

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 245

[FNS–2011–0027]

RIN 0584–AE16

#### National School Lunch Program and School Breakfast Program: Eliminating Applications Through Community Eligibility as Required by the Healthy, Hunger-Free Kids Act of 2010

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend the eligibility regulations for free and reduced price meals under the National School Lunch Program (NSLP) and School Breakfast Program (SBP) to codify the statutory provision that establishes the community eligibility provision, a reimbursement option for eligible local educational agencies and schools that wish to offer free school meals to all children in high poverty schools without collecting household applications. This proposed rule reflects statutory requirements that were implemented through policy guidance following enactment of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). Implementation of this proposed rule would align the regulations with the statutory provision that establishes administrative and operational requirements for State agencies, local educational agencies, and schools.

**DATES:** To be assured of consideration, comments on this proposed rule must be received by January 3, 2014.

**ADDRESSES:** The Food and Nutrition Service (FNS), USDA, invites interested persons to submit written comments on this proposed rule. Comments must be submitted through one of the following methods:

- *Preferred method:* Comments on the provisions in this rule must be received on or before January 3, 2014 to be assured of consideration. Go to [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments.

- *Mail:* Mailed comments on this proposed rule must be postmarked on or before January 3, 2014 to be assured of consideration. Send mailed comments to William Wagoner, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 1212, Alexandria, Virginia 22302–1594.

Comments sent by other methods will not be accepted. All comments sent by the methods listed above will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

William Wagoner or Marisol Aldahondo, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1212, Alexandria, Virginia 22302; telephone: (703) 305–2590.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 104(a) of the HHFKA (Pub. L. 111–296) amended section 11(a)(1) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1759a(a)(1)) by adding a new subparagraph (F) to establish the community eligibility provision, also known as the community eligibility option. The community eligibility provision is a 4-year reimbursement alternative for high poverty local educational agencies (LEAs) and schools participating in the NSLP and SBP. It is intended to improve access to free school meals in eligible high poverty LEAs and schools, and eliminate the administrative burden associated with collecting household applications.

This proposed rule would amend the regulations in § 245.9, *Special Assistance Certification and Reimbursement Alternatives*, to include the community eligibility provision. In addition, this rule would make minor editorial changes in the current regulations for all special assistance provisions to achieve consistency.

Currently, § 245.9 uses the term “school food authority” for the provisions 1, 2 and 3. For the community eligibility provision, however, the NSLA uses the term “local educational agency”, which is a broader entity in a school district that often includes or performs school food authority functions in addition to those unrelated to administration of the Child Nutrition Program. Therefore, this proposed rule refers to the “local educational agency” as defined in § 245.2 to describe the requirements for the provisions 1, 2 and 3, and the community eligibility provision. This editorial change does not indicate a change in the regulatory requirements for the provisions 1, 2 and 3, nor how these special assistance provisions are monitored. For example, counting and claiming responsibilities for the Provision 2 schools would continue to be the responsibility of the school food authority.

To use community eligibility, eligible LEAs and schools would be required to have a minimum percentage of identified students, who are students certified for free meals through means other than individual household applications (e.g., students directly certified through the Supplemental Nutrition Assistance Program (SNAP)) in the school year prior to implementing the provision, as required by Sections 11(a)(1)(F)(i) and (ii) of the NSLA, as amended. In addition, in accordance with Section 11(a)(1)(F)(ii), LEAs and schools would serve free lunches and breakfasts to all students, and cover with non-Federal funds any costs of providing free meals to all students that exceed the Federal reimbursement. As provided for in Section 11(a)(1)(F)(vi), no household applications for free and reduced price meals would be collected because meal reimbursement would be based on claiming percentages derived from the identified student percentage, as provided for in Section 11(a)(F)(iii) and (iv). The claiming percentages used in the first year would be valid for a period of four school years but could be increased in the second, third or fourth year if the identified student percentage rises. An eligible LEA would be able to elect the community eligibility provision on behalf of a single school, a select group of schools, or all schools under its jurisdiction, in accordance with Section 11(a)(1)(F)(ii)(I).

FNS has phased in the community eligibility provision over a three year period as required by the amendments made by HHFKA to Section 11(a)(F)(viii) and (ix) of the NSLA. Community eligibility was made available in eligible LEAs and schools in three States (Illinois, Kentucky and Michigan) starting with the school year beginning July 1, 2011. An additional four States (Ohio, New York, District of Columbia, and West Virginia) were added for the school year beginning July 1, 2012. Four more States (Florida, Georgia, Maryland and Massachusetts) were added for the school year beginning July 1, 2013. Community eligibility will be available nationwide to all eligible LEAs and schools for the school year beginning July 1, 2014.

This proposed rule mirrors the memoranda on community eligibility issued by FNS during the phased-in implementation. As required by the law, FNS issued guidance within 90 days of enactment of the HHFKA to implement the statutory requirements for community eligibility (see memorandum SP 23–2011 dated March 15, 2011). Additional memoranda followed to further explain the statutory requirements. State and local operators must continue to follow FNS memoranda and guidance on community eligibility, as applicable, while the rulemaking process is under way.

The following memoranda (available on the FNS Web site at <http://www.fns.usda.gov/cnd/governance/policy.htm>) address the community eligibility requirements established in section 11(a)(1)(F) of the NSLA, as amended:

- Memorandum SP 23–2011 (March 15, 2011), Community Eligibility Option: Guidance and Process for Selection of States for School Year 2011–2012.

- Memorandum SP 12–2012 (February 9, 2012), Community Eligibility Option: Guidance and Procedures for Selection of States for School Year 2012–2013 (Includes Frequently Asked Questions).

- Memorandum SP 24–2012 (April 10, 2012), Interim Review Guidance for States with Local Educational Agencies Electing the Community Eligibility Option.

- Memorandum SP 15–2013 (December 7, 2012), Community Eligibility Option: Guidance and Procedures for Selection of States for

School Year 2013–2014 (includes Frequently Asked Questions).

- Attachment A: Information for State Agency Participation.

- Attachment B: Monthly Federal Reimbursement Estimator.

In addition to issuing the above guidance, FNS has worked with the phase-in States to provide individual assistance and guidance. FNS has also conducted a number of webinars and monthly conference calls for the phase-in States.

FNS will evaluate participation in the community eligibility provision and the impact on eligible LEAs and schools in States selected during the phase-in period. Data collection began in fall, 2012 and the final report will be completed in December, 2013. FNS expects the community eligibility provision to improve access to school meals in high poverty areas, reduce administrative burden, and increase program efficiency by utilizing readily available and current data to certify eligible students for meal benefits.

This proposed rule would amend the regulations in § 245.9, Special assistance certification and reimbursement alternatives, by redesignating several paragraphs to add a new paragraph (f) and a new paragraph (l) for the community eligibility requirements. For consistency in the regulatory text, the proposed rule refers to the “local educational agency” to describe the requirements for provisions 1, 2 and 3, and the community eligibility provision.

#### Community Eligibility Definitions

For purposes of community eligibility, the proposed rule at § 245.9(f)(1) defines the terms “enrolled students”, “identified students” and “identified student percentages” as follows:

##### *Enrolled Students*

Under the proposal, the term “enrolled students” would mean students who are enrolled in and attending schools participating in the community eligibility provision and who have access to at least one meal service daily. Half-day students who *have access* to either breakfast or lunch would be included in the count of enrolled students. Students who *do not have access* to either breakfast or lunch due to the times they are attending school would not be included in the count of enrolled students.

##### *Identified Students*

Under this proposed rule, the term “identified students” would mean low-income children who are certified for free school meals without the use of a household application. Section 11(a)(1)(F)(i), as amended by HHFKA, defines identified students as “students certified based on documentation of benefit receipt or categorical eligibility as described in § 245.6a(c)(2)” of Program eligibility regulations in 7 CFR part 245. This refers to students directly certified for free meals through documentation provided by the following programs:

- Supplemental Nutrition Assistance Program (SNAP);
- Temporary Assistance to Needy Families (TANF);
- Food Distribution Program on Indian Reservations (FDPIR); and
- Medicaid (in States and LEAs participating in an FNS demonstration project to test the potential for direct certification with Medicaid).

The term identified students would also include the following students, as defined in § 245.2:

- Homeless children as defined under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2));
- Runaway and homeless youth served by programs established under the Runaway and Homeless Youth Act (42 U.S.C. 5701);
- Migrant children as defined under section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399);
- Foster children certified through means other than a household application;
- Children enrolled in a Federally-funded Head Start Program or a comparable State funded Head Start Program or pre-kindergarten program;
- Children enrolled in an Even Start Program; and
- Non-applicant students approved by local education officials, such as a principal, based on available information.

##### *Identified Student Percentage*

This proposed rule would define the term “identified student percentage” as the percentage determined by dividing the number of “identified students” as of a specified period of time by the number of “enrolled students” as of the same period of time and multiplying the quotient by 100.

$$\text{Identified Student Percentage} = \frac{\text{Number of Identified Students}}{\text{Number of Enrolled Students}} \times 100$$

For a group of schools, the identified student percentage would be calculated by taking the total of the identified students for that group of schools and dividing that total by the total student enrollment for that group of schools. Only schools that are in the same LEA would be grouped together for purposes of determining community eligibility.

#### Implementation

The proposed rule at § 245.9(f)(2) would allow LEAs to elect the community eligibility provision for all schools or for certain schools meeting the eligibility criteria on or after July 1, 2014. Eligible LEAs and schools may operate the community eligibility provision for one or more 4-year cycles. Extensions are discussed further in this preamble under the heading *New 4-year Cycles*.

#### Eligibility Criteria

To participate in the community eligibility provision, LEAs (other than a residential child care institution, as that term is set forth in the definition of "School" in § 210.2) and schools would be required to meet the requirements of § 245.9(f)(3), i.e., meet the minimum identified student percentage requirements, participate in both the NSLP and SBP, and comply with all community eligibility provision procedures, as set forth in § 245.9(f)(4) of the proposed rule.

To be eligible for community eligibility, an LEA or school would be required to have an identified student percentage of at least 40 percent based on data as of April 1st of the prior school year. This percentage reflects both the number of identified students and the number of enrolled students as of April 1 of prior school year data.

Section 11(a)(1)(F)(viii)(II) of the NSLA, as amended, authorizes the Department to establish a threshold that is less than 40 percent for each school year beginning on or after July 1, 2014. However, the Department does not intend to lower the threshold for school year 2014–2015. The Department would consider data from the final community eligibility evaluation, along with program operational data and experience from nationwide implementation in determining if a future change to the threshold is warranted. Any future change to the threshold would be communicated in advance of implementation, through the **Federal Register**.

Schools already offering free meals under Provision 2 or Provision 3 would be able to elect the community eligibility provision, and schools under Provision 1 would also be able to convert to this provision. The conversion could take place during base or non-base years as long as the State or the LEA is able to demonstrate that the minimum identified student percentage threshold is met as of April 1 of the prior school year. Provision 1 schools in Puerto Rico and the Virgin Islands, where a statistical survey procedure is allowed in lieu of eligibility determinations, would be able to participate in the community eligibility provision. For those schools, updated direct certification data would be needed to determine the current percentage of identified students and all other requirements of the proposed rule would need to be met.

#### Community Eligibility Provision Procedures

This rule at § 245.9(f)(4) outlines proposed community eligibility provision procedures. The procedures include election deadline, State agency approval, service of meals at no charge, household applications, meal claiming percentages, multiplier factor, cost differential, new 4-year cycles, and grace years.

##### *Election Deadline*

Under proposed § 245.9(f)(4)(i), any LEA intending to elect the community eligibility provision for the following year for some or all of its schools would be required to submit to the State agency documentation demonstrating that the LEA or school meets the minimum identified student percentage threshold, as described earlier under *Eligibility criteria*. Such documentation would include, at a minimum, the counts of identified and enrolled students, as of April 1 of the prior school year. LEAs would be required to submit documentation no later than June 30 to begin community eligibility in the school year beginning July 1.

##### *State Agency Review*

Prior to authorizing an LEA to participate in community eligibility provision for some or all of its schools, § 245.9(f)(4)(ii) of the proposed rule would require the State agency to review the identified student percentage documentation submitted by the LEA to ensure the LEA or school meets the

minimum identified student percentage, participates in both the NSLP and SBP, and has a record of administering the meal program in accordance with program regulations, as indicated by the most recent administrative review.

While the decision to participate in the community eligibility provision rests with the LEA, the State agency is responsible for providing technical assistance and assuring continued program integrity. Thus, the State agency would be required to confirm the LEA's eligibility to participate in the community eligibility provision.

##### *Meal Counts and Meals at No Charge*

Under § 245.9(f)(4)(iii) of the proposal, the LEA would be required to ensure participating schools offer free reimbursable breakfasts and free reimbursable lunches to all students in participating schools during the 4-year cycle and count the number of reimbursable breakfasts and lunches served to students daily.

##### *Household Applications*

Under proposed § 245.9(f)(4)(iv), an LEA would not be permitted to collect applications for free and reduced price school meals on behalf of children in schools participating in the community eligibility provision. Any LEA seeking to obtain socio-economic data from students would be required to develop, conduct and fund this effort totally separate from and not under the auspices of the NSLP and SBP. Because costs associated with obtaining the socio-economic data would not be allowable Program costs, nonprofit school food service account funds could not be used for this purpose.

Based on feedback from the States implementing the community eligibility provision during the phase-in period, the absence of socio-economic data is cited as the largest barrier to electing the provision. Currently, LEAs use aggregate, non-identifying, eligibility information collected from school meals applications as a socio-economic indicator for multiple purposes, including funding formulas for Federal and State education programs. Program regulations in 7 CFR Part 245 allow the use of aggregate, non-identifying information for such purposes, and also allow the use of individual student eligibility by authorized persons for specific purposes.

Consistent with discussions the Department has had with the U.S.

Department of Education (DoE), DoE is developing guidance on how to use data collected without applications through community eligibility to determine the distribution of Title I funds to schools, which preserves the burden reduction intent of community eligibility. However, Title I is not the only assistance funding that uses NSLP socio-economic data, as LEAs may rely on this data for the distribution of other services to children or areas in high need.

Before an LEA decides to collect separate applications to obtain socio-economic data, the State agency child nutrition staff is encouraged to work with State funding experts to assess the need for school meal program application data, and to identify alternate sources of socio-economic data. Replacing the collection of socio-economic data through NSLP with another collection system is contrary to the statutory goal of reducing paperwork for households and schools through community eligibility. If the LEA determines that it is absolutely necessary to collect socio-economic data to assist with the disbursement of other education-related funds, such application process would be developed and managed totally separate from the School Nutrition Programs, and not under the auspices of the National School Lunch Program. It is expected that the form/request for household information for non-Program purposes would clarify its purpose, and affirmatively state that receipt of school meal benefits would not be affected by a household's decision to complete and return the form/request.

#### *Free and Paid Claiming Percentages*

Under proposed § 245.9(f)(4)(v), reimbursement for breakfasts and lunches meeting Program requirements would be based on free and paid claiming percentages applied to the total number of reimbursable lunches and breakfasts served, respectively, each month. To determine the free claiming percentage, LEAs would multiply the identified student percentage by a multiplier factor of 1.6, as required by the NSLA. If the product of this calculation exceeds 100 percent, the free claiming percentage is capped at 100 percent. The difference between the free claiming percentage and 100 percent represents the paid claiming percentage. Because community eligibility schools do not collect household applications for school meals, the multiplier factor of 1.6 is intended to estimate the number of free and reduced price meals that would had been served at the participating school based on income

eligibility and categorical eligibility if applications were collected.

#### *Multiplier Factor*

Consistent with section 11(a)(1)(F)(vii) of the NSLA, as amended, the multiplier factor is 1.6, until otherwise determined by the Secretary. For each school year beginning on or after July 1, 2014, the law allows the Secretary to change the multiplier factor to a number between 1.3 and 1.6, and to apply a different multiplier factor for different schools or LEAs. However, schools electing community eligibility would maintain the same multiplier factor for an entire 4-year cycle. This proposed provision is found at § 245.9(f)(4)(vi).

Although the amendments to the NSLA made by HHFKA would allow the Secretary to change the multiplier factor on July 1, 2014, the Department does not intend to change it for school year 2014–2015. The Department would consider data from the final community eligibility evaluation, along with program operational data and experience from nationwide implementation in determining if a future change to the multiplier factor is warranted. Any change to the multiplier factor would be communicated in advance of implementation, through the **Federal Register**.

#### *Selection of the Identified Student Percentage*

In the first year of a 4-year cycle, the LEA would use the identified student percentage as of April 1 of the prior school year. In the second, third, and fourth year of the cycle, the LEA would have discretion to use either (a) the identified student percentage from the year prior to year 1 of the four-year cycle or (b) the identified student percentage from the preceding year, whichever is higher. For example, if an LEA elects community eligibility for the school year 2014–2015, the selection would be as follows:

For Year 1 (SY 2014–2015): percentage as of April 1, 2014 (school year prior to implementing the community eligibility provision);

For Year 2 (SY 2015–2016): percentage as of April 1, 2014 or April 1, 2015;

For Year 3 (SY 2016–2017): percentage as of April 1, 2014 or April 1, 2016; and

For Year 4 (SY 2017–2018): percentage as of April 1, 2014 or April 1, 2017.

Due to variations in the point in time for monthly updates in State and local systems, under this proposed rule the identified student percentage must be representative of the identified students and the student enrollment as of April 1. Updates could be done before or after

April 1 to account for differences in operational procedures, but the data would have to be representative of this date. For example, if a State or local direct certification system provides monthly updates of directly certified students on the 5th of each month, data from the April 5 updates may be used to develop the identified student percentage if it is representative of April 1.

#### *Calculating the Claiming Percentages*

As stated earlier, the LEA would multiply the applicable identified student percentage by a factor of 1.6 to calculate the free claiming percentage. The difference between the free claiming percentage and 100 percent represents the paid claiming percentage. An example of calculating the free and paid claiming percentages used for Year 1 follows:

Year 1 (School Year July 1, 2014–June 30, 2015):

Identified student percentage as of April 1, 2014 (school year prior to Year 1): 45%  
 Identified student percentage × multiplier factor:  $45\% \times 1.6 = 72\%$   
 Free claiming percentage: 72%  
 Paid claiming percentage (100% minus the free claiming percentage): 28%

The claiming percentages used in Year 1 would be valid for the 4-year community eligibility cycle. However, in the second, third and fourth year, the identified student percentage may be calculated each year (as discussed earlier) to determine if an increase has occurred from the year prior to the first year of community eligibility. An LEA or school may re-calculate its claiming percentages in the second, third or fourth year to reflect the higher identified student percentage. As shown in the next example, if the identified student percentage rises in the second, third or fourth year, there would be a corresponding increase in the free claiming percentage and decrease in the paid claiming percentage.

Year 2 (School Year July 1, 2015–June 30, 2016):

Identified student percentage (as of April 1, 2014) used for school year prior to Year 1: 45%  
 Identified student percentage as of April 1, 2015: 47%  
 Identified student percentage × multiplier factor:  $47\% \times 1.6 = 75.2\%$   
 Free claiming percentage: 75.2%  
 Paid claiming percentage (100% minus the free claiming percentage): 24.8%

#### *Calculating the Claim for Reimbursement*

Under the proposal, the LEA would determine the number of free lunches to claim for reimbursement by multiplying

the free claiming percentage by the total number of reimbursable lunches served. To determine the number of paid lunches to claim for reimbursement, the LEA would multiply the paid claiming percentage by the total number of reimbursable lunches served. Similar calculations are made to determine the number of free and paid breakfasts to claim for reimbursement.

#### *Non-Federal Funding Sources*

The proposed rule at § 245.9(f)(4)(vii) would require the LEA or school to pay, with funds from non-Federal sources, the difference between the cost of serving lunches and breakfasts at no charge to all participating children and Federal reimbursement. This is consistent with the existing requirements for Provision 2 and 3, the other two reimbursement alternatives available under § 245.9. The use of non-Federal funds would be necessary if the total amount of Federal reimbursement through the community eligibility provision does not cover the costs of serving all students free meals. Consistent with regular Program administration, funds other than Federal reimbursement available to the nonprofit school food service account would be used to make up the difference. Such funds generally include other school food service revenue such as revenue from a la carte sales, etc. The non-Federal funds used for community eligibility would have to be allocated for this purpose and could not be assigned to meet other Federal requirements.

When considering whether to participate in community eligibility, LEAs and schools should consider the participation level (e.g., individual school, group of schools within the LEA, or the entire LEA), the anticipated level of Federal reimbursement, and the non-Federal resources available.

#### *New 4-Year Cycle*

Under § 245.9(f)(4)(viii) of the proposal, participating LEAs or schools that meet the identified student percentage of 40 percent as of April 1 in Year 4 of the 4-year cycle would be able, with the State agency's concurrence, to immediately begin another 4-year cycle after the initial cycle concludes. For example, schools that elect community eligibility beginning July 1, 2014 would have to meet the 40 percent threshold as of April 1, 2018 to qualify for another 4-year cycle. The identified student percentage as of April 1, 2018 would be used to calculate the claiming percentages for Year 1 of the new cycle.

#### *Grace Year*

Under § 245.9(f)(4)(ix) of this proposed rule, participating LEAs and schools that fall within 10 percentage points lower than the established threshold of 40 percent as of April 1 in Year 4 of the 4-year cycle, would be allowed to continue community eligibility for a grace year (one year outside of the 4-year cycle). At least a 30 percent identified student percentage would be required to qualify for a grace year. Reimbursement for schools in a grace year would be based on the identified student percentage as of April 1 in year 4 of the current 4-year cycle. For example, the claiming percentages for participating schools in a grace year would be calculated as follows:

Year 4 identified student percentage as of April 1, 2018: 35%  
 Identified student percentage × multiplier factor: 35% × 1.6 = 56%  
 Free claiming percentage: 56%  
 Paid claiming percentage: 44%

LEAs or schools that reach the required 40 percent threshold of identified students as of April 1 of the grace year would be able to begin a new community eligibility 4-year cycle in the following school year. Those that do not meet the threshold as of April 1 of the grace year would be required to return to regular Program administration, including collecting household applications in the following school year.

#### **Notification and Reporting Requirements**

Section 11(a)(1)(F)(x) of the NSLA, as amended, includes several provisions which, in concert, encourage State agencies to promote and disseminate information about community eligibility. Under the statute, State agencies are required to publish a list of schools and notify eligible or potentially eligible LEAs of the community eligibility provision no later than May 1. In order for the State agency to meet the publication and notification deadline, the proposal would require the list of schools and the notification of eligible or potentially eligible LEAs to occur no later than April 15. The April 15 deadline is intended to give State agencies enough time to obtain and post the required information within the period specified by the law. The proposed deadlines and requirements are discussed in more detail below and appear in the proposed regulatory text under paragraphs § 245.9(f)(5) through (f)(8).

#### *List of Schools*

To assist State agencies in disseminating information about community eligibility, § 245.9(f)(5) of this proposal would require LEAs to submit to the State agency by April 15, a list of schools eligible or potentially eligible for the community eligibility provision. The State agency may exempt LEAs from this requirement if the State agency already collects this information. The lists would be required to include:

- Schools with an identified student percentage of at least 40 percent;
- Schools with an identified student percentage of at least 30 percent but less than 40 percent; and
- Schools that are currently in the fourth year community eligibility with an identified student percentage of at least 30 percent but less than 40 percent.

The above lists of schools may be obtained by the State agency at any time during the current school year, but not later than April 15. Since this requirement is intended as part of a public notification and outreach effort, local and State agencies would be permitted to use data reflecting either the identified student percentage or direct certifications as a percentage of enrollment, as an indicator of potential eligibility or eligibility. LEAs or State agencies are encouraged to use existing data sources to meet this requirement. For example, data collected through the frequent matching activities with the Supplemental Nutrition Assistance Program may be used to fulfill the notification requirements. Additional information regarding notification data is discussed in this preamble under the heading *Notification data*.

#### *Notification of Local Educational Agencies*

Under § 245.9(f)(6) of the proposal, State agencies would be required to notify eligible or potentially eligible LEAs by April 15, of their status for community eligibility and the procedures to elect this reimbursement option. Based on the most current identified student data available district wide, States agencies would notify:

- LEAs with an identified student percentage of at least 40 percent district wide, of the opportunity to elect community eligibility in the subsequent year; the estimated cash assistance the LEA would receive, e.g., a blended per meal rate; and the procedures to participate in community eligibility;
- LEAs 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 § 245.9 (f)(3) of this proposal;

- LEAs currently using community eligibility district wide, of the options available in establishing claiming percentages for next school year; and
- LEAs 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. The LEAs would also be notified of the estimated cash assistance they would receive during the grace year, and the procedures to maintain eligibility and election.

State agencies are encouraged to use existing data to effect the LEA notification requirement. For example, State agencies are able to determine each LEA's identified student percentage based on the FNS-742, *School Food Authority Verification Summary Report*. This information is submitted to the State agency by March 1. With this information, State agencies could readily notify eligible and potentially eligible LEAs of their status for the community eligibility provision.

#### *Public Notification Requirements*

Section 11(a)(1)(F)(x) of the NSLA, as amended, requires each State agency to publish the list of schools described previously under *List of schools*, and to submit to the Department the list of LEAs receiving notices as described previously under *Notification of local educational agencies*.

This proposed rule at § 245.9(f)(7) would require State agencies to make both the list of schools and the list of LEAs readily accessible on the State agency Web site in a format prescribed by FNS. FNS intends to develop a template for State agencies to use in displaying the required information.

In lieu of having the State agencies submit the list of LEAs to the Department for publication, the FNS intends to develop a Community Eligibility Provision Web site which would link to the applicable portion of the State agencies' Web sites that identify both the list of schools and the list of LEAs.

#### *Notification Data*

The proposed rule, at § 245.9(f)(8), would require State agencies and LEAs to obtain data reflective of the current school year when identifying schools and LEAs that are eligible or near eligible for community eligibility. State agencies and LEAs would be required to use the identified student percentage, as defined in the proposed § 245.9(f)(1).

As mentioned earlier, LEA-wide identified student percentage data are readily available as both the numbers of identified students and enrolled students are collected and reported on the FNS-742, *School Food Authority Verification Summary Report*. However, school-specific data may not be as readily available to the State agency.

If school-specific identified student data are not readily available, State agencies would be permitted to use the number of direct certifications as a proxy for identified students when identifying schools to notify, as required under proposed § 245.9(f)(5). To calculate the identified student percentage using proxy data, divide the number of students directly certified through the Supplemental Nutrition Assistance Program and other assistance programs, if applicable, by the number of enrolled students.

If direct certification counts are used in the identified student percentage calculation to meet the proposed notification requirements, the data must be clearly identified as data not fully reflective of the number of identified students. Further, if the data are not representative of April 1 of the current school year, the data must include a notation that the data are intended for informational purposes and do not confer eligibility for community eligibility. This proposed provision is found in § 245.9(f)(8) of the proposed regulation.

#### **Other Uses of the Free Claiming Percentage**

As required in § 245.9(f)(9) of the proposed regulation, when community eligibility is in place in all or a group of schools in an LEA, an individual school's eligibility for other Child Nutrition Programs, such as Fresh Fruit and Vegetable Program, Child and Adult Care Food Program, Summer Food Service Program, Afterschool Snacks, and Seamless Summer Option, would be determined by the school's free claiming percentage (as discussed earlier in the rule under the heading *Free and Paid Claiming Percentages*). No household applications would be required. Institutions or sites in the boundaries of the individual community eligibility school would be permitted to use the school's free claiming percentage (identified student percentage multiplied by 1.6) to determine area eligibility under these programs.

#### **Record Retention**

Under the proposal, LEAs and schools would be required to keep documentation and records related to

methodology used to calculate the identified student percentage (for each school year if applicable) and meet existing recordkeeping requirements in Parts 210, 220 and 245. Failure to maintain records would result in the State agency requiring the LEA and/or school(s) to return to standard meal counting and claiming procedures because the level of reimbursement could not be justified. This provision is found at § 245.9(h)(3).

#### **Administrative Reviews of Community Eligibility Schools**

When conducting the administrative reviews of community eligibility schools, the State agency must verify the identified student percentage used during the year in which a review is conducted. In addition, the State agency must review the documentation and records from each year used to establish the identified student percentage. Applicable provisions in § 210.18 and FNS guidance must be followed when reviewing schools using community eligibility. This proposed provision is found at § 245.9(i). Additional information on administrative review procedures will be provided under a separate proposed rulemaking.

#### **Ending Use of Community Eligibility**

Existing regulations at § 245.9(i) sets forth requirements for Provision 1, 2, and 3 schools wishing to return to standard meal counting and claiming procedures. Provision 1, 2, and 3 schools may return to standard notification, certification and counting procedures at any time if standard procedures better suit the school's Program needs. The LEA must notify the State agency of the return to standard procedures.

Under section 11(a)(1)(F)(ii)(II) of the NSLA, as amended, a participating LEA or school would be able to cease community eligibility and return to standard notification, certification and counting procedures for the following year by notifying the State agency not later than June 30.

The proposed rule at § 245.9(j) would consolidate the existing and new requirements for all special assistance LEAs and schools, i.e., LEAs and schools participating in Provision 1, 2, 3 or community eligibility. Under the proposal, special assistance LEAs or schools would be able to cease a special provision option and return to standard notification, certification and counting procedures at any time during the school year. The LEA would be required to notify the State agency prior to the change and seek State agency guidance and concurrence to resume standards

procedures. To return to standard procedures in the next school year, the LEA would notify the State agency no later than June 30.

### **Transferring a Student's Eligibility for Free Meals Under the Special Assistance Provisions**

This proposed rule at § 245.9(l) would ensure that students transferring from a community eligibility school, or a special provision school, to a school using standard counting and claiming procedures in the same LEA continue to receive free meals for up to 10 operating days. This is intended to avoid interruption in nutrition benefits for a student while the receiving school is determining individual eligibility status. For transfers between LEAs, the receiving LEA may also choose to provide the transferred student free meals for up to 10 operating days.

### **LEA Best Practices**

To implement community eligibility successfully and encourage all children to benefit from universal free school meals, LEAs are encouraged to:

- Consider and plan for potential issues surrounding the absence of individual free and reduced price data for other education purposes and communicate with those impacted.
- Inform students and parents that free meals (breakfast and lunch) will be offered to all enrolled students under the community eligibility provision.
- Implement the community eligibility provision in a way that results in full student participation and not in overt-identification of low-income students;
- Communicate effectively to all students and households the nutrition benefits of school meals; and
- Be aware of potential overt identification issues when offering a la carte foods.

### **Procedural Matters**

#### *Executive Order 12866 and Executive Order 13563*

This proposed rule has been reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866 and has been determined to be Not Significant.

#### *Regulatory Impact Analysis*

This rule has been designated as not significant by the Office of Management and Budget; therefore, no Regulatory Impact Analysis is required.

#### *Regulatory Flexibility Act*

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5

U.S.C. 601–612). Pursuant to that review it has been certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would establish an alternative reimbursement option for LEAs and schools in high poverty areas, and would eliminate the requirement to collect free and reduced price household applications in participating schools during the period of participation in the community eligibility provision. Therefore, FNS does not expect that the proposed rule will have a significant economic impact on small entities.

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

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) that would result in expenditures for State, local, or 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 NSLP and SBP are listed in the Catalog of Federal Domestic Assistance Programs under 10.555 and 10.553, respectively. 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), these programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. The Child Nutrition Programs are federally funded Programs administered at the State level. FNS headquarters and regional office staff engage in ongoing formal and informal discussions with State and

local officials regarding Program operational issues. This structure of the Child Nutrition Programs allows State and local agencies to provide feedback that contributes to the development of meaningful and feasible Program requirements.

#### *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.

#### **1. Prior Consultation With State Officials**

FNS headquarters and regional offices have formal and informal discussions with State agency officials on an ongoing basis regarding the Child Nutrition Programs and policy issues. Prior to drafting this proposed rule, FNS held several conference calls and webinars with the State agencies to discuss the phased-in implementation of the community eligibility provision as prescribed by the HHFKA. FNS also shared information with State officials at national, regional and state level conferences. These opportunities allowed for exchange of information that aided in the development of this proposed rule. Issues identified during the phased-in implementation of the community eligibility provision were also taken into consideration.

#### **2. Nature of Concerns and the Need To Issue This Rule**

State agencies identified the absence of non-identifying household information for other education related purposes, such as Title I funding allocation, as an issue. The HHFKA does not allow LEAs and schools to collect household applications for free and reduced price meals while participating in the community eligibility provision. This alternative reimbursement option is designed to increase access to school meals while maximizing the use of existing information and eliminating the burden associated with collecting household applications.

#### **3. Extent to Which the Department Meets Those Concerns**

FNS has considered the concerns raised by stakeholders. We have attempted to balance the statutory requirement prohibiting the use of

household applications for the purpose of identifying students eligible for free and reduced price meals in the community eligibility provision with the reported need of LEAs and schools to access household information for other education-related purposes. The preamble to this rule explains that LEAs and schools are allowed to develop alternative methods to collect household socio-economic data and lists a few restrictions intended to ensure that such collection of data is conducted separately from the NSLP and SBP. In addition, FNS has communicated with the Department of Education on several occasions, and with the Federal Communication Commission to provide information to assist them in the development of their community eligibility guidance materials related to funding distribution under their assistance programs.

#### *Executive Order 12988*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed 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 the final rule, appeal procedures in § 210.18(q) and § 235.11(f) of this chapter must be exhausted.

#### *Executive Order 13175*

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. In spring 2011, FNS offered five opportunities for consultation with Tribal officials or their designees to discuss the impact of the Healthy, Hunger-Free Kids Act of 2010 on Indian tribes or Indian Tribal governments. FNS followed up with a conference call on February 13, 2013, and has scheduled additional calls for May 22, 2013; August 21, 2013; and November 6, 2013. These consultation sessions have provided and will continue to provide

the opportunity to address Tribal concerns related to school meals. No concerns about the community eligibility provision have been expressed by the Indian Tribal governments.

The impact of this proposed rule on Tribal members is expected to be positive. The community eligibility provision facilitates access to free school meals in high-need LEAs and schools, and enhances program efficiency by eliminating the need to collect household applications. Providing free meals to all students through community eligibility would support Tribal efforts to reduce obesity and diabetes in their communities by providing nutritional balanced meals and helping children develop healthful eating habits early in life.

USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to host collaborative conversations with Tribal officials or their designees concerning ways to improve this rule in Indian country. We are unaware of any current Tribal laws that could be in conflict with the proposed rule. We request that commenters address any concerns in this regard in their responses.

#### *Civil Rights Impact Analysis*

FNS has reviewed this proposed rule in accordance with Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on children on the basis of age, race, color, national origin, sex, or disability. A careful review of the rule's intent and provisions revealed that this proposed rule is not intended to reduce a child's ability to participate in the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, or Special Milk Program. The community eligibility provision provides all children enrolled in and attending the eligible schools access to free school meals.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR Part 1320), requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. This collection is a revision of a currently approved collection for

Determining Eligibility for Free and Reduced Price Meals, OMB control #0584-0026 (7 CFR Part 245). The current approval for the information collection burden associated with 7 CFR Part 245 expires on April 30, 2016. This revision consists of the proposed rule, *National School Lunch Program and School Breakfast Program: Eliminating Applications through Community Eligibility as Required by the Healthy, Hunger-Free Kids Act of 2010*. The proposed rule is intended to improve school meal program access for low-income children and reduce paperwork for households and program administrators. The current collection burden inventory for Determining Eligibility for Free and Reduced Price Meals is 965,645. This revision will reduce reporting burden by 6,571 hours and increase recordkeeping burden by 80 hours for an overall reduction of 6,491 hours, resulting in a total collection burden inventory of 959,154 hours. These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval.

Written comments on the information collection in this proposed rule must be received by February 3, 2014.

Send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Margaret Applebaum, Program Analysis and Monitoring Branch, Child Nutrition Division, 3101 Park Center Drive, Room 640, Alexandria, VA 22302. For further information, or for copies of the information collection requirements, please contact Margaret Applebaum at the address indicated above. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov>, and follow the online instructions for submitting comments electronically.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval, and will become a matter of public record.

*Title:* National School Lunch Program and School Breakfast Program: Eliminating Applications through Community Eligibility as Required by the Healthy, Hunger-Free Kids Act of 2010.

*OMB Number:* 0584–0026.

*Expiration Date:* April 30, 2016.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* The Food and Nutrition Service administers the National School Lunch Program, the School Breakfast Program, and the Special Milk Program as mandated by the Richard B. Russell National School Lunch Act (NSLA), as amended (42 U.S.C. 1751, *et seq.*), and the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771, *et seq.*). As provided in 7 CFR Part 245, schools participating in these meal programs must make free and reduced price meals available to eligible children.

This rule proposes to amend the eligibility regulations for free and reduced price meals under the National

School Lunch Program (NSLP) and School Breakfast Program (SBP) to codify the statutory provision that establishes the community eligibility provision, a reimbursement option for eligible local educational agencies (LEAs) and schools that wish to offer free school meals to all children in high poverty schools without collecting household applications for a period of four years. Eligibility to participate in the provision is based on an identified student percentage (ISP) derived from the claiming percentages of students eligible for free meals who are not subject to verification as prescribed in section § 245.6a(c)(2). Participating LEAs and schools will receive meal reimbursement based on the ISP derived from the claiming percentages.

This collection obtains information on LEAs and schools that fall in one of the following categories of the community eligibility provision: Eligible to participate (ISP 40% or greater), nearly eligible (ISP between 30–40%), currently electing (ISP 40% or greater), or grace year eligible (in fourth year with ISP between 30–40%) and State agencies that must make the information collected publically available. For those eligible and electing to participate in the provision, this collection also eliminates certain LEA and household reporting and administrative burdens associated

with applications for free and reduced price meals.

This proposed rule is requesting a revision in the burden hours. As a result of program changes, the revisions result in an overall reduction of 6,491 hours from current approved burden (decrease of 6,571 reporting burden and slight increase of 80 hours of recordkeeping burden).

The average burden per response and the annual burden hours for reporting and recordkeeping are explained below and summarized in the charts which follow.

*Affected Public:* Individuals/ Households, Local Educational Agencies, and State Agencies

*Estimated Number of Respondents:* 8,278,357

*Estimated Number of Responses per Respondent:* 2.21

*Estimated Total Annual Responses:* 18,322,111

*Estimated Time per Response:* 0.258

*Estimate Total Annual Burden on Respondents:* 959,154

*Current OMB Inventory:* 965,645

*Difference (Burden Revisions Requested):* – 6,491

Refer to the following tables for estimated total annual reporting and recordkeeping burden per each type of respondent:

**ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR 0584–0026, DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS, 7 CFR 245**

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Previous total hours	Difference due to rulemaking
<b>Recordkeeping (State Agencies)</b>								
State Agencies review and confirm LEAs eligibility to participate in provision.	245.9(f)(4)(ii) .....	56	9	500	0.080	40	0	40
<b>Recordkeeping (Local Education Agency)</b>								
LEAs maintain documentation related to methodology used to calculate the identified student percentage and determine eligibility.	245.9(h)(3) .....	500	1	500	0.080	40	0	40
Total Recordkeeping Burden for Proposed Rule.	.....	556	1.80	1000	12.5	80	.....	.....
Total Existing Recordkeeping Burden for Part 245.	.....	.....	.....	.....	.....	6,059	.....	.....
Total Recordkeeping Burden for Part 245 with Proposed Rule.	.....	.....	.....	.....	.....	6,139	.....	.....

## ESTIMATED ANNUAL REPORTING BURDEN FOR 0584-0026, DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS, 7 CFR 245

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Previous total hours	Difference due to rulemaking
<b>Reporting (State Agencies)</b>								
State agency notify LEAs of their community eligibility status as applicable.	245.9(f)(6) .....	56	85	4769	0.050	239	0	239
State agency to make publicly available the names of LEAs and schools receiving notifications.	245.9(f)(7) .....	56	1	56	0.017	1	0	1
<b>Reporting (Local Education Agency)</b>								
LEAs submit to State agency documentation of acceptable identified student percentage of LEA/school electing the provision.	245.9(f)(4)(i) .....	500	1	500	0.033	17	0	17
LEA submit to State agency for publication a list of potentially eligible schools and their eligibility status; unless otherwise exempted by State agency.	245.9(f)(5) .....	5,159	1	5,159	0.0167	86	0	86
LEAs amend free and reduced policy statement and certify that schools meet eligibility criteria.	245.9(g)(1) .....	500	1	500	0.250	125	0	125
LEAs notify households of approval of meal benefit applications.	245.6(c)(6)(i) .....	20,358	306	6,231,886	0.02	124,638	125,148	-510
LEAs must notify households in writing that children are eligible for free meals based on direct certification and that no application is required.	245.6(c)(6)(ii) .....	20,358	145	2,942,097	0.020	58,842	62,574	-3,732
LEAs provide written notice to each household of denied benefits.	245.6(c)(7) .....	20,358	17	345,256	0.020	6,905	7,092	-187
LEA must enter into written agreement with the agency receiving children's free and reduced price eligibility information.	245.6(j) .....	20,358	1	20,358	0.166	3,379	3,462	-83
LEAs must determine sample size of households to verify eligibility.	245.6a(c) .....	20,358	1	20,358	0.330	6,718	6,883	-165
LEAs notify households of selection for verification.	245.6a(f) .....	20,358	12	249,531	0.250	62,383	62,574	-191
<b>Reporting (Household)</b>								
Households complete application form for free or reduced price meal benefits.	245.6(a) .....	8,236,529	1	8,236,529	0.070	576,557	578,343	-1,786
Households assemble written evidence for verification of eligibility and send to SFA.	245.6a(a)(7)(i) .....	189,235	1	189,235	0.500	94,617	95,000	-383
Households cooperate with collateral contacts for verification of eligibility.	245.6a(a)(7)(ii) .....	1,892	1	1,892	0.167	316	317	-1
Total Reporting Burden for Proposed Rule.	.....	8,256,943	2	18,248,125	0.051	934,823	.....	.....
Total Existing Reporting Burden for Part 245.	.....	.....	.....	.....	.....	959,586	.....	.....
Total Reporting Burden Decrease for Part 245.	.....	.....	.....	.....	.....	(6,571)	.....	.....
Total Reporting Burden for Part 245 with Proposed Rule.	.....	.....	.....	.....	.....	953,015	.....	.....

## SUMMARY OF BURDEN (OMB #0584-0026) 7 CFR 245

TOTAL NO. RESPONDENTS .....	8,278,357
AVERAGE NO. RESPONSES PER RESPONDENT .....	2.213
TOTAL ANNUAL RESPONSES .....	18,322,111

SUMMARY OF BURDEN (OMB #0584-0026) 7 CFR 245—Continued

AVERAGE HOURS PER RESPONSE .....	0.258
TOTAL BURDEN HOURS FOR PART 245 WITH REVISIONS .....	959,154
CURRENT OMB INVENTORY FOR PART 245 .....	965,645
DIFFERENCE (BURDEN REVISIONS REQUESTED) .....	(6,491)

*E-Government Act Compliance*

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

**List of Subjects**

*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.

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

■ 1. The authority citation for 7 CFR Part 245 continues to read as follows:

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

■ 2. In § 245.6, amend paragraph (b)(1)(v) by adding a third sentence at the end of the paragraph to read as follows.

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) \* \* \* Local educational agencies

or schools electing the community eligibility provision under § 245.9(f), are required to conduct direct certification only in the year prior to the first year of a cycle or, if seeking to update the identified student percentage in the second, third or fourth year of a cycle.

\* \* \* \* \*

■ 3. In § 245.9:

■ a. Redesignate paragraph (k) as paragraph (m) and redesignate paragraphs (f) through (j) as paragraphs (g) through (k);

■ b. Add new paragraphs (f) and (l);

■ c. Revise newly redesignated paragraphs (g), (i), (j) and (k);

■ d. Revise the introductory text for newly redesignated paragraph (h) and add paragraph (h)(3);

■ e. Remove the words “school food authority” whenever they appear in

§ 245.9 and add, in their place, the words “local educational agency”;

■ f. Remove the words “school food authorities” whenever they appear in § 245.9 and add, in their place, the words “local educational agencies”;

■ g. Remove the words “school food authority’s” whenever they appear in § 245.9 and add, in their place, the words “local educational agency’s”;

■ h. Remove the words “paragraph (g)” whenever they appear in § 245.9 and add, in their place, the words “paragraph (h)”;

■ i. Remove the words “paragraphs (g) and (h)” whenever they appear in § 245.9 and add, in their place, the words “paragraphs (h) and (i)”;

■ j. Remove the words “paragraph (k)” whenever they appear in § 245.9 and add, in their place, the words “paragraph (m)”.

The revisions and additions read as follows:

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

\* \* \* \* \*

(f) *Community eligibility.* The community eligibility provision is a 4-year reimbursement option for eligible high poverty local educational agencies and schools. Under this provision, a local educational agency may participate for all schools in the local educational agency or for only some schools. Participating local educational agencies must offer free breakfasts and lunches for 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 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. The term identified students also includes a homeless child, a

migrant child, a runaway child or a Head Start Child, 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 or for certain schools meeting the requirements of this section beginning on or after July 1, 2014. 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, local educational agencies (other than a residential child care institution, as that term is set forth in the definition of “School” in § 210.2) and schools must meet the eligibility criteria set forth in this paragraph.

(i) *Minimum identified student percentage.* A local educational agency 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.

(ii) *Lunch and breakfast program participation.* A local educational agency or school must participate in the National School Lunch Program and School Breakfast Program, under Parts 210 and 220 of this title.

(iii) *Compliance.* A local educational agency 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 deadline.* A local educational agency that intends to elect the community eligibility provision for the following year for all schools or on behalf of certain schools must submit to the State agency documentation demonstrating the LEA 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 prior school year.

(ii) *State agency concurrence.* A local educational agency must obtain State agency concurrence to elect the community eligibility provision.

(iii) *Meals at no charge.* A local educational agency must ensure participating schools offer free reimbursable breakfasts and lunches 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 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 socio-economic data from children receiving free meals under this section must develop, conduct and fund this effort totally separate from and not under the auspices of the National School Lunch Program and 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, or as otherwise specified by FNS. 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, 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 first year of community eligibility.

(B) To determine the number of lunches to claim for reimbursement, multiply the free claiming percentage 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, respectively.

(vi) *Multiplier factor.* A 1.6 factor 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.* The local educational agency of a school participating in community eligibility must pay, with funds from non-Federal sources, the difference between the cost of serving lunches and breakfasts at no charge to all participating children and Federal reimbursement.

(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 of the fourth year of the previous cycle. If the local educational agency or school meets the eligibility criteria set forth in paragraph (f)(3) of this section, a new 4-year cycle may begin, subject to State agency concurrence.

(ix) *Grace year.* A local educational agency or school in the fourth year of a community eligibility cycle with an identified student percentage of less than 40 percent but equal to or greater than 30 percent as of April 1 may continue using community eligibility for a grace year that is outside of the 4-year cycle. If the local educational agency 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 or school does not regain the required threshold as of April 1 of the grace year, it 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 or school as of April 1 of the fourth year of the previous cycle by the 1.6 factor, or the factor as otherwise established by FNS.

(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, e.g., a blended per meal rate; 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 at 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.

(8) *Notification data.* For purposes of fulfilling the requirements in paragraphs (f)(5) and (f)(6), 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, or as otherwise established by FNS guidance, 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:

\* \* \* \* \*

(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. Such documentation must be made available at any reasonable time for review and audit purposes.

(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 procedures at any time during the school year or for the following school year if standard procedures better suit the school's program needs. Prior to the change taking place, but no later than June 30, the local educational agency must:

(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 approval 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), (b), (c), (d), (e) and (f) of this section are met. For the community eligibility provision, updated direct certification data must be available to determine the identified student percentage.

(l) *Transferring eligibility for free meals.* For student transfers within a local educational agency, a student's access to free meals under the special provisions specified in this section must be extended by a receiving school operating under the standard counting and claiming procedures for up to 10

operating school days. For student transfers between local educational agencies, the free meals may be offered for up to 10 operating school days at the discretion of the receiving local educational agency.

\* \* \* \* \*

Dated: October 24, 2013.

**Audrey Rowe,**

*Administrator, Food and Nutrition Service.*

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 51

[NRC-2012-0246]

RIN 3150-AJ20

### Proposed Waste Confidence Rule and Draft Generic Environmental Impact Statement

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Rescheduling of public meetings.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has rescheduled the Waste Confidence public meetings it initially planned to hold in Perrysburg, Ohio, and Minnetonka, Minnesota, on October 15 and October 17, 2013, respectively. The NRC postponed these meetings as a result of lapsed appropriations. The Waste Confidence public meeting in Perrysburg will now be held on December 2, 2013. The Waste Confidence public meeting in Minnetonka will now be held on December 4, 2013. In addition to these rescheduled meetings, the NRC has also scheduled an additional, teleconference-only public meeting on December 9, 2013, that is accessible from anywhere in the United States. The meetings will allow the NRC to receive public comments on proposed amendments to the NRC's regulations pertaining to the environmental impacts of the continued storage of spent nuclear fuel beyond a reactor's licensed life for operation and prior to ultimate disposal (the proposed Waste Confidence rule) and the draft generic environmental impact statement (DGEIS), NUREG-2157, "Waste Confidence Generic Environmental Impact Statement," that forms a regulatory basis for the proposed rule. The meetings are open to the public, and anyone may participate. The NRC has now rescheduled all Waste Confidence public meetings that were affected by the lapse in governmental appropriations.

**DATES:** The NRC plans to hold a rescheduled Waste Confidence public meeting in Perrysburg Ohio, on December 2, 2013. The NRC plans to hold a rescheduled Waste Confidence public meeting in Minnetonka, Minnesota, on December 4, 2013. The NRC has scheduled a new public teleconference meeting on December 9, 2013. This document contains specific meeting information in the **SUPPLEMENTARY INFORMATION** section. **ADDRESSES:** Please refer to Docket ID NRC-2012-0246 when contacting the NRC about the availability of information for the proposed Waste Confidence rule and DGEIS. You may access publicly available information related to these documents by any of the following methods:

- Federal Rulemaking Web site: Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0246.

- NRC's Waste Confidence Web site: Go to <http://www.nrc.gov/waste/spent-fuel-storage/wcd.html>.

- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The DGEIS is available in ADAMS under Accession No. ML13224A106.

- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:**

Sarah Lopas, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-287-0675; email: [Sarah.Lopas@nrc.gov](mailto:Sarah.Lopas@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The NRC published the proposed Waste Confidence Rule in the **Federal Register** on September 13, 2013 (78 FR 56776). On the same day, the NRC and the U.S. Environmental Protection Agency issued notices of availability for the DGEIS (78 FR 56621; 78 FR 56695).

Prior to the lapse in appropriations in October 2013, the NRC staff held two Waste Confidence public meetings (one in Rockville, Maryland, on October 1, and one in Denver, Colorado, on October 3). The NRC postponed five meetings (in San Luis Obispo and Carlsbad, California; Perrysburg, Ohio;

Minnetonka, Minnesota; and Oak Brook, Illinois) as a result of lapsed appropriations. The NRC rescheduled the meeting in Oak Brook, Illinois, on November 12; in Carlsbad, California, on November 18; and in San Luis Obispo, California, on November 20. Five additional Waste Confidence public meetings remain scheduled as publicized in 78 FR 54789: Chelmsford, Massachusetts, on October 28; Tarrytown, New York, on October 30; Charlotte, North Carolina, on November 4; Orlando, Florida, on November 6; and Rockville, Maryland, on November 14. The December 9 meeting is a new meeting that the NRC has added to allow interested groups and individuals an additional opportunity to present oral comments.

The December 2 public meeting will take place at the Hilton Garden Inn Toledo/Perrysburg, 6165 Levis Commons Boulevard, Perrysburg, Ohio. The December 2 meeting will start at 7:00 p.m. Eastern Standard Time and will continue until 10:00 p.m. Eastern Standard Time. The December 4 public meeting will take place at the Minneapolis Marriott Southwest, 5801 Opus Parkway, Minnetonka, Minnesota. The December 4 meeting will start at 7:00 p.m. Central Standard Time and will continue until 10:00 p.m. Central Standard Time. Additionally, the NRC staff will host informal discussions during an open house one hour prior to the start of the Perrysburg and Minnetonka meetings. The open houses will start at 6:00 p.m. local time.

The December 9 public meeting will take place via teleconference only. The teleconference meeting will start at 1:00 p.m. Eastern Standard Time and will end at 4:00 p.m. Eastern Standard Time. To participate in the December 9 teleconference public meeting, dial 1-888-603-9749, and provide the operator with passcode 5132332. Interested groups and individuals may participate in the December 9 teleconference public meeting from anywhere in the United States.

The NRC staff will accept comments from the public during the comment-period portion of the meetings. The public meetings will be transcribed and will include: (1) a presentation on the contents of the DGEIS and proposed Waste Confidence rule; and (2) the opportunity for government agencies, organizations, and individuals to provide comments on the DGEIS and proposed rule. No oral comments on the DGEIS or proposed Waste Confidence rule will be accepted during the open house sessions at the December 2 and December 4 meetings (the December 9 meeting does not have an open house