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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR parts 210, 215, 220, 235 and 245

RIN 0584-AC01

School Nutrition Programs: Nondiscretionary Technical Amendments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule makes a number of technical changes to the regulations governing the National School Lunch Program, the Special Milk Program for Children, the School Breakfast Program, State Administrative Expense Funds, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools. A number of these changes are a direct result of statutory changes made under the Child Nutrition and WIC Reauthorization Act of 1989, the Healthy Meals for Healthy Americans Act of 1994, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and the William F. Goodling Child Nutrition Reauthorization Act of 1998. This rule also removes and updates obsolete provisions in these regulations. These amendments are nondiscretionary and technical in nature and will conform these regulations to statutory requirements.

EFFECTIVE DATE: October 20, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Jane Whitney, Section Chief, School Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service at 703-305-2620.

SUPPLEMENTARY INFORMATION:

Background

Four different public laws, Public Law (Pub. L.) 101-147 (the Child Nutrition and WIC Reauthorization Act of 1989), Pub. L. 103-448 (the Healthy Meals for Healthy Americans Act of 1994), Pub. L. 104-193 (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996), and Pub. L. 105-336 (the William F. Goodling Child Nutrition Reauthorization Act of 1998), made specific changes to the National School Lunch Act and the Child Nutrition Act of 1966, necessitating changes in the regulations that guide the National School Lunch Program, the School Breakfast Program, the Special Milk Program, State Administrative Expense Funds, and Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

In section 201 of Pub. L. 101-147, the Child Nutrition and WIC Reauthorization Act of 1989, enacted on November 10, 1989, Congress amended the National School Lunch Act (NSLA) (42 U.S.C. 1751 *et seq.*) to make changes in the way the National School Lunch Program (NSLP) and School Breakfast Program (SBP) operate. Specifically, section 201 amended Section 8 of the NSLA by making permanent the agreements between the State agencies (SA) and school food authorities (SFA) for carrying out the school lunch program and school breakfast program.

In section 112 of Pub. L. 103-448, the Healthy Meals for Healthy Americans Act of 1994, enacted on November 2, 1994, Congress amended the definition of *School* in section 12(d) of the NSLA to make child care centers in Puerto Rico ineligible to participate in the NSLP and SBP. Additionally, section 202 of Pub. L. 103-448 amended section 7(a) of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1771 *et seq.*) to authorize the Secretary to withhold State Administrative Expense (SAE) funds when the Secretary determines that the SA's administration of the program is seriously deficient.

Section 703 of Pub. L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, amended section 9(b)(2) of the NSLA. The amendment requires that after initial submission, an SFA would not be required to submit a new free and reduced price policy statement to a

State educational agency unless there is a substantive change in the free and reduced price policy of the SFA. Section 707 of Pub. L. 104-193 amended section 14(e) of the NSLA by removing the requirement for States to have State food distribution advisory councils and adding in its place a requirement that SAs which receive food assistance payments for any school year must consult with schools regarding the selection and distribution of donated foods. Furthermore, section 723 of Pub. L. 104-193 removed section 4(f) of the CNA which dealt with breakfast outreach activities. Section 724(b) of Pub. L. 104-193 amended section 7(e) of the CNA by removing the requirement that State administrative expense plans be submitted annually by State agencies for approval by FNS and revising the regulation to require that States only need submit substantive changes to approved plans. In section 726 of Pub. L. 104-193 Congress amended section 11(a) of the CNA by revising the prohibition regarding the imposition of any requirements with respect to teaching personnel, curriculum, instruction and methods and materials of instruction. Section 726 removed references to State, thus directing the prohibition only to USDA.

In section 102(c) of Pub. L. 105-336, the William F. Goodling Child Nutrition Reauthorization Act of 1998, Congress added section 9(h) to the NSLA to establish new requirements regarding annual food safety inspections for schools participating in the NSLP or SBP. Section 102(d) added section 9(i) to the NSLA to require each SFA to submit a single agreement and a common claim form for programs administered by the SA. Section 104(b) amended section 12(g) of the NSLA to make changes in criminal penalties for attempting to defraud the program. Section 104(d) added section 12(n) to the NSLA to incorporate a provision to require that schools purchase, to the maximum extent practicable, domestic commodities or products. Finally, section 202(b) revised section 7(a)(6) of the CNA to eliminate the 10% transfer limitation for SAE funds.

The following chart summarizes the statutory provisions:

Statute	Provision	Regulatory section affected
Pub. L. 101-147: Section 201	Mandates permanent agreements	§§ 210.9, 215.7 and 220.7(e).
Pub. L. 103-448: Section 112	Revises definition of "school"	§§ 210.2 and 220.2(u).
Section 202	Authorizes USDA to withhold SAE funds when State agencies are deemed seriously deficient.	§ 235.4.
Pub. L. 104-193: Section 703	Mandates permanent Free and Reduced Price Policy Statement.	§ 245.10.
Section 707	Removes requirement for State Food Distribution Advisory Council.	§ 210.28
Section 723	Removes breakfast outreach activities	§ 220.13(k).
Section 724	Replaces annual State Administrative Expense Plan with a permanent base plan updated for substantive changes.	§ 235.5
Section 726	Revises educational prohibitions	§§ 210.27 and 220.17(a).
Pub. L. 105-336: Section 102(c)	Mandates food safety inspections	§§ 210.13(b), 220.7(a-2).
Section 102(d)	Mandates single agreements and common claim forms for SFAs.	§§ 210.8(c), 210.9(b), 215.7(d), 215.10(b), 220.7(e) and 220.11(b).
Section 104(b)	Changes criminal penalties for fraud	§§ 210.26, 215.6(b), 220.6(b), 2356(g) and 245.12.
Section 104(d)	Mandates purchase of domestic commodities or products	§§ 210.21(d) and 220.16d.
Section 202(b)	Eliminates 10% transfer for SAD funds	§ 235.6(a).

Additionally, the Department is taking the opportunity to remove obsolete provisions from and make technical corrections to 7 CFR parts 210, 215, 220, 235 and 245. For example, the obsolete references to "handicapped" children are removed, using instead the term "children with disabilities". The rule also incorporates technical conforming amendments to 7 CFR parts 210, 215, 220, 235 and 245. The remainder of this preamble discusses these amendments.

What Specific Revisions and Additions are Being Made to the Regulations?

The changes being made fall under four categories. They are:

- Changes to definitions
- New, updated or removed requirements
- Removal of obsolete references
- Technical amendments

What Changes are Being Made to the Definition Sections?

Definition of Child

The definition of the term *Child* in §§ 210.2 and 220.2(c) and the definition of the term *Children* in § 215.2(e-1) are amended to remove references to *handicapped* children, adding in their place the term *disabled*, thus conforming the definition to operating terminology.

Definition of Handicapped Student

The definition of the term *Handicapped student* in § 210.2 is removed, in order to remove references to *handicapped* children. A new definition, *Student with disabilities*, is used in its place.

Definition of School

Section 112(a) of Pub. L. 103-448 amended the definition of *School* in section 12(d)(5) of the NSLA. This amendment removed child care centers in the Commonwealth of Puerto Rico from the definition of *School*, effective October 1, 1995. As of that date, child care centers in Puerto Rico were no longer eligible to participate in the NSLP and SBP. However, these child care centers could provide meals and snacks to children under the Child and Adult Care Food Program, 7 CFR part 226, or milk under the Special Milk Program, the same as other child care centers in the contiguous United States. Affected child care centers were advised of their change in status. This rule codifies the provision by amending the definition of *School* in §§ 210.2 and 220.2(u) to remove child care centers in Puerto Rico from the definition of school to conform to this nondiscretionary statutory provision. Corresponding technical changes are made to the definition of *School* in § 235.2(o) to reflect these amendments.

Definition of Financial Management Circulars

The definition, 7 CFR part 3015, in §§ 210.2, 215.2(x-1), 220.2(x-1), and 235.2(q-1) is revised to remove obsolete references to A-124 and A-128, as well as the Single Audit Act of 1984 (31 U.S.C. 7501 et seq.). New definitions, 7 CFR part 3017, 7 CFR part 3018, and 7 CFR part 3052 are added to §§ 210.2, 215.2, 220.2 and 235.2. Part 3017 refers to the Department's Common Rule regarding Governmentwide Debarment and Suspension (Nonprocurement) and

Governmentwide Requirements for Drug-Free Workplace (Grants). Part 3018 refers to the Department's Common Rule regarding New Restrictions on Lobbying. Part 3052 refers to the Department's rule regarding Audits of States, Local Governments and Non-Profit Organizations.

Definition of State

The definition of *State* (§§ 210.2; 215.2(y); 220.2(y); 235.2(r)) is revised to accommodate the elimination of the territories under the Compact of Free Association and the block grant status of American Samoa and the Commonwealth of the Northern Marianas. Because both American Samoa and the Commonwealth may elect to forego the block grant and participate under part 210, 215, 220 and 235, they continue to be included in the definition of *State agency*, "as applicable".

What Requirements are Being Added, Updated or Removed?

Agreements/Claims

Section 201 of Pub. L. 101-147 amended section 8 of the NSLA by making permanent the agreements between SAs and SFAs for carrying out the NSLP and SBP. On May 28, 1991, USDA issued a proposed rule which would have implemented the provision to make these agreements permanent, to be amended as necessary (56 FR 24033). Fifty comments were received on that proposed rule during the 60-day public comment period, which closed on July 29, 1991. Commenters represented 19 different SAs, 22 SFAs, 4 State or local Departments of Human Services and 2

professional organizations. Only one commenter was opposed to having the agreement made permanent, stating that the agreement is a legal document that should have a beginning and ending date. All other commenters who addressed this provision viewed it as a paperwork reduction measure and supported the proposal. On May 12, 1991, USDA issued a memorandum implementing this provision. This memorandum stated that, because the Department did not anticipate any changes to the proposal for permanent agreements, the SAs would be able to accept current agreements as permanent, at their discretion. This was effective as of school year 1992–1993. This final rule codifies this provision in §§ 210.9(b), 215.7(d) and 220.7(e).

Section 102 (d) of Pub. L. 105–336 amended section 9 (c) of the NSLA by establishing two requirements with respect to SFAs which administer any combination of the Child Nutrition Programs under the same State administering agency. First, the SA must use a single State/local agreement for all programs operated by the SFA under that SA. This also means that multiple SFA programs operated under an alternate SA must be combined into a single agreement. This rule makes the necessary changes to §§ 210.9(b), 215.7(d), and 220.7(e).

Second, an SFA must be able to use a common reimbursement form to claim meals under all of the programs. Previously, single agreements and common claim forms were permitted at SA option for SFAs administering multiple Child Nutrition Programs under a single SA. This rule makes the necessary changes to 7 CFR 210.8(c), 215.10(b), and 220.11(b) to reflect the implementation of the statutory requirements.

Free and Reduced Price Policy Statement

As noted above, on May 28, 1991, the Department had proposed to make the agreement between the SA and SFA a permanent document to be amended as necessary (56 FR 24033). Although Pub. L. 101–147 had not directed the Department to make the SFA's free and reduced price policy permanent, the Department used its discretionary authority to include the policy statement in the permanency provision, because the Department considers the policy statement part of the agreement. The Department had proposed in that rule to (1) Increase the number of provisions required in an SFA's policy statement and (2) remove the requirement for annual resubmission of the policy statement to the SA for

approval, unless there was a substantive change to the SFA's free and reduced price policy. Of the 50 comments received on the proposal, only one commenter supported the increase in the required provisions to be included in the policy statement. Before the department could issue a final rule, section 703 of Pub. L. 104–193 amended section 9(b)(2) of the NSLA by making permanent the free and reduced price policy statement. Unless there is a substantive change made to the free and reduced price policy of the SFA, the policy statement need not be changed and resubmitted. Routine changes, such as an annual adjustment of the income eligibility guidelines, are not sufficient to require resubmission. This rule implements this provision by making the necessary amendments to §§ 245.10 and 245.11.

Food Safety Inspections

Section 102(c) of Pub. L. 105–336 amended section 9 of the NSLA by adding subsection (h) to require schools participating in the NSLP or the SBP to obtain food safety inspections conducted by a State or local government agency responsible for such inspections at least once a year if a State or local governmental agency does not otherwise require inspections. This provision does not apply to schools that must comply with State or local requirements for food safety inspections even if the time frames for these inspections are less frequent than annual. Moreover, if a State or local governmental agency responsible for food safety inspections conducts voluntary inspections in schools, these inspections may be counted toward meeting this requirement. This rule implements this provision by amending §§ 210.13 and 220.7 by adding a new paragraph, *Food safety inspections*.

State Agency Consultation With Schools

Section 707 of Pub. L. 104–193 removed the requirement for the State to establish a food distribution advisory council and in its place required SAs that receive food assistance payments to consult with schools that receive commodities in order to make the best assessment of the specific needs of that school relating to the manner of selection and the distribution of commodity goods. This rule removes § 210.28, *State Food Distribution Advisory Council*, and amends § 210.19 (b) to implement this provision. To accommodate the changes, the definition of *State Food Distribution Advisory Council* is removed and sections are redesigned.

Buy American

Section 104(d) of Pub. L. 105–336 amended section 12 of the NSLA to require SFAs participating in the NSLP and SBP in the contiguous United States (U.S.) to purchase for those programs, to the maximum extent practicable, domestic commodities or products. This requirement will help ensure that Federal funds dispensed to States support the U.S. agricultural economy to the extent feasible. For purposes of this provision, Pub. L. 105–336 defines the term "domestic commodity or product" to mean an agricultural commodity that is produced in the U.S. and a food product that is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. The Conference Report accompanying Pub. L. 105–336 makes it clear that the term "substantially" means that over 51 percent of the processed food comes from American produced products. Pub. L. 105–336 also stipulates that an SFA in Hawaii is required to purchase commodities or products that are produced in Hawaii, to the extent that such products are in adequate supply for program purposes. This rule implements this provision by adding new paragraphs (d), *Buy American* to §§ 210.21 and 220.16.

Criminal Penalties

Section 104(b) of Pub. L. 105–336 amended section 12(g) of the NSLA to increase from \$10,000 to \$25,000 the maximum fine for embezzling, willfully misapplying, stealing or obtaining by fraud any funds, assets or property acquired under the NSLA or CNA. This rule reflects this provision by amending §§ 210.26, 215.6(b), 220.6(b), 235.6(g) and 245.12(a).

Educational Prohibitions

Prior to Pub. L. 104–193, section 12 of the NSLA prohibited SAs and USDA from imposing any educational requirements with respect to teaching personnel, curriculum, instruction, methods of instruction, and materials of instruction in any school. Section 726 of Pub. L. 104–193, recognizing the educational responsibilities of the State education agencies, amended section 11 of the CNA by removing the reference to the State. This rule implements this provision by amending §§ 210.27 and 220.17 to limit the prohibition to USDA.

Removal of School Breakfast Outreach Requirements

Prior to Pub. L. 104–193, Section 4(f) of the CNA mandated that the Department and SAs initiate outreach and education on the benefits of the SBP. Section 723 of Pub. L. 104–193

removed the SBP outreach activities. This rule removes paragraph (k) of § 220.13 to implement this provision.

Withholding State Administrative Expense Funds

Section 202(a) of Pub. L. 103-448 amended section 7(a) of the CNA to stipulate that USDA may withhold SAE funds when SAs are seriously deficient in either their administration of the Child Nutrition Programs or their compliance with regulations issued to implement the Child Nutrition Programs, and that USDA may restore those withheld funds when performance improves. This rule adds a new paragraph (h) to § 235.4 to implement this provision.

State Administrative Expense Plans

Section 724(b) of Pub. L. 104-193 amended section 7(e) of the CNA by removing the requirement that SAE plans be submitted annually by State agencies for approval by FNS and revising the regulation to require that States only need submit substantive changes to approved plans. FNS notified State agencies of this change on June 5, 1997. The SAE plan used for fiscal year 1997 is the permanent plan document (i.e., the "base year" SAE plan). For SAs not participating in the Child Nutrition Programs in FY 1997, the first SAE plan submitted will be considered the base year plan. After submitting the base plan, the SA is only required to submit substantive changes, as defined in the June 5, 1997 guidance, for approval by FNS. When those substantive changes

are submitted and the plan is amended, the fiscal year in which those changes are effective becomes the plan's base year. This rule implements this provision by amending § 235.5.

Transfer of State Administrative Expense Funds

Section 202(b) of Pub. L. 105-336 amended section 7(a)(6) of the CNA by eliminating the previous 10 percent limit on SAE funds that may be transferred from one child nutrition program to another. Now, SAs may transfer their SAE funds among the programs as they deem necessary for efficient administration of the programs. This rule implements the limitation by amending § 235.6(a).

Which References are Being Removed as Obsolete?

The Department is taking this opportunity to remove the obsolete § 210.18a, Assessment, Improvement and Monitoring system, in its entirety and to make technical changes throughout 7 CFR part 210 and 235 to reflect its removal. The Department is removing the Appendix to 7 CFR part 215, which shows the apportionment of funds to States for the SMP for 1976. Finally, the Department is removing § 245.13 in its entirety because the Department of Health, Education and Welfare Public School Civil Rights Survey no longer exists.

What Technical Amendments are Being Made?

Audit Requirements in §§ 215.13 and 220.15

The audit requirements contained in §§ 215.13 and 220.15 are revised to match those set forth in § 210.22. This revision will not result in changes in program operation.

Coordinated Review

In § 210.18, a technical error is corrected. The review threshold set forth for Performance Standard I at § 210.18(i)(3)(B) is revised by revising the parenthetical phrase (but not less than 10 lunches) to read (but not less than 100 lunches).

Correction of OMB Numbers

The regulations governing the SAE funds (7 CFR part 235) are being revised to reflect corrected Office of Management and Budget information collection/recordkeeping control numbers. This rule amends § 235.12 to reflect this change.

Correction of an Incorrect Reference

Section 245.5 requires SFAs to publicly announce the eligibility criteria for free and reduced price school meals and free milk. An announcement is not required for certain schools, including schools defined in § 210.2 paragraph (c) of the definition of *School*. Section 245.5(a) currently makes an incorrect reference. This rule corrects that error.

The following chart restates the changes affected in this regulation:

Provision	Affected section of regulation	Reason for change
Definition of "child" and "children"	§§ 210.2, 215.2(e-1) and 220.2(c)	Updated to reflect commonly accepted terminology.
Definition of "handicapped student"	§ 210.2	Updated to reflect commonly accepted terminology.
Definition of "school"	§§ 210.2, 220.2(u) and 235.2(o)	Excluding Puerto Rico child care centers from participation in NSLP and SBP because they may now participate in the CACFP (Statutory Provision).
Definition of Financial Management Circulars ...	§§ 210.2, 215.2, 220.2 and 235.2	Updated to reflect current terminology.
Definition of "State"	§§ 210.2, 215.2 (y), 220.2 (y), and 235.2(r)	Accommodates the elimination of the territories under the Compact of Free Association and the block grant status of American Samoa and the Commonwealth of the Northern Marianas.
Single Agreements/Claims	§§ 210.8(c), 210.9(b), 215.7(d), 215.10(b), 220.7(e) and 220.11(b).	Paperwork reduction (Statutory Provision).
Permanent Free and Reduced Price Policy Statement.	§§ 245.10 and 245.11	Paperwork reduction (Statutory Provision).
Food safety inspections	§§ 210.13 and 220.7(a-2)	Raising health standards (Statutory Provision).
State agency consultation with schools	§§ 210.2, 210.19(b) and 210.28	Food distribution advisory council was eliminated (Statutory Provision).
Buy American	§§ 210.21 and 220.16	Supporting American farmers and industries (Statutory Provision).
Criminal penalties	§§ 210.26, 215.6(b), 220.6(b) 235.6(g) and 245.12(a).	Updating penalties for fraud (Statutory Provision).

Provision	Affected section of regulation	Reason for change
Educational prohibitions	§§ 210.27 and 220.17	Recognizing educational responsibilities of SAs (Statutory Provision).
Removal of School Breakfast Outreach Requirements.	§ 220.13(k)	No longer required by law (Statutory Provision).
Withholding SAE funds	§ 235.4(h)	Monitoring SA performance (Statutory Provision).
Permanent State Administrative Expense Plans	§ 235.5	Paperwork reduction (Statutory Provision).
Transfer of SAE funds	§ 235.6(a)	Greater efficiency in program administration (Statutory Provision).
Removal of § 210.18a	Technical changes throughout 210 and 235 ...	Obsolete reference.
Removal of Appendix, § 215	§ 215, Appendix	The appendix is obsolete.
Removal of Welfare Public School Civil Rights Survey.	§ 245.13	Obsolete reference to a Department of Health and Human Services Civil Rights survey that no longer exists.
Audit requirements	§§ 215.13 and 220.15	Intent to show continuity throughout the administration of the programs.
Coordinated review	§ 210.18(i)(3)(B)	Corrects technical error.
OMB numbers	§ 235.12	Reflect corrected numbers.
Announcement of eligibility criteria	§ 245.5(a)	Corrects technical error.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Public Law 104-4

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 Food and Nutrition Service (FNS) must generally 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 FNS 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 final rule contains no Federal mandates (under 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, this final rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the FNS has certified that this rule will not

have a significant economic impact on a substantial number of small entities. Additionally, the Department of Agriculture (the Department or USDA) does not anticipate any adverse fiscal impact on local schools.

Executive Order 12372

The National School Lunch Program, Special Milk Program for Children, School Breakfast Program, and State Administrative Expense Funds are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555, 10.556, 10.553, and 10.560, respectively. They are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V and final rule-related notice at 48 FR 29112, June 24, 1983.)

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 impede its full implementation. This final rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this final rule, all applicable administrative procedures must be exhausted. In the National School Lunch Program, the Special Milk Program, and School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) SFA appeals of SA fiscal action resulting from an administrative review must follow SA hearing procedures as established pursuant to 7 CFR 210.18(q); (2) SFA appeals of FNS fiscal action

resulting from an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); (3) FNS claims against SAs must follow hearing procedures as established pursuant to 7 CFR 215.12(e); and (4) SA appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS administrative review process as established pursuant to 7 CFR 235.11(f).

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Public Participation

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). The amendments contained herein are nondiscretionary in nature and therefore not subject to change as a result of public comment. Thus, the Department has determined in accordance with 5 U.S.C. 553(b) that Notice of Proposed Rulemaking and Opportunity for Public Comments is unnecessary and contrary to the public interest and, in accordance with 5 U.S.C. 553(d), that this action will be effective 30 days after the date of publication.

List of Subjects

7 CFR Part 210

Food and Nutrition Service, Grant programs-education, Grant programs-health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 215

Food and Nutrition Service, Food assistance programs, Grant programs-education, Grant programs-health, Infants and children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Food and Nutrition Service, Grant programs-education, Grant programs-health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 235

Administrative practice and procedure, Food and Nutrition Service, Food assistance programs, Grant programs-education, Grant programs-health, Infants and children, reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 245

Civil rights, Food and Nutrition Service, 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, 215, 220, 235, and 245 are amended as follows:

Part 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.2,

a. The definition of *Child* is amended by removing the words “handicapped” and “handicaps” wherever they appear and adding in their place the words “disabled” and “disabilities” respectively.

b. The definition of *Handicapped student* is amended by removing the words “Handicapped student”, adding in their place the words “Student with disabilities”, and redesignating the paragraph in alphabetical order.

c. The definition of *School* is amended by adding the word “or” before paragraph (c) and by removing the words “; or (d) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico”.

d. The definition of 7 CFR part 3015 is revised, and the Note following the definition is removed.

e. New definitions 7 CFR part 3017, 7 CFR part 3018 and 7 CFR part 3052 are added.

f. The definition of *State* is revised, and

g. The definition of *State food distribution advisory council* is removed in its entirety.

The additions and revisions read as follows:

§ 210.2 Definitions.

* * * * *

7 CFR part 3015 means the Uniform Federal Assistance Regulations published by the Department to implement OMB Circulars A–21, A–87, A–102, A–110, and A–122; and Executive Order 12372. (For availability of OMB Circulars referenced in this definition, see 5 CFR 1310.3.)

7 CFR part 3017 means the Department’s regulation to implement Executive Order 12549, covering governmentwide rules on suspension and debarment as well as The Drug Free Workplace Act of 1988.

7 CFR part 3018 means the Department’s Common Rule regarding Governmentwide New Restrictions on Lobbying. Part 3018 implements the requirements established by section 319 of the 1990 Appropriations Act for the Department of Interior and Related Agencies (Pub. L. 101–121).

7 CFR part 3052 means the Department’s regulations implementing OMB Circular A–133, “Audits of State, Local Governments, and Non-Profit Organizations.” (For availability of OMB Circulars referenced in this definition, see 5 CFR 1310.3.)

State means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and, as applicable, American Samoa and the Commonwealth of the Northern Marianas.

* * * * *

3. In § 210.8, a new sentence is added to the end of paragraph (c)(1) to read as follows:

§ 210.8 Claims for reimbursement.

* * * * *

(c) * * *

(1) * * * If a single State agency administers any combination of the Child Nutrition Programs, a school food authority shall be able to use a common claim form with respect to claims for reimbursement for meals served under those programs.

* * * * *

4. In § 210.9, the heading of paragraph (b) and the first two sentences of the introductory text are revised, and a new sentence is added after the second sentence.

The addition and revisions read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) *Agreement.* Each school food authority approved to participate in the program shall enter into a written agreement with the State agency that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State agency to suspend or terminate the agreement in accordance with § 210.25. If a single State agency administers any combination of the Child Nutrition Programs, that State agency shall provide each school food authority with a single agreement with respect to the operation of those programs. * * *

* * * * *

5. In § 210.13, paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added, to read as follows:

§ 210.13 Facilities management.

* * * * *

(b) *Food safety inspections.*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, schools shall, at least once during each school year, obtain a food safety inspection conducted by a State or local governmental agency responsible for food safety inspections.

(2) *Exception.* Paragraph (b)(1) of this section shall not apply to a school if a food safety inspection of the school is required by a State or local governmental agency responsible for food safety inspections.

* * * * *

§ 210.18 [Amended]

6. In § 210.18,

a. The third sentence of paragraph (a) is amended by removing the words “; in lieu of implementing the provisions of § 210.18a of this part for school year 1991/1992”.

b. The fourth sentence of paragraph (a) is amended by removing the reference “§ 210.30 of this part” and adding in its place the reference “§ 210.29”.

c. The undesignated paragraph after paragraph (i)(3)(i)(B) is amended by removing the parenthetical phrase “(but not less than 10 lunches)” and adding in its place the new parenthetical phrase “(but not less than 100 lunches)”.

d. The seventh sentence of paragraph (j) is amended by removing the reference “§ 210.30 (d)(3)” and adding in its place the reference “§ 210.29 (d)(3)”.

e. The first sentence paragraph (q) is amended by removing the reference “§ 210.30 (d)(2) of this part” and adding in its place the reference “§ 210.29 (d)(2)”, and

f. The first sentence of paragraph (r) is amended by removing the reference “§ 210.30 (d)(2) of this part” and adding in its place the reference “§ 210.29 (d)(2)”.

§ 210.18a [Removed]

7. Section 210.18a is removed in its entirety.

8. In § 210.19,

a. The third sentence of paragraph (a)(6) is amended by removing the reference “or § 210.18a of the part”.

b. Paragraph (b) is revised.

c. The third sentence of paragraph (c)(2)(ii) is amended by removing the reference “or § 210.18a of this part”.

The revision reads as follows:

§ 210.19 Additional responsibilities.

* * * * *

(b) *Donated food distribution information.* Information on schools eligible to receive donated foods available under section 6 of the National School Lunch Act (42 U.S.C. 1755) shall be prepared each year by the State agency with accompanying information on the average daily number of lunches to be served in such schools. This information shall be prepared as early as practicable each school year and forwarded no later than September 1 to the Distributing agency. The State agency shall be responsible for promptly revising the information to reflect additions or deletions of eligible schools, and for providing such adjustments in participation as are determined necessary by the State agency. Schools shall be consulted by the Distributing agency with respect to the needs of such schools relating to the manner of selection and distribution of commodity assistance.

* * * * *

§ 210.20 [Amended]

9. In § 210.20,

a. Paragraph (a)(7) is amended by removing the reference “§ 210.28 (d)” adding in its place the reference “§ 250.13(k) of this chapter”.

b. Paragraph (b)(11) is amended by removing the reference “§ 210.28 (d)” and adding in its place the reference “§ 250.13(k) of this chapter”.

10. In § 210.21, a new paragraph (d) is added to read as follows:

§ 210.21 Procurement.

* * * * *

(d) *Buy American.*—(1) *Definition of domestic commodity or product.* In this paragraph (d), the term ‘domestic commodity or product’ means—

(i) An agricultural commodity that is produced in the United States; and

(ii) A food product that is processed in the United States substantially using

agricultural commodities that are produced in the United States.

(2) *Requirement.* (i) *In general.*

Subject to paragraph (d)(2)(ii) of this section, the Department shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.

(ii) *Limitations.* Paragraph (d)(2)(i) of this section shall apply only to—

(A) A school food authority located in the contiguous United States; and

(B) A purchase of domestic commodity or product for the school lunch program under this part.

(3) *Applicability to Hawaii.* Paragraph (d)(2)(i) of this section shall apply to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school lunch program under this part.

§ 210.23 [Amended]

11. In § 210.23, the first sentence of paragraph (b) is amended by removing the word “handicap” and adding in its place the word “disability”.

§ 210.26 [Amended]

12. In § 210.26, the first sentence of the paragraph is amended by removing the word “\$10,000” and adding in its place the word “\$25,000”.

§ 210.27 [Amended]

13. In § 210.27, the paragraph is amended by removing the words “neither the Department nor the State agency shall” and adding the words “the Department shall not”.

§ 210.28 [Removed]

14. § 210.28 is removed in its entirety.

§§ 210.29, 210.30, 210.31, and 210.32 [Redesignated as §§ 210.28, 210.29, 210.30 and 210.31]

15. Sections 210.29, 210.30, 210.31, and 210.32 are redesignated as 210.28, 210.29, 210.30, and 210.31, respectively.

Part 215—SPECIAL MILK PROGRAM FOR CHILDREN

1. The authority citation for 7 CFR part 215 continues to read as follows:

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

2. In § 215.2,

a. Paragraph (e-1) is amended by removing the word “handicapped” wherever it appears and adding in its place the word “disabled”.

b. Paragraph (x-1) is revised, and the Note following the definition is removed.

c. Paragraph (x-2) is redesignated as paragraph (x-5).

d. New paragraphs (x-2), (x-3) and (x-4) are added, and

e. Paragraph (y) is revised.

The additions and revisions read as follows:

§ 215.2 Definitions.

* * * * *

(x-1) *7 CFR part 3015* means the Uniform Federal Assistance Regulations published by the Department to implement OMB Circulars A-21, A-87, A-102, A-110, and A-122; and Executive Order 12372. (For availability of OMB Circulars referenced in this definition, see 5 CFR 1310.3.)

(x-2) *7 CFR part 3017* means the Department’s regulation to implement Executive Order 12549, covering governmentwide rules on suspension and debarment as well as The Drug Free Workplace Act of 1988.

(x-3) *7 CFR part 3018* means the Department’s Common Rule regarding Governmentwide New Restrictions on Lobbying. Part 3018 implements the requirements established by section 319 of the 1990 Appropriations Act for the Department of Interior and Related Agencies (Pub. L. 101-121).

(x-4) *7 CFR part 3052* means the Department’s regulations implementing OMB Circular A-133, “Audits of State, Local Governments, and Non-Profit Organizations.” (For availability of OMB Circulars referenced in this definition, see 5 CFR 1310.3.)

* * * * *

(y) *State* means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and, as applicable, American Samoa and the Commonwealth of the Northern Marianas.

* * * * *

§ 215.6 [Amended]

3. In § 215.6, paragraph (b) is amended by removing “\$10,000” and adding in its place “\$25,000”.

4. In § 215.7,

a. The second sentence of paragraph (b) introductory text is amended by removing the words “and thereafter at least annually”, and

b. The first sentence of paragraph (d) introductory text is removed and three sentences are added in its place to read as follows:

§ 215.7 Requirements for participation.

* * * * *

(d) Each school food authority or child care institution approved to participate in the program shall enter into a written agreement with the State agency or FNSRO, as applicable, that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State

agency to suspend or terminate the agreement in accordance with § 215.15. If a single State agency administers any combination of the Child Nutrition Programs, that State agency shall provide each SFA with a single agreement with respect to the operation of those programs. * * *

5. In § 215.10, paragraph (b) is amended by adding a new sentence between the second and third sentences to read as follows:

§ 215.10 Reimbursement procedures.

(b) * * * If a single State agency administers any combination of the Child Nutrition Programs, the SFA shall be able to use a common claim form with respect to claims for reimbursement for meals served under those programs. * * *

6. In § 215.13, a. Paragraphs (a) through (c) are removed. b. Paragraphs (d) and (e) are redesignated as (c) and (d), respectively, and

c. New paragraphs (a) and (b) are added to read as follows:

§ 215.13 Management evaluations and audits.

(a) State agencies and school food authorities shall comply with the requirements of part 3015 of this title concerning the audit requirements for recipients and subrecipients of the Department's financial assistance.

(b) These requirements call for organization-wide financial and compliance audits to ascertain whether financial operations are conducted properly; financial statements are presented fairly; recipients and subrecipients comply with the laws and regulations that affect the expenditures of Federal funds; recipients and subrecipients have established procedures to meet the objectives of federally assisted programs; and recipients and subrecipients are providing accurate and reliable information concerning grant funds. States and school food authorities shall use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in part 3015 of this title.

Appendix to Part 215 [Removed]

7. In part 215, the Appendix is removed in its entirety.

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for 7 CFR part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In § 220.2, a. Paragraph (c) is amended by removing the word "handicapped" wherever it appears and adding in its place the word "disabled".

b. Paragraph (u) is amended by adding the word "or" before paragraph (u)(3), and by removing the words "; or (4) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico".

c. Paragraph (x-1) is revised, and the Note following the definition is removed.

d. New paragraphs (x-2), (x-3) and (x-4) are added, and

e. Paragraph (y) is revised. The additions and revisions read as follows:

§ 220.2 Definitions.

(x-1) 7 CFR part 3015 means the Uniform Federal Assistance Regulations published by the Department to implement OMB Circulars A-21, A-87, A-102, A-110, and A-122; and Executive Order 12372. (For availability of OMB Circulars referenced in this definition, see 5 CFR 1310.3.)

(x-2) 7 CFR part 3017 means the Department's regulation to implement Executive Order 12549, covering governmentwide rules on suspension and debarment as well as The Drug Free Workplace Act of 1988.

(x-3) 7 CFR part 3018 means the Department's Common Rule regarding Governmentwide New Restrictions on Lobbying. Part 3018 implements the requirements established by section 319 of the 1990 Appropriations Act for the Department of Interior and Related Agencies (Pub. L. 101-121).

(x-4) 7 CFR part 3052 means the Department's regulations implementing A-133, "Audits of State, Local Governments, and Non-Profit Organizations." (For availability of OMB Circulars referenced in this definition, see 5 CFR 1310.3.)

(y) State means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and, as applicable, American Samoa and the Commonwealth of the Northern Marianas.

§ 220.6 [Amended]

3. In § 220.6, paragraph (b)(1) is amended by removing "\$10,000" and adding in its place "\$25,000".

4. In § 220.7, a. New paragraph (a-2) is added, and b. The first sentence of paragraph (e) introductory text is removed and three new sentences are added in its place. The additions read as follows:

§ 220.7 Requirements for participation.

(a-2) Schools shall, at least once during each school year, obtain a food safety inspection conducted by a State or local governmental agency responsible for food safety inspections. However, this requirement shall not apply to a school if a food safety inspection of the school is required by a State or local governmental agency responsible for food safety inspections.

(e) Each school food authority approved to participate in the program shall enter into a written agreement with the State agency or the Department through the FNSRO, as applicable, that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State agency or the FNSRO to suspend or terminate the agreement in accordance with § 220.18. If a single State agency administers any combination of the Child Nutrition Programs, that State agency shall provide each SFA with a single agreement with respect to the operation of those programs. * * *

5. In § 220.11, paragraph (b) is amended by adding a new sentence between the second and third sentences to read as follows:

§ 220.11 Reimbursement procedures.

(b) * * * If a single State agency administers any combination of the Child Nutrition Programs, the SFA shall be able to use a common claim form with respect to claims for reimbursement for meals served under those programs. * * *

§ 220.13 [Amended]

6. In § 220.13, paragraph (k) is removed in its entirety.

7. In § 220.15, a. Paragraphs (a), (b), (c), and (d) are removed and paragraphs (e) and (f) are redesignated as paragraphs (c) and (d), respectively, and b. New paragraphs (a) and (b) are added. The additions read as follows:

§ 220.15 Management evaluations and audits.

(a) State agencies and school food authorities shall comply with the requirements of part 3015 of this title concerning the audit requirements for recipients and subrecipients of the Department's financial assistance.

(b) These requirements call for organization-wide financial and compliance audits to ascertain whether financial operations are conducted properly; financial statements are presented fairly; recipients and subrecipients comply with the laws and regulations that affect the expenditures of Federal funds; recipients and subrecipients have established procedures to meet the objectives of federally assisted programs; and recipients and subrecipients are providing accurate and reliable information concerning grant funds. States and school food authorities shall use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in part 3016 of this title.

8. In § 220.16, a new paragraph (d) is added to read as follows:

§ 220.16 Procurement standards.

(d) Buy American.—(1) Definition of domestic commodity or product. In this paragraph (d), the term "domestic commodity or product" means—

- (i) An agricultural commodity that is produced in the United States; and
(ii) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

(2) Requirement.—(i) In general. Subject to paragraph (d)(2)(ii) of this section, the Department shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.

(ii) Limitations. Paragraph (d)(2)(i) of this section shall apply only to—

- (A) A school food authority located in the contiguous United States; and
(B) A purchase of domestic commodity or product for the school breakfast program under this part.

(3) Applicability to Hawaii. Paragraph (d)(2)(i) of this section shall apply to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school breakfast program under this part.

§ 220.17 [Amended]

9. In § 220.17, paragraph (a) is amended by removing the words "neither the Department nor the State shall" and adding the words "the Department shall not".

Part 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. The authority citation for 7 CFR part 235 continues to read as follows:

Authority: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

- 2. In § 235.2,
a. Paragraph (o) is revised.
b. Paragraph (q-1) is revised, and the Note following the definition is removed.
c. New paragraphs (q-2), (q-3) and (q-4) are added, and
d. Paragraph (r) is revised.
The additions and revisions read as follows:

§ 235.2 Definitions.

(o) School means the term as defined in sections 210.2, 215.2(v), 220.2(u), and 226.2 of this chapter, as applicable.

(q-1) 7 CFR part 3015 means the Uniform Federal Assistance Regulations published by the Department to implement OMB Circulars A-21, A-87, A-102, A-110, and A-122; and Executive Order 12372. (For availability of OMB Circulars referenced in this definition, see 5 CFR 1310.3.)

(q-2) 7 CFR part 3017 means the Department's regulation to implement Executive Order 12549, covering governmentwide rules on suspension and debarment as well as The Drug Free Workplace Act of 1988.

(q-3) 7 CFR part 3018 means the Department's Common Rule regarding Governmentwide New Restrictions on Lobbying. Part 3018 implements the requirements established by section 319 of the 1990 Appropriations Act for the Department of Interior and Related Agencies (Pub. L. 101-121).

(q-4) 7 CFR part 3052 means the Department's regulations implementing OMB Circular A-133, "Audits of State, Local Governments, and Non-Profit Organizations." (For availability of OMB Circulars referenced in this definition, see 5 CFR 1310.3.)

(r) State means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and, as applicable, American Samoa and the Commonwealth of the Northern Marianas.

- 3. In § 235.4,
a. Paragraph (b) is amended by removing the words "or § 210.18a of this title" wherever they appear; and
b. A new paragraph (h) is added to read as follows.

§ 235.4 Allocation of funds to States.

(h) Withholding SAE funds. The Secretary may withhold some or all of the funds allocated to the State agency under this section if the Secretary determines that the State agency is seriously deficient in the administration of any program for which State administrative expense funds are provided under this part or in the compliance of any regulation issued pursuant to those programs. On a subsequent determination by the Secretary that State agency administration of the programs or compliance with regulations is no longer seriously deficient and is operated in an acceptable manner, the Secretary may allocate some or all of the funds withheld.

- 4. In § 235.5,
a. The third sentence of paragraph (a) introductory text is amended by removing the words "for the fiscal year";
b. The fifth sentence of paragraph (a) is amended by removing the word "fiscal" and adding in its place the word "base";
c. Paragraphs (b) and (c) are revised, and
d. The fourth sentence of paragraph (d) is revised.
The revisions read as follows:

§ 235.5 Payments to States.

(b) Administrative plan. (1) Each State agency shall submit, subject to FNS approval, an initial State Administrative Expense plan based upon guidance provided by FNS. This base year plan shall include:

- (i) The staffing pattern for State level personnel;
(ii) A budget for the forthcoming fiscal year showing projected amounts (combined SAE and State funds) by cost category;
(iii) The total amount of budgeted funds to be provided from State sources;
(iv) The total amount of budgeted funds to be provided under this part;
(v) The State agency's estimate of the total amount of budgeted funds (combined SAE and State funds) attributable to administration of the School Nutrition Programs (National School Lunch, School Breakfast and Special Milk Programs), Child and Adult Care Food Program, and/or Food

Distribution Program in schools and child and adult care institutions and to each of the major activity areas of the State agency; and

(vi) The State agency's estimate of the total Child and Adult Care Food Program audit funds to be used for the forthcoming fiscal year.

(2) These activity areas shall be defined and described by the State agency in accordance with guidance issued by FNS and may include such activities as program monitoring, technical assistance, Federal reporting/claims processing, policy implementation, and allocation of foods to recipient agencies.

(3) Except in specific instances where determined necessary by FNS, State agencies shall not be required to maintain expenditure records by activity area or program. State agencies shall refer to Office of Management and Budget Circular A-87, Attachment B, to establish cost categories.

(4) FNS shall approve a State agency's plan, or any amendment to such plan under paragraph (c) of this section, if it determines that the plan or amendment is consistent with program administrative needs and SAE requirements under this part.

(5) To the extent practicable, State agencies shall implement their approved plans (as amended). FNS shall monitor State agency implementation of the plans through management evaluations, State agency reports submitted under this part, audits, and through other available means.

(6) FNS may expand plan requirements for individual State agencies in order to address specific administrative deficiencies which affect compliance with program requirements and which have been identified by FNS through its monitoring activities.

(c) *Amendments to the administrative plan.* A State agency may amend its plan at any time to reflect changes in funding or activities, except that, if such changes are substantive as defined in the June 5, 1997 guidance, and any amendments or updates to this guidance, the State agency shall amend its plan in accordance with guidance provided by FNS. Plan amendments shall provide information in a format consistent with that provided in the State agency's plan, but shall only require FNS approval if it results in a substantive change as defined by FNS.

(d) * * * Reallocated funds shall be made available for payment to a State agency upon approval by FNS of the State agency's amendment to the base year plan which covers the reallocated funds, if applicable. * * *

* * * * *

§ 235.6 [Amended]

- 5. In § 235.6,
 - a. The second sentence of paragraph (a) is amended by removing the words "up to ten percent of the",
 - b. Paragraph (a-2) is amended by removing the reference "or § 210.18a of this title", and
 - c. Paragraph (g)(1) is amended by removing "\$10,000" and adding in its place "\$25,000".

§ 235.11 [Amended]

- 6. In § 235.11, paragraph (b)(2) is amended by removing the references "or § 210.18a of this title", "or § 210.18a" and ", § 210.18a," wherever they appear.
- 7. Section 235.12 is revised to read as follows:

§ 235.12 Information collection/recordkeeping-OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control number
235.3(b).	
235.4(d), (e)	0584-0067
235.7(a)	0584-0067
235.7(b)	0584-0067
235.7(c)	0584-0067
235.8(a), (b)	0584-0067
235.9(c), (d)	0584-0067
235.11(b)(2)	0584-0067
235.11(b)(5)(ii)	0584-0067
235.11(f)	0584-0067

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: Secs. 3, 4, and 10 of the Child Nutrition Act of 1966, 80 Stat. 885, 886, 889, as amended (42 U.S.C. 1772, 1773, 1779); secs. 2-12, 60 Stat. 230, as amended (42 U.S.C. 1751-1760).

§ 245.5 [Amended]

- 2. In § 245.5,
 - a. The first sentence of paragraph (a) introductory text, is amended by removing the reference "(o)(2) of part 210"; and
 - b. Paragraph (a)(1)(x) is amended by removing the word "handicap" and adding in its place the word "disability".

§ 245.6a [Amended]

- 3. In § 245.6a, paragraph (d) is amended by removing the word "handicap" and adding in its place the word "disability".
- 4. In § 245.10,
 - a. Paragraph (a) introductory text is amended by adding a sentence between the first and second sentences.

- b. Paragraph (a)(2) is revised, and
- c. Paragraph (c) is amended by adding two new sentences to the beginning of the paragraph.

The revision and additions read as follows:

§ 245.10 Action by School Food Authorities.

(a) * * * Once approved, the policy statement shall be a permanent document which may be amended as necessary, except as specified in paragraph (c) of this section. * * *

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

* * * * *

(c) Each school food authority shall amend its permanent free and reduced price policy statement to reflect substantive changes. Any amendment to a policy shall be approved by the State agency prior to implementation, or as provided in paragraph (e) of this section. * * *

* * * * *

5. In § 245.11, the first sentence of paragraph (a)(1) revised to read as follows:

§ 245.11 Action by State agencies and FNSRO's.

(a) * * *

(1) As necessary, each State agency or FNSRO, as applicable, shall issue a prototype free and reduced price policy statement and any other instructions to ensure that each school food authority is fully informed of the provisions of this part. * * *

* * * * *

§ 245.12 [Amended]

6. In § 245.12, paragraph (a)(1) is amended by removing "\$10,000" and adding in its place "\$25,000".

§ 245.13 [Removed]

7. Section 245.13 is removed in its entirety.

§ 245.14 [Redesignated as § 245.13]

8. Section 245.14 is redesignated as § 245.13.

Dated: September 10, 1999.

Samuel Chambers, Jr.,
Administrator, Food and Nutrition Service.
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