United States Department of Agriculture

Food and Nutrition Service

Mountain Plains Region

1244 Speer Boulevard
Denver, CO
80204-2581

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Reply to Attn of:

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Subject:

Questions and Answers on Changes in School Nutrition Program Policies from Kansas City State Directors Reauthorization Briefing

To:

STATE AGENCY DIRECTORS - (Special Nutrition Programs)

Colorado ED, Iowa, Kansas, Missouri ED, Nebraska, North Dakota, Montana OPI, South Dakota, Utah and Wyoming

Attached are questions raised about school nutrition programs policies at the State Directors Reauthorization Briefing in Kansas City in September, 2004, and the answers to those questions. You may use these responses as you move forward to implement the provisions of the new Law. However, please keep in mind that these answers may be modified as Regulations are published.

We expect you have already received a copy of questions and answers from this meeting sent to you from our National Office on November 30, 2004. The attachment to this memorandum contains questions and answers from the National Office document, but only those that pertain to school nutrition programs. The questions and answers correspond to those in the National Office version, with these differences:

- Question and Answer 28 of the National Office version, on State Administrative Expense funds, has been extracted and issued separately,
- Question and Answer 27 has been extracted and issued as part of the separate memorandum for the Child and Adult Care Food Program,
- Additional clarification has been added in Question and Answer 2, in the third paragraph,
- Question and Answer 34 has been added to the attached version to address a question very recently raised and answered, and
- Numbering of the questions themselves is not the same as in the National Office version beginning with Question and Answer 27.

If you have any questions please contact Felicia Gaither or Joe Fisher at (303) 844-0354.

Felicia Gaither

DARLENE SANCHEZ
Regional Director
Special Nutrition Programs

Attachment

State Agency Reauthorization Briefing
Kansas City
Questions and Answers
School Programs

Dietary Guidelines

1. Will the rules to be issued by the Secretary to promote consumption of foods recommended by the Dietary Guidelines for Americans result in changes to the meal patterns in the food-based menu planning approach?

Section 9(a) of the Richard B. Russell National School Lunch Act (NSLA) requires the Secretary to issue rules establishing specific recommendations, expressed in serving sizes, to promote consumption of the foods recommended by the most recent Dietary Guidelines for Americans. The Dietary Guidelines are currently being updated and are expected to be released in 2005. When the new guidelines are released, the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) will evaluate program meal patterns. Adjustments to the meal patterns, if any, will be addressed through the rulemaking process, which includes public comment.

Categorical Eligibility of Migrant, Runaway and Homeless Children

2. We understand that the delays may be substantial in some cases (i.e., up to 90 days) for receiving information about a child's status as migrant, runaway, or homeless. How does the Local Education Agency (LEA) handle a child's eligibility while awaiting confirmation from the homeless/migrant coordinator?

We suggest that the LEA or school determine who best knows the child's situation and have that person indicate that a child is homeless, a runaway or a migrant. This could be done either by completing an application on the child's behalf or by establishing a list indicating which children are migrants, for example. Keep in mind that the school's determining official must base the decision on concrete information that will support such a determination. This policy is consistent with our existing policy in FNS Instruction 765-2, Rev. 1, March 19, 1986, *Households that do not Apply for Free and Reduced Price Meals (F/RP).*

Once a LEA or school official establishes a child's eligibility as homeless, runaway or migratory, that eligibility remains in effect for the school year provided the child was correctly certified. However, if the child's status is <u>not</u> confirmed by subsequent information from the homeless/migrant coordinator, the school year eligibility is no longer valid. In these situations, the LEA/school must take steps to advise the household of the change by issuing a notice of adverse action which explains the household's right to appeal and inform the household that it can reapply for benefits.

Note also that eligibility for free meals dates from the LEA or school official's establishment of a child's eligibility. Eligibility for free meals is not back-dated to any period prior to this date, even if the child already was in a categorical eligibility status.

3. What if a child's status in NOT subsequently confirmed by the migrant/homeless/runaway liaison? Does the LEA continue to report the previously reported free meals as "free" and not require the family who was misclassified originally to pay for the meals received? Must adjustments to reimbursement claims be made?

If the child's status is not confirmed by the liaison, the household that was misclassified does not have to repay any difference between their correct eligibility and their free status. The household would need to submit an application to determine the child's correct eligibility status, or be classified as "paid" from that point forward. The meal counts and the reimbursement claims also do not need to be adjusted. (Also see question above.)

4. Is the migrant/runaway/homeless document provided to the LEA considered direct certification or an "application" for verification purposes?

Students in these three categories are considered to be directly certified for our programs. An application is not required nor should these students be considered for the verification process.

5. Is categorical eligibility for migrant children in effect for the school year if a child's migrant status expires mid-year?

Yes, the initial correct eligibility determination is good for the entire school year provided that the child is considered a migrant at the time of application.

6. Is there any specific information that liaison needs to provide to the LEA?

Referring to our previous memorandum issued April 4, 2002, *Updated Guidance for Homeless Children in the School Nutrition Programs*, documentation to substantiate free meal eligibility must consist of the child's name or a list of names, effective date(s), and the signature of the local educational liaison or the director of the homeless shelter. This documentation is acceptable in lieu of a free and reduced price meal application. The homeless coordinator will more than likely also be the one to certify migrants and runaways as well.

7. If certification is good for a year, can children who move to another state still be certified based on eligibility determined at their previous school?

Schools do not have to accept eligibility determinations from another state or another district. If communication between LEAs is done, continuing certification may be possible. However, it is important to note that the receiving school is responsible for

certifying the children correctly and therefore would need some type of documentation, whether it is a letter from previous school stating eligibility status, or an application from the household.

8. If migrant children are certified (as migrants) for three years, does this mean that they are eligible for free meals for three years as well?

No, eligibility determinations must be made for each school year.

Household Applications

9. Is a household application still considered one application? If two students attend the same school, is it considered two applications?

A household application for verification purposes is considered one application.

10. Does the household application provision allow or require one application per household? Does it allow applications for each school which children attend if a parent chooses?

The LEA cannot require more than one application per household.

11. When are States going to receive prototype household applications?

We will issue new prototype multi-child (household) applications for School Year 2005-2006 in spring 2005.

12. Are foster children still to be on their own individual applications?

Yes. Each foster child is considered a household of one.

13. What are the confidentiality standards for electronic signatures?

Section 105(a) of the Reauthorization Act explicitly permits applications with electronic signatures if the application is submitted electronically and the application filing system meets confidentiality standards set by USDA/FNS. Until we are able to issue specific guidance, we recommend State agencies follow the same guidelines prescribed to Federal agencies by the Department of Justice (DOJ) for electronic transactions.

14. Where and how should applications be kept?

Individual schools do not need to keep a copy of the applications on-site. The School Food Authority (SFA) or LEA can send only the Master List of Approved F/RP Students to the schools. The applications can be kept on file at the SFA or LEA. It is important that applications be numbered and that they correspond to the Master List so that applications can be pulled for Coordinated Review Effort reviews.

15. What happens when one household submits multiple applications?

Most of the computer software used in the school food service program will catch multiple applications coming from the same household. Families will need to be contacted if the information on different submittals conflicts.

Eligibility Duration

16. Joint custody: If the mother applies and the children are approved as free and then the children move to the non-qualifying father's home, can the children remain in the free category?

Once a child's eligibility has been determined, it is in effect for the entire school year. If the father's home is in the same district, a new application is not necessary. If the father's home is in a different district, that district must establish eligibility. So, if the parents live in the same district, and the mother's household qualifies for free meals, and the father's household qualifies for reduced-price meals, then the child would be free.

17. A household is known to have understated its income at the time of application. Can verification for cause still be done?

Yes. The statute continues to allow LEAs to exceed the required verification sample sizes. The LEA could approve the application on face value, but send a notice of selection for verification with the approval notice. With the tightened verification timeframe, LEAs will be selecting applications closer to the beginning of the school year. The one year duration does not apply to households whose applications are verified and the household's eligibility status changes.

18. What if someone knows they are to begin a job in the very near future, at the time they apply? Or similarly, how do you handle people who work only 10 months out of the year and have no income in August.

Current guidance on how to handle temporary approvals and fluctuating income remains in effect. Otherwise, the intent of the law is to provide for approval for the entire year.

19. Some households initially are approved for reduced price and then lose income or increase household membership that would make them eligible for free benefits? Can their eligibility status be changed?

Households may always reapply to improve their benefits.

20. Can households transfer their eligibility if they move out of the district?

If the new district is willing to accept applications from another district, then it is possible for households to carry their eligibility with them when moving. However, the new district is responsible for assuring correct eligibility of the household. The old school

district may supply certification information to the new school district, but the onus is on the new district to prove that eligibility was correctly determined.

Severe Need Rates for the School Breakfast Program

21. When will guidance be available on how to address schools without the second preceding year's data (e.g., new schools), especially residential child care institutions whose residents are all certified for free benefits?

The new law will not change what was already practice through guidance. The amended provision is not a blanket exception for all new schools. It will only apply to those that have special circumstances that we would have acknowledged in the past, such as, two schools are combined, or an over crowded school is split. We intend to be flexible, but there will have to be justification for approving schools for the severe need rate that do not have a second preceding year history.

Direct Certification

22. How should we certify new children that are not on the direct certification list at the beginning of the year?

At a minimum, direct certification must take place once a year. LEAs may do matches at other times throughout the year and we encourage Food Stamp agencies and LEAs to conduct direct certification as frequently as possible. Households may provide documentation anytime during the school year to establish their categorical eligibility for free meals as receiving food stamps. This issue will be addressed in the forthcoming interim rule on direct certification.

23. States are required to do direct certification for children in households receiving food stamps. Can State agencies/LEAs do direct certification with other programs besides food stamps as long as USDA approves?

Direct certification of food stamp households is required. Use of data from Temporary Assistance for Needy Families (TANF) and the Food Distribution Program on Indian Reservations (FDPIR) is allowed.

24. Can we propose using other programs for direct certification, for example WIC?

No. The law requires direct certification for food stamps, and permits it only for TANF, FDPIR and homeless, migrants, and runaways.

25. Are the School Years (Sys) in the right-hand column in error in the chart below? Shouldn't each be one SY later?

Mandatory Direct Certification: Food Stamps

The Provision Goes Into Effect In	For School Districts With Enrollments of	
	At Least	In the School Year
July, 2006	25,000 students	2005-2006
July, 2007	10,000 students	2006-2007
July, 2008	All school districts	

The SYs are correct. Implementation of mandatory direct certification for food stamps is phased in based on prior year enrollment figures. To determine whether a school district must implement this provision in July 2006, which will govern SY 2006-2007, one measures the enrollment in SY 2005-2006.

26. Please clarify the reference to the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) in Section 104. Are they intended to be an outreach audience or can WIC participants be directly certified?

Per section 104, application materials are required to include a statement that WIC participants may be eligible for free/reduced price meals. The WIC participants cannot be directly certified.

Procurement

27. Is there a discrepancy between the procurement guidance that specifies that no geographic area be given purchasing preference and Section 112 of the Reauthorization Act (which amended Section 9(j)(l)(A) of the Richard B. Russell National School Lunch Act), which states that the Secretary encourages institutions to purchase "locally produced foods for school meal programs, to the maximum extent practicable and appropriate?"

No.

Local Wellness Policy

28. Will USDA issue guidance and technical assistance to help LEAs establish a local wellness policy?

Per the law, USDA will make information and technical assistance available to LEAs, SFAs, and State agencies on request. The assistance will include Team Nutrition materials and other resources. The FNS is working with the Department of Education, Centers for Disease Control (CDC) and others to provide guidance and technical assistance to facilitate establishing a local wellness policy.

Verification

29. The law on direct verification discusses using information from other agencies except for information outside 180 days before the application date. Can LEAs use matching data that is 6 months old or less for direct verification?

Information reflecting program data can be no more than 180 days old from the time that the application's eligibility was determined.

30. For the preliminary reviews of approved applications, will State agencies need to have LEAs submit a second determining official?

Prior to conducting verification, the LEA is responsible for insuring that the initial eligibility determination for each selected approved household application is reviewed for accuracy by an individual other than the individual who made the initial eligibility determination.

31. What date is used for reporting free and reduced eligible numbers, October 1 or October 31?

The required sample size is based on the total number of approved applications on file on October 1. With regard to the Verification Summary Report, at present, the date that needs to be used to report application information is the last operating day in October. However, the verification reporting form will be revised in the near future.

32. Beginning July 2005, the sample size is determined based on the number of approved applications as of October 1. Can verification start before October 1st?

Yes.

33. Please confirm or clarify if LEAs can still use the random sampling and focused verification methods outlined in the current Eligibility Guidance if they have not exceeded the 20 percent non-response rate?

Beginning with the SY 2005-2006 verification process, an LEA will qualify for alternative sample sizes (i.e., the LEA will be able to choose to verify a 3 percent random sample or a 1 percent focused sample) if it achieves a non-response rate of 20 percent or lower in the previous SY. For SY 2005-2006, this is the non-response rate for SY 2004-2005.

34. LEAs having more than 20,000 children approved for F/RP benefits <u>by application</u> may use the alternate random sampling or focused sampling verification options, if the verification non-response rate for the preceding year is at least 10 percent below the non-response rate for the second preceding year. How is this comparison computed?

The LEA would take the percentage of non-respondants (does not include any income applications verified by direct verification) from the second preceding year, and then compute 10 percent of that figure. Deduct that amount from the percentage for the second preceding year, and if the LEA's actual non-response rate for the preceding year is at or below that percentage, the LEA may use the alternate verification sampling procedures. Example: the LEA has a non-response rate of 40 percent in the second preceding year, and 10 percent of 40 is 4, so 40 percent - 4 = 36 percent. If the response rate in the preceding year is 36 percent or lower, the LEA may use the alternate verification sampling procedures.

35. Is Medicaid used for certification purposes or for verification purposes?

Information from Medicaid may only be used to verify a household's status.

36. In the past, Medicaid agencies have objected to sharing data because of privacy concerns. Can they share data for purposes of direct verification?

The reauthorization act amended the NSLA to allow use of data matching with Medicaid, but it is not required. States agencies will have to work directly with the State Medicaid offices in order to obtain this information. The law also amended the law governing Medicaid to make information sharing easier.

37. For the alternate sample sizes, if the 3 percent sample calculation results in less than a whole number (e.g., 100.3 applications), should the LEA round up or down?

LEAs should round all decimals upward. If the sample size calculated to 100.3 applications, the LEA should verify 101. In all cases, at least one application must be verified.

38. What should be done when there are not enough error-prone applications?

In cases in which there are not enough error-prone applications to comply with the options, LEAs will be required to randomly select additional applications to fulfill the percentages or number requirement. For example, if an LEA is doing a percentage and needs to select 100 approved applications and can only find 80 error-prone applications, then that LEA would have to randomly select another 20 applications, in order to have a complete sample size.

39. Must small LEAs with limited means set up a toll-free number to comply with the new requirement?

No. It would be sufficient to provide households with information that they can call the LEA for verification help, and the charges will be reversed. The household must know that it has the option of asking about verification via telephone and not incur a charge. If

any of the LEA's households are outside of its calling area, the household must be able to call without charge.

40. Can a State-wide waiver be approved to change the verification deadline from November 15 to December 15th?

No. A waiver is only allowed on a school district basis.

41. What do you do if a child is initially certified for free, but during a confirmation review his/her eligibility is determined to be reduced price?

The current procedures (adverse action, appeal, etc.) continue to apply for a change in the household's status due to verification and the application is replaced with another income application.

42. Will the size of the verification sample be smaller with the use of household applications?

Using household applications will reduce the size of the verification sample.

Food Safety Inspections and Hazard Analysis Critical Control Point (HACCP)

43. Does the LEA qualify as a State or local government agency responsible for food safety inspections?

No. Section 9(h) of the NSLA requires that the food safety inspections be conducted by a State or local governmental agency responsible for food safety inspections.

44. May a school or SFA with a strong HACCP conduct only one food safety inspection per year?

No. The HACCP is a preventive process to reduce the risk of food-borne illness through proper food handling, monitoring of procedures, and record keeping. The food safety inspection is an evaluation that brings immediate attention to food safety concerns and provides the opportunity for offering technical assistance to the foodservice staff.

45. Are schools offering the Special Milk Program (SMP) required to have two food safety inspections annually?

No. The SMP is for institutions that do not participate in the school lunch or breakfast programs. Since the language in section 9(h) of the NSLA refers to schools participating in the school lunch or breakfast programs, SMP-only schools are not required to comply with this provision.

46. Must schools that contract with a Food Service Management Company (FSMC) to manage food service operations comply with the requirement of two food safety inspection per year?

Yes.

47. What is the status of the standardized recipes that have the HACCP procedures on them?

The National Food Service Management Institute has standardized recipes on its website (http://www.nfsmi.org/) that include critical control points. The revised standardized recipes reflecting the updated yields in the Food Buying Guide will also include critical control points and should be available on the website this winter.

48. What will the food safety inspection include?

The State or local agency responsible for conducting the food safety inspection determines what is included in the inspection.

49. May a school count a food safety inspection conducted as part of the Summer Food Service Program or the Child and Adult Care Food Program as part of the two food safety inspections required per school year?

Yes, as long as the inspection covers the same preparation facilities and similar food services.

Milk

50. What does it mean to offer a "variety" of milk?

Section 9(a)(2) of the NSLA requires that lunches served by participating schools include fluid milk in a variety of fat contents. In accordance with the Dietary Guidelines for Americans, school lunches must reflect a diet that is low in saturated fat and cholesterol and moderate in total fat. Accordingly, USDA encourages schools to offer children low-fat (1 percent) and fat-free milk, although other types of milk may be offered.

51. Are juvenile detention centers required to offer a variety of fluid milk?

Lunches served by schools and institutions that participate in the NSLP must include fluid milk in variety of fat contents. This requirement applies to residential child care institutions such as juvenile detention centers since they meet the definition of "school" under the NSLP regulations.

52. What is "fluid milk"?

All milk served in the Child Nutrition Program must be pasteurized fluid milk which meets State and local standards for such milk. All milk must have vitamins A and D at levels specified by the Food and Drug Administration.