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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

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

[FNS–2007–0023]

RIN 0584–AD54

Applying for Free and Reduced Price Meals in the National School Lunch Program and School Breakfast Program and for Benefits in the Special Milk Program, and Technical Amendments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes changes to eligibility determinations for free and reduced price school meals to implement nondiscretionary provisions of the Child Nutrition and WIC Reauthorization Act of 2004. This rule also finalizes the following changes set forth in the interim rule published on November 13, 2007 (72 FR 63785)—addition of a statutory definition of ''local educational agency,'' specification that a family only has to submit one application for all children in the household as long as they attend schools in the same local educational agency, and requirements to enhance descriptive materials distributed to families. This rule finalizes requirements for electronically-submitted applications, electronic signatures, and use and disclosure standards for such applications. This rule also finalizes year-long eligibility for free or reduced price school meals, unless the household chooses to decline a level of benefits. These changes are intended to provide children with increased access to the school nutrition programs by simplifying the certification process, streamlining program operations, and improving program management.

DATES: *Effective Date:* This rule is effective November 28, 2011.

FOR FURTHER INFORMATION CONTACT: Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service (FNS) at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004, enacted June 30, 2004, amended the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1751 *et seq.*) and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1771 *et seq.*) concerning applications for free and reduced price meals under the National School Lunch Program (NSLP) and the School Breakfast Program (SBP), and for free milk under the Special Milk Program for Children. Please note that while the application and certification procedures of this final rule apply to the Special Milk Program, the preamble will only discuss free and reduced price meal benefits in the NSLP and SBP, as only a very small number of schools and children participate in the Special Milk Program. However, this rule finalizes appropriate changes to the Special Milk Program regulations. All references to regulatory citations in this preamble are to Title 7, United States Code unless otherwise indicated.

In response to the statutorily imposed effective dates established by sections 501 and 502 of Public Law 108–265, the Department of Agriculture (USDA) issued memoranda to implement some of the provisions regulatorily codified in this final rule. For a list of memoranda, see the interim rule published by FNS on November 13, 2007 (72 FR 63785). All memoranda are located on the FNS Web site at *http://www.fns.usda.gov/cnd/,* click on Policy.

This rule finalizes modifications made by Public Law 108–265 that necessitated changes to the existing regulatory procedures relating to application and certification for free and reduced price meal benefits. This rule also finalizes definitions and other technical changes to 7 CFR Part 210 (National School Lunch Program), 7 CFR part 215 (Special Milk Program for Children), 7 CFR part 220 (School Breakfast Program), 7 CFR part 235 (State Administrative Expense Funds) and 7 CFR part 245 (Determining Eligibility for Free and Reduced Meals and Free Milk in Schools) to increase consistency in application and certification requirements among these regulatory divisions.

In addition, this rule finalizes changes to the definitions sections of 7 CFR 215.2, 220.2, 235.2, and 245.2, including removing primary designations and alphabetizing the definitions, and finalizing a definition for ''Nonprofit.''

For details, see the interim rule published by FNS on November 13, 2007 (72 FR 63785). This rule finalizes changes to the regulations in 7 CFR parts 210, 215, 220, 235 and 245 to reflect the changes mandated by Public Law 108–265.

II. Discussion of Public Comments and FNS Response

The 180-day comment period for the interim rule began November 13, 2007 and ended May 12, 2008. FNS received 26 comments on the interim rule: 17 comments from advocacy group officials, seven from individuals, one from a school food service association, and one from a State agency. The comments addressed the following areas:

Understandable Communications With Applicant Households

The interim rule stated that the school meals programs application must be clear and simple in design. The rule added language reflecting the statutory requirement that any communication with households regarding certification be understandable, and to the maximum extent practicable, provided in a language that parents and guardians can understand (§ 245.6 (a)(2)).

Advocacy groups and individuals emphasized the need for local educational agencies (LEAs) to provide information to parents and guardians at a low literacy level (5–6th grade was suggested), and in the primary languages represented in the school district (including providing oral translations, as needed).

Currently, FNS promotes understandable communication with families by providing LEAs with prototype application materials on our *Web site: http://www.fns.usda.gov/cnd/frp/frp.process.htm.* The application materials have an 8th grade reading level (6th grade with the required

privacy, penalty, and disclosure statements omitted) as determined by the Flesch-Kincaid and the McLaughlin Simple Measure of Gobbledygook (SMOG) reading level tests. FNS conducted focus groups with low-income parents to ensure that application materials are clear and easy to understand, can be completed quickly, and elicit accurate household income information.

FNS also provides translations of the prototype application materials on our Web site in 33 languages (available at: *http://www.fns.usda.gov/cnd/frp/frp.process.htm*). In 2005, FNS polled State agencies to determine the languages in which translated NSLP application packets were needed. This method of assessing needs was conducted because each geographical area is best positioned to determine the needs of their own communities. Based on State agency responses, languages were identified and prioritized based on the number of States requesting a particular language. Application packets were translated into those languages, reviewed by internal and external persons fluent in the appropriate language(s), and made available on our Web site. FNS recently created prototype application materials in eight additional languages to be consistent with the languages in which Supplemental Nutrition Assistance Program (SNAP) application materials are available. If a prototype application is not available in a language needed to communicate with a household, FNS encourages LEAs to utilize free and low-cost resources to provide families with meaningful access to school meals programs. LEAs should be aware of and utilize resources available within schools. School staff may be available to assist in communicating with households. Communities with limited English speaking populations often have community organizations or advocacy groups who may be able to assist in communicating with households. There are also several technology resources that can assist LEAs with providing families with meaningful access to school meals programs. Several Web sites offer free translation services; there are also several low-cost telephone translation services that provide assistance on an as-needed basis. These are the same types of resources that hospitals use to communicate with limited English speaking patients.

On a national level, commenters asked USDA to specify what is expected of LEAs to comply with the requirements of the statutory provision to provide ''understandable'' communication, and emphasized the need to monitor compliance at the State and local levels.

In addition to providing prototype application materials on our Web site, FNS ensures that States and LEAs develop ways to provide assistance in completing applications when there are language or literacy barriers. FNS Instruction 113–1 (November 8, 2005), *Civil Rights Compliance and Enforcement—Nutrition Programs and Activities,* requires State agencies and LEAs to provide bilingual services to applicants, including translators and translated materials. LEAs are responsible for determining the type of translation services, and language(s) in which translation services are available, that are needed to facilitate participation in school meals programs. State agencies must provide oversight and technical assistance to ensure that language is not a barrier to program participation. Compliance with these requirements is currently part of State agency reviews of LEAs and our review of State agencies.

FNS is taking steps to help LEAs identify the languages in which NSLP application materials are needed. The NSLP prototype application was translated into 33 languages and released together with an ISpeak form. These resources will help LEAs identify households' primary languages and readily provide application materials. Schools are required by the Department of Education to collect information on the primary languages spoken in student households through the Home Language Survey. FNS will promote providing NSLP application materials to households in the languages schools determine using information collected via the Home Language Survey.

In addition, FNS developed a strategic plan to improve program access for populations with limited English proficiency (LEP). FNS convened a ''Tiger Team'' to assess program applications and identify LEP-related barriers. FNS intends for these efforts to result in improved resources and guidance available to State and local authorities responsible for administering the Child Nutrition Programs, including the NSLP, SBP, and SMP.

Commenters also expressed the need for consistent policies across FNS programs, specifically recommending that Child Nutrition Programs adopt SNAP's policies regarding limited English proficiency. SNAP reimburses States for 50% of administrative expenses; Child Nutrition Programs do not have comparable resources for administrative expenses. As such, State burdens in achieving full parity with SNAP administrative policies would be very costly in many circumstances.

In considering national requirements for translation services, FNS must balance the administrative burden placed on State agencies and LEAs with the impact on households. That said, on a national level FNS will issue additional guidance to establish its expectations and assist LEAs in communicating with student households, including a short explanation of the recent provisions that remove participation barriers and encouraging both the use of the application translations and utilization of existing translation resources.

In light of limited LEA resources, FNS will also continue to develop ready-to-use communication resources, informed by periodically reviewing the languages in which the application packet is available, identifying unmet needs, and making translations available in additional languages as necessary. FNS is committed to providing all eligible children access to free and reduced-price school meals. Consequently, FNS expects LEAs to use the resources provided and take appropriate measures to ensure that language and communication are not barriers to program participation.

Transferring Eligibility for Free or Reduced Price Meals

The interim rule stated that the NSLA requires year long eligibility, which is effective through the current school year and up to 30 days into the subsequent school year. The interim rule, at § 245.6(a)(4), also includes a provision that allows LEAs the option of accepting the eligibility determination from the student's old school district without incurring liability for the accuracy of the initial determination.

Advocacy groups commented that, ideally, full year eligibility requires a system to transfer a child's status from one LEA to another, even across state lines. These commenters asked USDA to require LEAs to provide materials to each student newly enrolled during the school year and process the new application quickly. They also suggested that LEAs should conduct direct certification on each new student to determine if s/he is a member of a household receiving assistance benefits or is otherwise categorically eligible.

Currently, LEAs are encouraged, to the maximum extent practicable, to transfer/receive information about a child's eligibility for free or reduced price meals. In order to avoid placing an undue burden on districts where the costs of compliance would outweigh the benefits, the final rule does not make

these provisions mandatory. USDA is sensitive to LEA burden and seeks to provide LEAs flexibility to conduct certification and direct certification activities differently, in ways that are most suitable to local eligibility systems. Therefore, USDA has taken measures other than mandatory provisions to ensure that students who transfer during the school year can access school meal programs, including the following: USDA is supporting transfers by removing any liability from the receiving LEA for errors made in the initial application approval; as suggested by the comment letters, we added language in the final rule at § 245.6(a)(1) requiring LEAs to provide newly enrolled students with applications and determine eligibility promptly; and, finally, we also encourage LEAs to directly certify these students, and encourage State and local agencies to develop and support systems that allow schools to determine the eligibility status of transferred students. Our recently published rule, *Direct Certification and Certification of Homeless, Migrant and Runaway Children for Free School Meals* (76 FR 22785), requires that LEAs conduct direct certification at least three times during the school year and encourages more frequent direct certification. This measure should also help LEAs capture and provide free meal eligibility to more students who transfer between schools during the school year.

Temporary Approvals

The interim rule stated that year-long eligibility does not apply when a household is given temporary approval, a determination made by the LEA when a household's need for assistance appears to be short-term, such as when a household experiences a temporary reduction in income. A suggested time period for temporary approvals was 45 days unless otherwise stipulated by the State agency. At the end of temporary approval, determining officials re-evaluate the household's situation. The provision on temporary approval was included in the interim rule at § 245.6(c)(3)(iii).

Advocacy groups stated that there is no statutory authority to permit temporary approvals due to the new requirement for year-long eligibility, and noted that the statutory exemptions for year-long eligibility do not address temporary approvals. The school food service association echoed that anything less than year-long approval is not warranted.

After careful reconsideration, we agree that the requirement for year-long eligibility negates the use of temporary approvals. Temporary approvals were used to safeguard Federal benefits in situations where the need for assistance appeared to be short-term. In lieu of temporary approvals, in situations where a LEA is concerned about the accuracy of application information, we highly encourage the LEA to conduct ''verification for cause.'' Therefore, this final rule removes the paragraph on temporary approvals, § 245.6 (c)(3)(iii). We will also update our guidance to reflect this change. We will address the use of verification for cause in a separate rulemaking.

Carryover of Previous Year's Eligibility Into the New School Year

Per Section 106 of Public Law 108–265, the interim rule stated that year-long eligibility is valid for the full school year and for a period not to exceed the first 30 operating days following the first operating day at the beginning of the school year, or until the new eligibility determination is made, whichever comes first. USDA used the long-standing permissive carry-over authority of current § 245.6(c) as the basis for this new requirement.

Advocacy groups requested that USDA clarify that siblings of previously eligible children may receive benefits when they start school, and encouraged USDA to address ways that LEAs should identify siblings.

The provision concerning newly enrolled siblings receiving benefits is currently only included in our guidance materials. LEAs can claim and be reimbursed for free and reduced price meals or free milk served to new children in an LEA from households with children who were approved for benefits the previous year. The *Eligibility Manual for School Meals* (available at: *http://www.fns.usda.gov/cnd/guidance/eligibility_guidance.pdf*) currently states that categorical eligibility may not be extended to siblings. This determination was made because different assistance programs confer benefits based on household characteristics using different definitions of ''household.'' After reconsideration, this final rule, at § 245.6(c)(2), requires the extension of categorical eligibility to children living in the same household as children previously receiving benefits, based on the definition of ''household'' provided in § 245.2. This change is consistent with our policy SP 38–2009 (August 27, 2009), *Extending Categorical Eligibility to Additional Children in a Household.*

In addition, a State agency found ambiguity in the wording ''* * * a period not to exceed * * *'' in § 245.6(c)(2) and suggested the omission of those words. We agree with the State agency, and omitted the ambiguous language from the final rule.

Processing Changes During the School Year

With the exception of incorrect eligibility determinations, a household's initial eligibility determination remains valid for the entire school year and up to 30 operating days into the next school year, unless a new application is submitted. Households are no longer required to report changes in income or household size or loss of SNAP (formerly the Food Stamp Program) or Temporary Assistance for Needy Families benefits. (Please note that current regulations refer to the Food Stamp Program. Regulatory references to the Food Stamp Program will be updated in future rulemaking to reflect the Program's name change.) However, households may voluntarily report changes, and may apply for benefits any time during the school year.

Advocacy groups were pleased that the interim rule states that a household must be given the option to decline a reduction of benefits if it reports a change in income or household size during the school year. Commenters also requested that the regulations prohibit reducing benefits using information from a source other than the household (*e.g.,* child is no longer homeless as reported by the school district's homeless liaison).

Due to year-long eligibility, the final rule specifies that benefits may only be reduced during the school year if a household voluntarily makes a written request for benefit reduction, for example, by submitting a new application or other documentation. The final rule clarifies that benefits cannot be reduced by new information received through other sources without the consent of the household. This is consistent with guidance materials which are very specific about how to handle changes reported during the school year, especially as they relate to households' ability to decline a reduction in benefits.

The interim rule also defined ''local educational agency'' and ''nonprofit,'' provided for electronically-submitted applications, addressed electronic signatures, and established use and disclosure standards for such applications. Commenters did not recommend any changes to these provisions; therefore, USDA is adopting these changes as set forth in the interim rule.

III. 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 rule has been determined to be significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Regulatory Impact Analysis

Need for action:

This rule modifies and finalizes interim regulations published in November 2007 to carry out nondiscretionary provisions of the 2004 Child Nutrition and WIC Reauthorization Act. The rule implements provisions intended to facilitate the certification of children for free and reduced price school meals and free milk. These provisions are meant to benefit children eligible for school meal benefits as well as program administrators responsible for the certification process.

Benefits:

The rule finalizes provisions that mandate or provide for year-long eligibility, single applications for most households, extension of eligibility for newly enrolled siblings of most eligible students, electronic applications, the transfer of eligibility across schools and districts, and clarity in written communication between applicant households and school officials. These provisions will benefit eligible children who may have been denied benefits for at least part of the school year under previous program rules. Several of these provisions, particularly greater use of household applications and electronic applications, and the promotion of transferred eligibility across districts, promise long-term benefits to program administrators as well.

Costs:

Although the rule promotes the certification of eligible children for school meals benefits, at least one of its most significant provisions, year-long certifications, serves to affirm what had previously occurred in practice. To the extent that these provisions increase the number of children certified for free or reduced price school meals or free milk, the cost of federal reimbursements will increase. Other provisions, such as those encouraging electronic applications and the transfer of eligibility across districts, may require short-term investment by LEAs. Overall, the costs of the rule are expected to be small.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). It has been certified that this rule will not have a significant economic impact on a substantial number of small entities. Households applying for free or reduced price school meals for their children are affected, as they are no longer required to complete and submit an application for each child. Local educational agencies are also affected because there are fewer applications to process and there will be potential for more economically beneficial centralized systems.

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, 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 USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no 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, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The NSLP, Special Milk Program, SBP, 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. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V, and final rule related notice at 48 FR 29114, June 24, 1983, these programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Because these programs are federally funded programs administered at the State level, FNS headquarters and regional office staff have ongoing formal and informal discussions with State and local officials regarding operational issues. This arrangement allows State and local agencies to provide feedback that forms the basis for any discretionary decisions made in this and other rules.

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 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures under § 210.18(q) or § 235.11(f) must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on children on the basis of age, race, color, national origin, sex, or disability. A careful review of the rule's intent and

provisions revealed that this rule is not intended to reduce participants' ability to participate in the NSLP, SBP, or Special Milk Program.

Executive Order 13175

USDA will undertake, within 6 months after this rule becomes effective, a series of Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities and individuals. These sessions will establish a baseline of consultation for future actions, should any be necessary, regarding this rule. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

We are unaware of any current Tribal laws that could be in conflict with the final rule. We request that commenters address any concerns in this regard in their responses.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency 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 rule does not contain any new information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995. Information collections associated with this rule have been approved under following OMB control numbers 0584–0005, 0584–0006, 0584–0012, 0584–0026 and 0584–0067.

E-Government Act Compliance

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

List of Subjects in 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, the interim rule amending 7 CFR parts 210, 215, 220, 235 and 245, published at 72 FR 63785 on November 13, 2007, is adopted as a final rule with the following changes:

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:
■ a. Amend paragraph (a) introductory text by adding a comma between the words ''school'' and ''shall'';
■ b. Amend paragraph (a)(1) by adding a new sentence between the first and second sentences of the paragraph, and removing the word ''issued'' and adding in its place the word ''provided'';
■ c. Amend the first sentence of paragraph (a)(4) by removing the word ''another'' and adding in its place the words ''a new'';
■ d. Amend paragraph (a)(5)(i) by removing the word ''that'';
■ e. Amend paragraph (a)(9) by adding a new sentence at the end of the paragraph.
■ f. Revise paragraph (c)(1);
■ g. Revise paragraph (c)(2);
■ h. Revise paragraph (c)(3)(i);
■ i. Remove paragraph (c)(3)(iii);
■ j. Amend the first sentence of paragraph (c)(6)(iii) by adding the words ''or reduced price'' between the words ''free'' and ''benefits'';
■ k. Amend the last sentence of paragraph (c)(7) by removing the word ''As'' and adding in its place the word ''At''.

The revisions and additions read as follows:

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

(a) * * *

(1) *Household applications.* * * * The local educational agency must provide newly enrolled students with an application and determine eligibility promptly. * * *

* * * * *

(9) * * * Applicants must attest to changes in information as specified in this paragraph (b), if changes are voluntarily reported in writing during the eligibility period.

* * * * *

(c) * * * (1) *Duration of eligibility.* Except as otherwise specified in paragraph (c)(3) of this section, eligibility for free or reduced price meals, as determined through an approved application or by direct certification, must remain in effect for the entire school year and for up to 30 operating days into the subsequent school year. The local educational agency must determine household eligibility for free or reduced price meals either through direct certification or the application process at or about the beginning of the school year. The local educational agency must determine eligibility for free or reduced price meals when a household submits an application or, if feasible, through direct certification, at any time during the school year.

(2) *Use of prior year's eligibility status.* Prior to the processing of applications or the completion of direct certification procedures for the current school year, children from households with approved applications or documentation of direct certification on file from the preceding year shall be offered reimbursable free and reduced price meals or free milk, as appropriate. The local educational agency must extend eligibility to newly enrolled children when other children in their household (as defined in § 245.2) were approved for benefits the previous year. However, applications and documentation of direct certification from the preceding year shall be used only to determine eligibility for the first 30 operating days following the first operating day at the beginning of the school year, or until a new eligibility determination is made in the current school year, whichever comes first.

(3) *Exceptions for year-long duration of eligibility.* (i) *Voluntary reporting of changes.* Households are not required to report changes in circumstances during the school year, but a household may voluntarily contact the local educational agency to report any changes. If the household voluntarily reports a change in income or in program participation that would result in loss of categorical eligibility, the local educational agency may only reduce benefits if the household requests the reduction in writing, for example, by submitting a new application.

(ii) Households must attest to changes in information as specified in § 245.3(a)(9). In addition, benefits cannot be reduced by information received through other sources without the written consent of the household, except for information received through verification.

* * * * *

Dated: October 24, 2011.

Kevin W. Concannon,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 2011–27933 Filed 10–27–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0759; Airspace Docket No. 11–AAL–12]

Amendment of Class E Airspace; Nuiqsut, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Nuiqsut, AK, to accommodate the amendment of two standard instrument approach procedures at the Nuiqsut Airport. The FAA is taking this action to enhance safety and management of Instrument Flight Rules (IFR) operations at the Nuiqsut Airport. The action also adjusts the coordinates for the Nuiqsut Airport.

DATES: Effective 0901 UTC, December 15, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Martha Dunn, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; *telephone number:* (907) 271–5898; *fax:* (907) 271–2850; *email: Martha.ctr.Dunn@faa.gov. Internet address: http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

On Wednesday, August 10, 2011, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** to revise Class E airspace at Nuiqsut, AK (76 FR 49386).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received, but the FAA determined that the 1200 ft transition airspace overlies Control 1485L and that airspace should have been excluded from the rule. This action corrects that error. The FAA also noted that the coordinates published for the Nuiqsut Airport were outdated and they are corrected in this action.

Class E5 airspace designated as 700 and 1200 foot transition areas are published in FAA Order 7400.9V, *Airspace Designations and Reporting Points,* signed September 9, 2011, and effective September 15, 2011 which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. With the exception of editorial changes, this rule is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at the Nuiqsut Airport, Nuiqsut, AK, to accommodate the amendment of a two standard instrument approach procedures. The Class E airspace provides adequate controlled airspace extending upward from 700 and 1,200 feet above the surface is necessary for the safety and management of IFR operations at the airport. The action also revises the geographic coordinates for the Nuiqsut Airport to be in concert with the FAA's aeronautical database.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Nuiqsut Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, *Airspace Designations and Reporting Points,* signed September 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Nuiqsut AK [Revised]

Nuiqsut Airport, AK
(Lat. 70°12′35″ N., long. 151°00′23″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Nuiqsut Airport, AK and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Nuiqsut Airport, AK, excluding that airspace which overlies Control 1485L.

Issued in Anchorage, AK, on October 14, 2011.

Marshall G. Severson,

Acting Manager, Alaska Flight Services.

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