determination. For LEAs selected for the second review of applications using criterion 3, a second review of applications would have been required every base year of the Provision 2 or Provision 3 cycle.

The proposed rule defined documentation as the required LEA annual report (described next) detailing the number of free and reduced price applications subject to a second review and the number and percentage of reviewed applications for which the eligibility determination was changed, and a summary of the type of changes made.

In recognition of the changes to the LEA selection criteria, this rule finalizes at 7 CFR 245.11(c)(2) that selected LEAs must conduct a second review of applications until LEA-provided documentation demonstrates to the satisfaction of the State agency, that no more than 5 percent of reviewed applications required a change in eligibility determination.

To provide LEAs more flexibility in demonstrating they no longer are at risk for certification error, this final rule expands documentation to also include information obtained by a State agency through administrative reviews. This change is finalized at 7 CFR 245.11(c)(2).

State Agency and LEA Reporting Requirements

As required by the HHFKA, the proposed rule would have established reporting requirements for State agencies and LEAs. The proposed reporting requirements were expected to allow the State agency and the Department to monitor the effect of the second review of applications requirement.

State agency requirements

Under 7 CFR 245.11(b) of the proposal, State agencies would have been required to submit an annual report to FNS on February 1 in a format prescribed by FNS. The report would provide information detailing the number of free and reduced price applications subject to a

second review, the number and percentage of reviewed applications for which the eligibility was changed, and a summary of the type of changes that were made for all the LEAs subject to a second review of applications.

The final rule makes two technical changes to the proposed State agency reporting requirements. The proposed rule did not specify a format for State reporting. Therefore in an effort to provide clarification and keep consistent with data already collected on the FNS-742, this final rule requires at 7 CFR 245.11(b) that the report required by State agencies include LEA-level information. This means State agencies will provide the information described above for each LEA required to conduct a second review of applications. In addition, the final rule at 7 CFR 245.11(b) changes the date reports are due to FNS from February 1 to March 15, consistent with existing verification reporting requirements. This change provides State agencies with additional time to obtain the data from LEAs.

Finally, the final rule adds a requirement that State agencies provide technical assistance to LEAs who demonstrate they are at risk for certification errors to ameliorate any problems. While newly added to paragraph (b), this addition falls within existing State agency responsibilities in managing the program.

LEA requirements

The proposed rule at 7 CFR 245.11(c)(3) would have required LEAs subject to the second review of applications to submit to the State agency an annual report, detailing the number of free and reduced price applications subject to a second review, the number and

percentage of reviewed applications for which the eligibility determination was changed, and a summary of the types of changes that were made.

While the proposed rule did not address the timeframes covered by the LEA report, this final rule clarifies that the information reported to the State agency, is information as of October 31st. This means State and LEAs will only need to report on applications for the current school year that have been reviewed on or before October 31st, a date consistent with already existing reporting requirements. State agencies have discretion in establishing the reporting format and timeframe for report submission, provided such timeframes permit the State to meet its reporting deadline to FNS.

One comment acknowledged that there will be additional reporting and recordkeeping, and three comments stated that the estimates for reporting and recordkeeping burden provided in the proposed rule were low. FNS agrees that LEAs will need to track how many applications were approved in error compared to total applications and the reasons for the errors, and that SAs will need to collect and report the data collected from LEAs to FNS. FNS also acknowledges that the second review of all applications has administrative burden for LEAs that are at risk for eligibility determination errors. However, reviewing applications as mandated by this rule is considered a normal (usual and customary) operating task and therefore this new requirement does not add new burden. It should be noted that a second review of applications can be expected to help LEAs ensure better outcomes during an administrative review which could lessen the burden during and following an administrative review.

State agencies are encouraged to use the administrative review process or other existing mechanisms, wherever possible, to implement this requirement as seamlessly as possible. State

agencies can notify LEAs subject to the second review requirements at the exit conference for the administrative review or through the administrative review report. This approach would allow LEAs sufficient time to obtain technical assistance and establish procedures for the forthcoming school year.

The reporting requirements described above are finalized at 7 CFR 245.11(b)(2) for State agencies and reporting requirements for LEAs are finalized at 7 CFR 245.11(c)(3).

Implementation

As noted in the DATES section, this final rule is effective [insert date 30 days after the date of publication in the Federal Register]. However, because implementation begins with identification of LEAs with high error rates or at-risk of error, the actual conduct of second reviews will not start until the beginning of the next school year. For example, for School Years 2013-2014 and 2014-2015, implementation is phased-in as follows:

- State agencies must identify LEAs subject to a second review and notify affected LEAs no later than June 30, 2014 (School Year 2013-2014) (7 CFR 245.11(a)).
- Identified LEAs must conduct second reviews of applications beginning July 1, 2014 (School Year 2014-2015) (7 CFR 245.11(c)).
- Affected LEAs must submit to the State agency, an annual report on the results of the second review in a format prescribed by the State agency. The report must be submitted no later than the date specified by the State agency (in School Year 2014-2015) (7 CFR 245.11(c)(3)).

- State agencies must submit a report providing LEA-level information including the number of free and reduced price applications subject to a second review in the LEA, the number and percentage of reviewed applications for which the eligibility determination was changed in the LEA, and a summary of the types of changes that were made to applications reviewed in the LEA to FNS no later than March 15, 2015 (7 CFR 245.11(b)(2)).

Amendatory Changes Since Publication of Proposed Rule

Since publication of the proposed rule, FNS has amended 7 CFR part 245 by adding a new 7 CFR 245.12, State agencies and direct certification requirements. Therefore, this final rule will redesignate 7 CFR 245.11 through 245.14 as 7 CFR 245.12 through 245.15 and add a new 7 CFR 245.11, which contains the second review of application requirements.

Monitoring of Compliance

While not directly addressed in the proposed rule, FNS would like to take this opportunity to remind State agencies and LEAs that, as with other program requirements, this provision will be monitored through the administrative review process. Additional information regarding monitoring of compliance with the second review of applications requirement will be addressed in a forthcoming administrative review regulation.

Technical Correction

This rule also corrects a typographical error which appeared in the proposed rule statement regarding Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect, as provided for in the statement in this final rule.

III. Procedural Matters

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

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

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601-612). Pursuant to that review, it has been certified that this rule will not have a significant impact on a substantial number of small entities. While there may be some LEA burden associated with the second review of applications required in this final rule, the burden will not be significant and will be outweighed by the benefits of decreased administrative error associated with certification. Additionally, only LEAs that fall under the established criteria would be required to conduct the second review of applications.

Unfunded Mandates Reform Act

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

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

Executive Order 12372

The National School Lunch Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.555. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

Prior Consultation With State Officials:

Prior to drafting this final rule, FNS staff received informal input from various stakeholders while participating in various State, regional, national, and professional conferences. Numerous stakeholders, including State and local program operators, also provided input at public meetings held by the School Nutrition Association.

Nature of Concerns and the Need To Issue This Rule:

State agencies and LEAs want to provide the best possible school meals through the NSLP but are concerned about the costs and administrative burden associated with increased program oversight. While FNS is aware of these concerns, the National School Lunch Act, 42 U.S.C. 1769c(b)(6), as amended by the HRFKA, requires that LEAs that demonstrate a high level of, or a high risk for, administrative error associated with certification have an individual or entity review the initial eligibility determinations for free and reduced price school meals for accuracy prior to sending out household notifications of eligibility or ineligibility.

Extent to Which We Meet Those Concerns:

FNS has considered the impact of this final rule on State and local operators and has developed a rule that would implement the second review of applications requirement in the most effective and least burdensome manner.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of this rule, all applicable administrative procedures under §210.18(q) or §235.11(f) must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300-4, “Civil Rights Impact Analysis”, and 1512-1, “Regulatory Decision Making Requirements.” to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits on the basis of their race, color, national origin, sex, age or disability, nor is it intended to have a differential impact on minority owned or operated business establishments, and women-owned or operated business establishments that participate

in the Child Nutrition Programs. The final rule is technical in nature, and it affects only State agency and local educational agency operations.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 ([44 U.S.C. 3501](#) et seq.), the information collection or recordkeeping requirements included in this final rule, which were filed under 0584-0573, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the Federal Register providing notice of what action we plan to take.

E-Government Act Compliance

FNS is committed to complying with the E-Government Act, 2002 to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 210

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

7 CFR Part 245

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

Accordingly, 7 CFR parts 210 and 245 are amended as follows:

PART 210 – NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for part 210 continues to read as follows:

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

2. Amend §210.15:

- a. In paragraph (a)(7), by removing the word “and”;
- b. In paragraph (a)(8), by removing the period and adding “; and” in its place;
- c. By adding a new paragraph (a)(9).

The addition reads as follows:

§210.15 Reporting and recordkeeping.

(a) * * *

(9) For any local educational agency required to conduct a second review of free and reduced price applications as required under §245.11 of this chapter, the number of free and reduced price applications subject to a second review, the number and percentage of reviewed applications for which the eligibility determination was changed, and a summary of the types of changes made.

* * * * *

3. Amend §210.20:

- a. In paragraph (a)(8), by removing the word “and”;
- b. In paragraph (a)(9), by removing the period and adding “; and” in its place;
- c. By adding a new paragraph (a)(10).

The addition reads as follows:

§210.20 Reporting and recordkeeping.

(a) * * *

(10) For each local educational agency required to conduct a second review of applications under §245.11 of this chapter, the number of free and reduced price applications subject to a second review, the results of the reviews including the number and percentage of reviewed applications for which the eligibility determination was changed, and a summary of the types of changes made.

* * * * *

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

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

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

5. Revise §245.6(c)(6)(i) as follows:

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

* * * * *

(c) * * *

(6) * * *

(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.

* * * * *

6. Redesignate §§245.11 through 245.14 as §§245.12 through 245.15, respectively;

7. Add a new §245.11 to read as follows:

§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.

Audrey Rowe
Administrator
Food and Nutrition Service

January 31, 2014

Date

[FR Doc. 2014-02556 Filed 02/05/2014 at 8:45 am; Publication Date: 02/06/2014]