

### § 245.3

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

#### § 245.3 Eligibility standards and criteria.

(a) Each State agency, or FNSRO where applicable, shall by July 1 of each year announce family-size income standards to be used by local educational agencies, as defined in § 245.2, under the jurisdiction of such State agency, or FNSRO where applicable, in making eligibility determinations for free or reduced price meals and for free milk. Such family size income standards for free and reduced price meals and for free milk shall be in accordance with Income Eligibility Guidelines published by the Department by notice in the FEDERAL REGISTER.

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

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

### 7 CFR Ch. II (1–1–15 Edition)

School Lunch Program, School Breakfast Program, Special Milk Program and the School Food Authority has elected to provide free milk, or is a commodity-only school.

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

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

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

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

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

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

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

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

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