Proposed Rules

Federal Register

Vol. 77, No. 178

Thursday, September 13, 2012

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 Parts 210 and 245

RIN 0584–AE17

Independent Review of Applications Required by the Healthy, Hunger-Free Kids Act of 2010

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: In accordance with Section 304 of the Healthy, Hunger-Free Kids Act of 2012, this proposed rule would require local education agencies participating in the Department's National School Lunch Program and demonstrating high levels of, or a high risk for administrative error associated with certification, verification, and other administrative processes to conduct an independent review of the initial eligibility determinations for free and reduced price school meals for accuracy prior to notifying households of eligibility or ineligibility. Additionally, this proposed rule would require each affected local educational agency to submit to the relevant State agency the results of the reviews including the number of applications subject to a second review, the number and percentage of reviewed applications for which the eligibility determinations changed, and a summary of the type of changes made. State agencies would be required to submit to the Food and Nutrition Service, a report describing the results of the second reviews in their State. This proposed rule is expected to reduce administrative errors in eligibility determinations for free and reduced price school meals.

DATES: To be assured of consideration, written comments must be postmarked on or before November 13, 2012.

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

- *Preferred method:* Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Comments should be addressed to Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1594.
- *Hand Delivery or Courier:* Deliver comments to the Food and Nutrition Service, Child Nutrition Division, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1594, during normal business hours of 8:30 a.m.–5 p.m.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Duplicate comments are not considered. Therefore, we request that commenters submit comments through only one of the methods listed above. 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. The Food and Nutrition Service (FNS) will make the comments publicly available on the Internet via *http://www.regulations.gov*.

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

SUPPLEMENTARY INFORMATION:

I. Background

The National School Lunch Program (NSLP) and School Breakfast Program (SBP) reimburse local educational agencies (LEAs) for the cost of providing nutritious low-cost or free meals to children in public and nonprofit private schools and residential child care institutions. Participating schools and institutions receive cash reimbursements and U.S. Department of Agriculture (USDA) food assistance for each meal served. About 101,000 schools and institutions participate in the NSLP and average daily student participation totaled approximately 32 million in Fiscal Year (FY) 2011. About 88,000 schools participate in the SBP and average daily student participation totaled approximately 11.6 million in FY 2011.

In exchange for Federal assistance, participating schools and institutions serve meals that satisfy Federal nutrition standards. In addition, they must offer school meals at no cost, or at reduced price, to children from income eligible households. Children from households with incomes at or below 130 percent of the Federal poverty level ($29,055 for a family of four during School Year (SY) 2011–2012) are eligible for free meals. Those with incomes between 130 and 185 percent of the Federal poverty level ($41,348 for a family of four during SY 2011–2012) are eligible for reduced price meals.

Children are determined eligible for free meals through application or direct certification; reduced price eligibility is determined by application alone. In recent years, FNS research (see below for more information) has identified a significant amount of erroneous payments associated with administrative errors occurring during the free and reduced price eligibility determination process.

Administrative Error

When households submit applications for free or reduced price meals, the LEA staff review these applications and make determinations of eligibility by comparing household size and income information with the guidelines published by FNS, or by assessing categorical eligibility based on a household's indication of meeting a categorical standard (homeless, migrant, runaway or foster child) or participation in certain means-tested programs (Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families, etc.). During the eligibility determination process, administrative errors can occur in determining gross monthly income, household family size, or assignment of benefit level based on household size and income specific (or relevant) information. Inaccurate certifications may result in assignment of a higher or lower amount of benefits than children are eligible to receive. For example, a child could incorrectly be certified for free lunches when they should be certified for reduced price lunches.

Common administrative errors in determining gross monthly income may involve computation errors. Such errors include not converting multiple income

sources to annual income, incorrectly determining the frequency of receipt of household income, and/or incorrect addition or multiplication. In determining household size, common errors include not counting the children in the list of all household members or counting a child twice.

Approved but incomplete applications (e.g., missing adult signature, missing last four digits of social security number, missing amount of income of the adult signing the application, etc.) also constitute administrative errors. In some instances, an administrative error may not have any impact on a benefit decision, and therefore would not translate into an error in the benefit level provided to a child.

Research Findings

In 2007, FNS released the Access, Participation, Eligibility, and Certification (APEC) study, which included national estimates of the amounts and rates of erroneous payments in the NSLP and SBP. Erroneous payments may arise because LEAs claim reimbursement at the free or reduced price rate for meals served to children who are not eligible for these benefits. Alternatively, erroneous payments may occur because LEAs fail to claim reimbursement at the free or reduced price rate for children who have applied for and are eligible for these benefits.

Using a nationally-representative sample for SY 2005–06, the APEC study found that 4.2 percent of applications were misclassified due to administrative error. This resulted in $129 million in net loss ($158 million in overpayments less $29 million in underpayments), for the NSLP and SBP combined. The most common administrative error was certification of students whose applications were incomplete; this most frequently occurred because the application lacked a signature. Other types of administrative errors were missing applications, assessment errors and transmittal errors.

In addition to the APEC study, FNS annually conducts the Regional Office Review of Applications (RORA) for School Meals. This annual report examines administrative error made during LEA approval of applications for free and reduced price meals in the NSLP and SBP. The most recent report, published in July 2011, found that LEA eligibility determinations were incorrect for 2.3 percent of students applying for free and reduced price meals in SY 2009–2010. About two-thirds (63 percent) of the incorrect determinations certified households for more benefits than were justified based on the documentation available, while roughly one-third (37 percent) of the students certified in error were certified for a lesser benefit than was justified. Errors were most commonly made processing income-based applications, with most errors associated with the determination of a household's gross income.

In response to concerns raised by APEC and RORA and the Department, the Healthy, Hunger-Free Kids Act of 2010, Public Law 111–296, (the HHFKA), modified the free and reduced price process for determining children's eligibility for free and reduced price meal benefits. The HHFKA strengthened rules governing certification.

II. Overview of the Proposed Rule

Section 304 of the HHFKA amended section 22 of the Richard B. Russell National School Lunch Act (NSLA) 42 U.S.C. to require LEAs that demonstrate high levels of, or a high risk for, administrative error associated with certification, verification, and other administrative processes, as determined by the Secretary, to have an individual independently review the initial eligibility determinations for free and reduced price school meals for accuracy prior to notifying households of eligibility or ineligibility. This independent review of eligibility determinations is hereafter referred in this preamble and the proposed regulation as ''second review'' of applications.

The Department has determined that given the results of the APEC and RORA, this proposed rule should focus on administrative errors that occur during certification of eligibility. For purposes of this proposed rule, certification includes both benefit issuance and updating student eligibility for program benefits on rosters used to claim meals to the extent the State agency identifies problems in the benefit delivery process during an administrative review. Subsequent rulemaking may address administrative error associated with verification and other administrative processes.

This proposed rule addresses requirements for both State agencies and LEAs, including criteria for identifying LEAs that must conduct a second review of applications; requirements for the second review of applications process, including timeframes and duration of second reviews; and requirements for reporting review results. With these new requirements, this proposed rule would create a new section 7 CFR 245.11 entitled ''Second review of applications'' and would redesignate the current 7 CFR 245.11 through 245.13 as 7 CFR 245.12 through 245.14, respectively.

These requirements are discussed in more detail below.

State Agency Requirements

LEA Selection Process

Proposed 7 CFR 245.11(a) would require each State agency to annually identify LEAs that demonstrate high levels of, or a high risk for, administrative error associated with the certification process to conduct a second review of applications.

Under the proposal, a State agency would be required to use the following criteria when identifying LEAs that are required to conduct a second review of applications:

- *Criterion 1—Administrative Review Performance Standard 1 Violation:* LEAs subject to a follow-up administrative review due to certification, benefit issuance or updating eligibility status violations of Performance Standard 1 (7 CFR 210.18(i)(3)(i));
- *Criterion 2—At-risk for Administrative Review Performance Standard 1 Violation:* LEAs at risk for a follow-up administrative review due to certification, benefit issuance or updating eligibility status violations of Performance Standard 1 (7 CFR 210.18(i)(3)(i));
- *Criterion 3—Provision ⅔ (special assistance certification and reimbursement alternatives) base year:* LEAs that are establishing a new Provision ⅔ base year in the following school year; and
- *Criterion 4—State agency discretion:* Of the LEAs scheduled for an administrative review the following year, the State agency may select any LEAs not identified through the above criterion that the State agency identifies as at risk for certification error, as determined by the State agency.

Criterion 1—Administrative Review Performance Standard 1 Violation: On an administrative review, State agencies assess whether a LEA and schools under its jurisdiction have a system in place that accurately certifies children for free and reduced price meal benefits, issues benefits, and updates eligibility status (Performance Standard 1). Any LEA with an inadequate certification and issuance system is required to take corrective action and, depending on the severity of the problem, may be subject to a follow-up administrative review. The Performance Standard 1 thresholds resulting in a follow-up administrative review are found at current 7 CFR 210.18(i)(3)(i). The threshold related to certification, benefit issuance and

updating eligibility is exceeded when: (1) a number of the reviewed schools in a LEA (as specified in Table B under § 210.18(i)(3)(i)) have an inadequate system for certification, issuing benefits or updating eligibility status; and (2) a school or LEA's system for certification, issuing benefits or updating eligibility status is inadequate, i.e., if 10 percent or more (but not less than 100 lunches) of the free and reduced price lunches claimed for the review period (for any school reviewed) are claimed incorrectly due to errors of certification, benefit issuance or updating of eligibility status.

For purposes of this proposed rule, a LEA subject to a follow-up administrative review due to certification and benefit issuance violations of Performance Standard 1 (§ 210.18(i)(3)(i)) would be subject to a second review of applications beginning the following school year.

Criterion 2—At-risk for Administrative Review Performance Standard 1 Violation: This proposed rule also would require State agencies to identify LEAs that demonstrate a high risk for administrative error associated with certification to be required to conduct a second review of applications. For purposes of this proposed rule, LEAs, as determined by an administrative review, which claimed between 5–10 percent of the free and reduced price lunches incorrectly due to errors of certification, benefit issuance or updating of eligibility status would be considered at high risk for administrative error associated with certification.

Based on data available through RORA, we expect that LEAs selected based on Criterion 1 and 2 will account for approximately 20–25 percent of all LEAs nationwide over a three year period.

Criterion 3—Provision 2/3 (special assistance certification and reimbursement alternatives) base year: In an effort to reduce paperwork and other administrative burdens at the local level, Congress incorporated into Section 11(a)(1) of the NSLA (42 U.S.C. 1759a) alternative provisions to the traditional requirements for annual determinations of eligibility for free and reduced price school meals and daily meal counts by type. A school participating in Provisions 2 or 3 must serve NSLP and/or SBP meals to all participating children at no charge for up to 4 consecutive years. During the first base year, there is no change in traditional procedures and administrative burden. The school distributes free and reduced price meal applications and makes eligibility determinations for participating children, takes daily meal counts by type (free, reduced price and paid) at the point of service, or approved alternate, reports these counts for claiming meal reimbursement, and receives Federal reimbursement based on these counts as it normally does. However, regardless of the children's free, reduced price or paid eligibility category, all children are served meals at no charge. During years 2, 3 and 4 of the cycle, the school makes no new eligibility determinations and continues to serve all children meals at no charge. The school takes counts of only the total number of reimbursable meals served each day, instead of counting meals by type. Reimbursement during these years is determined by applying the percentages of free, reduced price, and paid meals served during the base year to the total meal count for the claiming period in subsequent years.

The APEC study found that schools in Provisions 2 or 3 base years, on average, experience higher erroneous payments rates than other schools (1.75 times higher for NSLP), making them a high risk for administrative error associated with certification. Therefore, this proposed rule would require State agencies to require LEAs to conduct a second review of applications when the LEA is establishing a new Provision ⅔ base year.

Criterion 4—State agency discretion: Lastly, this proposed rule would allow State agencies to select LEAs that are not identified in the above criteria, and that the State identifies are at risk for certification error, and are scheduled for an administrative review the following year. This selection requirement is intended to ensure that when a selected LEA undergoes an administrative review the following year, it will already be working towards decreasing the administrative error associated with the certification process, thus mitigating the potential for fiscal action by the State agency.

This requirement would give State agencies discretion to decide which LEAs are selected to conduct the second review of applications. Examples of LEAs that State agencies should include are new entities with less experience with the free and reduced price process, LEAs with new administrative staff and LEAs in the first year of a new electronic system.

These criteria for selection are included in proposed 7 CFR 245.11(b).

FNS asks for commenter input on the above criteria for selecting LEAs for the second review of applications. Specifically, we are interested in input on how many LEAs would likely be required to conduct a second review of applications using these criteria, as well as any suggestions for other criteria that could be used for LEA selection.

Exemptions

FNS is also seeking input on whether State agencies should be able to exempt LEAs that use computerized free and reduced price determination and roster transfer systems, provided that the State agency can attest to the efficacy of those systems. While FNS is considering this exemption for LEAs that use computerized systems, we do not expect that State agencies would use the exemption often because computerized eligibility determination systems should be more accurate than manual determinations, meaning that LEAs using them would not likely fall within the criterion for LEA selection. We anticipate that this exemption would reduce burden on State agencies.

LEA Requirements

The proposed rule at 7 CFR 245.11(c) would require LEAs identified by their State agency to conduct a second review of applications, to ensure that the initial eligibility determination for each application is reviewed for accuracy prior to notifying the household of the eligibility or ineligibility of the household for free and reduced price meals. Under the proposal, the second review would be conducted by an individual or entity who did not make the initial eligibility determination. This individual or entity is not required to be an employee of the LEA but must be trained on how to make application determinations as are all individuals who review initial eligibility applications, individuals or entities who conduct a second review of applications are subject to the disclosure requirements set forth in the NSLA and current 7 CFR 245.6(f) through 245.6(k).

Timeframes

The proposed rule at 7 CFR 245.11(c)(1) would require the second review of applications by identified LEAs to be conducted in a timely manner and not result in the delay of an eligibility determination. Once the review of eligibility has been completed, the household must be notified immediately.

In addition, the proposed rule would make a change to the timeframes for application approval for all LEAs, not simply those affected by the second review of applications requirements. Under the proposal, the Department would establish a regulatory requirement that all LEAs notify the household of the children's eligibility

and provide the eligible children the benefits to which they are entitled within 10 operating days of receiving the application. This change would conform the regulations with longstanding guidance and is intended to make the certification process consistent for both LEAs that are required to conduct a second review of applications and those that are not. This proposed change is found at 7 CFR 245.6(c)(6)(i).

Second Review Duration

The proposed rule at § 245.11(c)(2) would require LEAs identified under Criterion 1 (Administrative Review Performance Standard 1 Violation), Criterion 2 (At-risk for Administrative Review Performance Standard 1 Violation), or Criterion 4 (State agency discretion) to conduct a second review of applications until such time as the required LEA documentation demonstrates no more than 5 percent of the applications reviewed in the second review have changes to the eligibility determination.

Documentation means the required LEA annual report (described below) detailing the number of free and reduced price applications subject to a second review and the number and percentage of reviewed applications for which the eligibility determination was changed and a summary of the type of changes made.

LEAs identified under Criterion 3 (Provision 2/3 base year) are required to conduct a second review of applications during every base year. These LEAs are considered at-risk for administrative error associated with certification because of the infrequency (every 4 years) that they perform the certification process.

Reporting Requirements

As required by the HHFKA, this proposed rule would establish reporting requirements for State agencies and LEAs. These proposed reporting requirements would allow the State agency and the Department to monitor the potential decrease in administrative error associated with certification created by the second review of applications requirement.

Under the proposal at § 245.11(b)(2), State agencies would be required to submit an annual report, as specified by FNS, detailing the number of free and reduced price applications subject to a second review, the number and percentage of reviewed applications for which the eligibility was changed and a summary of the type of changes that were made for all the LEAs that were required to conduct a second review of applications. In addition, this proposed rule would require at § 245.11(c)(3) that LEAs subject to conduct a second review of applications be required to submit to the appropriate State agency, the number of applications reviewed, the results of the second reviews including the number and percentage of reviewed applications for which the eligibility determination was changed and a summary of the type of changes that were made.

Verification for Cause

The intended effect of this proposed rule is to help reduce administrative error during the application review process. The Department would also like to point out that in addition to decreasing the types of administrative error described above, the second review of applications requirement could provide an opportunity to allow an LEA to identify applications that should be verified for cause. Currently, 7 CFR 245.6a(c)(7) requires LEAs to verify any questionable application and encourages them, on a case-by-case basis, to verify any application for cause when the LEA is aware of additional income or persons in the household. LEAs must first complete the certification process prior to conducting verification.

II. Procedural Matters

Executive Order 12866 and Executive Order 13563

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

This proposed rule has been determined to be not significant under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601–612). Pursuant to that review, it has been certified that this rule will not have a significant impact on a substantial number of small entities.

While there may be some LEA burden associated with the second review of applications required in this proposed rule, the burden will not be significant and will be outweighed by the benefits of decreased administrative error associated with certification. Additionally, only LEAs that fall under the established criteria would be required to conduct the second review of applications.

Unfunded Mandates Reform Act

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

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

Executive Order 12372

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

Executive Order 13132

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

Prior Consultation With State Officials: Prior to drafting this proposed rule, FNS staff received informal input

from various stakeholders while participating in various State, regional, national, and professional conferences. Numerous stakeholders, including State and local program operators, also provided input at public meetings held by the School Nutrition Association.

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

Extent to Which We Meet Those Concerns: FNS has considered the impact of this proposed rule on State and local operators and has developed a rule that would implement the second review of applications requirement in the most effective and least burdensome manner.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not 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, all applicable administrative procedures under § 210.18(q) or § 235.11(f) must be exhausted.

Civil Rights Impact Analysis

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

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 is a new collection. The proposed provisions in this rule create new burden which will be merged into a currently approved information collection titled ''Determining Eligibility for Free and Reduced Price Meals,'' OMB Control #0584–0026, expiration date March 31, 2013. The current collection burden inventory for the Determining Eligibility for Free and Reduced Price Meals (7 CFR part 245) is 960,367. 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.

Comments on the information collection in this proposed rule must be received by November 13, 2012. Send 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 Jon Garcia, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection requirements, please contact Jon Garcia at the address indicated above. 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 request for comments will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: Independent Review of Applications Required by the Healthy, Hunger-Free Kids Act of 2010.

OMB Number: 0584–NEW.

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: Section 304 of the Healthy, Hunger-Free Kids Act of 2010 amended Section 22(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(b)). The new requirements necessitate the submission of a report to the State agency from each local educational agency that is required by the State agency to conduct a second review of eligibility determinations based on demonstrating high levels of, or a high risk for, administrative error associated with the certification process. This report must describe the results of the second review of applications, including the number and percentage of reviewed applications for which the eligibility determinations changed and a summary of the types of changes made. State agencies are required to submit this information in a report to the USDA. USDA must publish annually the results of the reviews of initial eligibility determinations by State, number, percentage, and type of error.

This proposed rule would increase the recordkeeping and reporting burden for local educational agencies and State agencies on the current collection burden inventory for Determining Eligibility for Free and Reduced Price Meals, OMB Control #0584–0026. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow.

Estimated Annual Burden for 0584–NEW, Independent Review of Applications, 7 CFR Part 245

Respondents for This Proposed Rule: State Agencies and Local Educational Agencies.

Estimated Number of Respondents for This Proposed Rule: 1,456.

Estimated Number of Responses per Respondent for This Proposed Rule: 1.

Estimated Total Annual Responses: 1,456.

Estimated Total Annual Burden on Respondents for This Proposed Rule: 378.

ESTIMATED ANNUAL BURDEN FOR 0584–NEW, INDEPENDENT REVIEW OF APPLICATIONS, 7 CFR PART 245

[Reporting (State agencies and local educational agencies)]

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
State agencies must annually report the results of the second reviews conducted by LEAs each school year.	7 CFR 245.11(b)(2) ...	56	1	6	.5	28
Local educational agencies must annually report the results of the second reviews conducted each school year.	7 CFR 245.11(c)(3) ...	1,400	1	1,400	0.25	350
Total Reporting for Proposed Rule.	.....	1,456	.....	1,456	.....	378

ESTIMATED ANNUAL BURDEN FOR 0584–NEW, INDEPENDENT REVIEW OF APPLICATIONS, 7 CFR PART 245

[Recordkeeping (State agencies and local educational agencies)]

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
State agencies	7 CFR 245.11	56	1	56	*0	*0
Local educational agencies	7 CFR 245.11	1,400	1	1,400	*0	*0
Total Recordkeeping for Proposed Rule.						

*Recordkeeping requirements for State agencies and local educational agencies are included in the burden for the existing requirements for submitting data for the FNS–742 form.

SUMMARY OF BURDEN (OMB #0584–NEW) 7 CFR 245

Total No. Respondents	1,456
Average No. Responses Per Respondent	1
Total Annual Responses	1,456
Average Hours per Response	.....
Total Burden Hours for Proposed Rule	378

E-Government Act Compliance

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

List of Subjects

7 CFR Part 210

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

7 CFR Part 245

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

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

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

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

Authority: 42 U.S.C. 1751–1760, 1779.

2. Amend § 210.15 by:

a. In paragraph (a)(7), removing the word ''and'';

b. In paragraph (a)(8), removing the period and adding ''; and'' in its place;

c. Adding a new paragraph (a)(9).

The addition reads as follows:

§ 210.15 Reporting and recordkeeping.

(a) * * *

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

* * * * *

3. Amend § 210.20 by:

a. In paragraph (a)(8), removing the word ''and'';

b. In paragraph (a)(9), removing the period and adding the word ''; and''

c. Adding a new paragraph (a)(10).

The addition reads as follows:

§ 210.20 Reporting and recordkeeping.

(a) * * *

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

* * * * *

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

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

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

2. In § 245.6 revise paragraph (c)(6)(i) to read as follows:

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

* * * * *

(c) * * *

(6) * * *

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

* * * * *

3. Amend Part 245 by:

a. Redesignating §§ 245.11 through 245.13 as §§ 245.12 through 245.14, respectively;

b. Adding a new § 245.11 to read as follows:

§ 245.11 Second review of applications.

(a) *General.* On an annual basis not later than the end of each school year, State agencies must identify local educational agencies demonstrating a high level of, or risk for, administrative error associated with certification processes and notify the affected local educational agencies that they must conduct a second review of applications beginning in the following school year. The second review of applications must be completed prior to notifying the household of the eligibility or ineligibility of the household for free or reduced price meals.

(b) *State agency requirements.*

(1) *Selection criteria.* In selecting local educational agencies demonstrating a high level of, or risk for, administrative errors associated with certification processes, State agencies must use the following criteria:

(i) *Administrative Review Performance Standard 1 Violation.* All local educational agencies subject to a follow-up administrative review due to certification, benefit issuance, or updating eligibility status violations of Performance Standard 1 under § 210.18(i)(3)(i) of this chapter.

(ii) *At-Risk for Administrative Review Performance Standard 1 Violation.* All local educational agencies at risk for a follow-up administrative review under § 210.18(i)(3)(i) because they claim between 5–10 percent of the free and reduced price lunches incorrectly for the review period due to errors of certification, benefit issuance or updating of eligibility status.

(iii) *Provision 2 or Provision 3 Base Year.* All local educational agencies that are establishing a new base year in the following school year under the special assistance certification and reimbursement alternatives set forth in § 245.9.

(iv) *State agency Discretion.* Of the local educational agencies scheduled for an administrative review under § 210.18(c) the following year, the State agency must select those local educational agencies not selected under paragraphs (b)(1)(i) through (b)(1)(iii) and that are at risk for certification error, as determined by the State agency.

(2) *Reporting Requirement.* By February 1 of each year, each State agency must submit a report, as specified by FNS, describing the results of the second reviews conducted by local educational agencies in their State. The report must include:

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

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

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

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

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

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

(2) *Duration of requirement to conduct a second review of applications.* Selected local educational agencies must conduct a second review of applications until the State agency determines that the local educational agency is no longer demonstrating a high level of, or is no longer at risk for, administrative error associated with the certification process. The State agency makes this determination as follows:

(i) For local educational agencies selected for second review of applications using criterion set forth in paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iv) of this section, local educational agency provided documentation demonstrates that no more than 5 percent of reviewed applications required a change in eligibility determination.

(ii) For local educational agencies selected for second review of applications using criterion set forth in paragraph (b)(1)(iii) of this section, a second review of applications is required every base year of the Provision 2 or Provision 3 cycle.

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

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

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

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

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

Dated: September 5, 2012.

Robin D. Bailey Jr.,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2012–22261 Filed 9–12–12; 8:45 am]

BILLING CODE 3410–30–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 604, 611, 612, 619, 620, 621, 622, 623, and 630

RIN 3052–AC65

Unincorporated Business Entities

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) is proposing to establish a regulatory framework for Farm Credit System (System) institutions' use of unincorporated business entities (UBEs) organized under State law for certain business activities. For purposes of this proposed rule, a UBE includes limited partnerships (LPs), limited liability partnerships (LLPs), limited liability limited partnerships (LLLPs), limited liability companies (LLCs), and any other unincorporated business entities, such as unincorporated business trusts, organized under State law. This rule does not apply to UBEs that one or more System institutions may establish as Rural Business Investment Companies (RBICs) pursuant to the institutions' authority under the provisions of title VI of the Farm Security and Rural Investment Act of 2002, as amended