

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 2054888  
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JUN 14 1976

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DATE:

MATTER OF:

Department of Agriculture - Amended regulations regarding free and reduced-price meals in Puerto Rico and Virgin Islands

DIGEST:

This Office has no objection to a proposed regulatory amendment by the Department of Agriculture which will provide that under the National School Lunch Program and the School Breakfast Program if all children in Puerto Rico and the Virgin Islands (or any other State as defined by the relevant statutes) are receiving free meals, no application for eligibility need be taken from individual families and Federal payments will be made upon a basis determined by the Department with the concurrence of the Puerto Rico and Virgin Islands (or other State) educational agencies.

This decision is in response to a request by the Assistant Secretary of Agriculture seeking our concurrence in a method of computing the amount of Federal assistance to be paid to Puerto Rico and the Virgin Islands for free and reduced-price lunches and breakfasts served pursuant to the National School Lunch Act (42 U.S.C. § 1751 et seq.) and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. § 1773). Both of the above Acts are administered by the Food and Nutrition Service (FNS) of the Department of Agriculture (USDA).

In his submission the Assistant Secretary advises that the procedure currently employed in Puerto Rico and the Virgin Islands is to provide free lunches and breakfasts to all children in school, without regard to the economic need of the children's families. To the extent necessary, these jurisdictions use their own funds to supplement the Federal assistance. Puerto Rico and the Virgin Islands are defined as States for the purposes of those Acts.

Since the same terms and conditions of eligibility apply to both the school lunch program and the school breakfast program, the same analyses and conclusions are equally applicable to both programs. Therefore, for convenience, we will confine our discussion to the specific provisions of the National School Lunch Act.

Appropriations to carry out the school lunch program are authorized by 42 U.S.C. 1752. Under 42 U.S.C. 1753, it is provided that except for a small portion not here applicable, the sums appropriated are available for supplying agricultural commodities and other food for the program. The Secretary of Agriculture makes these food assistance payments in a total amount equal to the result obtained by multiplying the number of lunches served during such fiscal year to children in schools in a given State which participate in the school lunch program, by a national average payment per lunch (which shall not be less than 10 cents per lunch).

Section 9 of the National School Lunch Act, 42 U.S.C. 1758, as amended, establishes eligibility criteria for free and reduced price lunches. Prior to the amendment of that section by Pub. L. No. 92-433, September 26, 1972, 86 Stat. 729, the provisions of section 9 provided that meals would be provided without cost or at a reduced cost to children who are determined by local school authorities to be unable to pay the full cost of the lunch and that such determinations would be made by applying criteria which at a minimum were required to include the level of family income, including welfare grants, the number in the family unit, and the number of children in the family unit attending school or service institutions.

Pub. L. No. 92-433, supra, amended that portion of this section to state as follows:

"Any child who is a member of a household which has an annual income not above the applicable family-size income level set forth in the income poverty guidelines prescribed by the Secretary shall be served a free lunch." 42 U.S.C. 1758(b) (Supp. IV, 1974)

In making this change the Congress transferred the discretion of local authorities to establish additional eligibility criteria and established uniform national criteria. Hereafter, each State educational agency prescribes the income guidelines, by family size, to be used by schools in the State in making determinations of those children eligible for a free lunch. Additional guidelines are to be promulgated to prescribe income guidelines by family size, for those children eligible for lunch at a reduced price if a school elects to serve reduced-price lunches.

Section 9 of the Act, 42 U.S.C. 1758(b) (Supp. IV, 1974), further provides in pertinent part:

"Local school authorities shall publicly announce such income guidelines on or about the opening of school each fiscal year and shall make determinations with respect to the annual incomes of any household solely on the basis of a statement executed \* \* \* by an adult member of such household. No physical segregation of or other discrimination against any child eligible for a free lunch or a reduced-price lunch shall be made by the school nor shall there be any overt identification of any child by special tokens or tickets, announced or published lists of names \* \* \*." (Underscoring supplied.)

The above quoted portion of section 9, although slightly amended by Pub. L. No. 92-433, supra, is substantially the same as it was before the enactment of that Act.

The provisions of 42 U.S.C. 1759a(a), (Supp. IV, 1974), provide for additional special assistance payments in an amount equal to the sum of the product obtained by multiplying the number of lunches served free to children eligible for such lunches in schools within that State by the special-assistance factor for free lunches prescribed by the Secretary. A similar calculation is made for reduced-price lunches.

Prior to the enactment of Pub. L. No. 92-433, regulations (since repealed) published at 7 C.F.R. § 245.6, entitled "Applications for free and reduced-price lunches," provided:

"(c) In providing free or reduced-price lunches to eligible children, the school-food authority need not require the submission of an application if alternative methods will expedite eligibility determinations. The school-food authority may determine that the children, or certain categories of children, automatically meet the school's eligibility standards. In such latter event, it shall include information

to this effect in the letter or notice to parents, distributed in accordance with § 245.5, and advise parents of such children that an application is not required."

These regulations were clearly directed at identifying children who qualify for free lunches. After the enactment of Pub. L. No. 92-433, the reference to categorical determinations in the regulations was deleted. See 38 F.R. 4409, 4411 (February 14, 1973).

We might also note that current regulations continue to provide that local school authorities may fill out an income certification for a child in the absence of a parental certificate where independent information available to such authorities establishes the child's eligibility for either free or reduced-price meals, 7 C.F.R. § 245.6(c) (1975). Thus, it appears that the Department has consistently taken the position that a statement executed by an adult household member is not required in every instance.

In his submission the Assistant Secretary states that despite the change in regulations the Food and Nutrition Service has continued to allow Puerto Rico and the Virgin Islands to make claims for reimbursement for free and reduced-price meals on the basis in effect prior to the amendment of the regulations. He contends that:

"It is the Department's position that the intent of section 9 is solely to specify a method to determine eligibility of children for a free or reduced-price meal. When, as in Puerto Rico and the Virgin Islands, all children are receiving free meals, we believe it is unnecessary to make the determination as to the eligibility of any particular child. All that is necessary is to determine the amount which the Department is obligated to pay to the State educational agency in reimbursement for meals which qualify for a special assistance rate, i.e., meals served to children who would be eligible under the Department's regulations for a free or reduced price meal. We believe that the statistical method to be developed in Puerto Rico and the Virgin Islands will result in a valid determination of the number of eligible meals.

"We, therefore, propose to amend our regulations to provide that in Puerto Rico and the Virgin Islands no application need be taken from individual families and that the Federal payments will be made upon a basis determined by the Department, with the concurrence of the State educational agencies. We propose to limit this method of determining reimbursement to Puerto Rico and the Virgin Islands because of the particular administrative difficulty in those areas of taking applications from a large number of families, the majority of whom would qualify for either a free or a reduced-price meal. We believe they are areas particularly suitable for the use of a statistical sampling procedure."

The statutory and regulatory provisions discussed above deal, in our view, with determinations of the eligibility of individual children for free and reduced-price lunches. The portion of section 9 first quoted above states the thrust of that section-- that children coming from households below a certain income level shall receive a free meal. The remainder of the section, quoted in part above, relate to ascertaining eligibility. Among other things, these provisions require that eligibility be determined solely on the basis of family size and income and that the determination of the amount of household income will be based solely on the certificate of an adult member thereof. From the context of the latter part of this section, 42 U.S.C. § 1758(b), which we believe was primarily intended to govern the conduct of local school officials to assure that no eligible child will be denied a free or reduced-price lunch and that neither he nor his family will be subjected to embarrassment and/or harassment as the result of such eligibility, it appears to us that the requirement that household income be determined solely on the certificate of an adult member was not intended to require that an application be made in every case but to assure that, without cause, the local school authorities would not challenge the certificate. In this regard we note that the legislative history of these provisions shows that the primary congressional concern was that some otherwise eligible children were not being given free meals, because of inconsistent State criteria rather than that some ineligible children might be getting free meals. Further, as noted above, the Department has consistently held that a certificate was not needed when school authorities had independent information of a child's eligibility and an application would be either unnecessary or difficult to obtain (resulting perhaps in denial of such meals to eligible children).

The provisions relating to payment of special assistance funds are separate and apart from the aforementioned provisions relating to the procedures and criteria for determining individual eligibility for free or reduced-price lunches. The Federal payment is based on the number of lunches served free or at reduced-prices to eligible children, but there is no statutory directive for determining the number of such meals served.

Normally, it appears to us, the income statements executed by family members (or in special cases by local school authorities) not only assure that all eligible children receive their meals but also assist in ascertaining the exact number of children qualifying for such meals. The issue, as we see it, is whether these certificates are required in all circumstances to determine the amount of the Federal payment.

The Assistant Secretary states that the particular situations of Puerto Rico and the Virgin Islands raise unusual administrative difficulties in attempting to obtain parental certifications and that they are areas particularly suitable for the use of statistical sampling procedures. He notes that based on preliminary results of a survey now being conducted, the number of Puerto Rican school children eligible, on a now statistically valid base, for free meals may reach 17 percent of the entire school population with those eligible for reduced-price meals encompassing another 9 percent. The Department, in cooperation with Puerto Rico and the Virgin Islands, established the statistical base to be used.

Insofar as each child in these two jurisdictions who would be eligible for free or reduced-price meals will be provided (along with all their classmates) with free meals, the use of income certifications to assure that all children eligible for free or reduced-price meals will receive them is clearly not necessary. Hence, the only purpose they would serve would be to assist in determining the actual number of eligible children which would then be used to extrapolate the number of free and reduced-price meals served by the schools to eligible children. The Federal payment is based, as noted, on the number of such meals served and not on the total number of free or reduced-price meals served without regard to eligibility.

Accordingly, if the Secretary of Agriculture determines that he can ascertain, with sufficient accuracy, the number of meals served which are entitled to special assistance fund payments pursuant to 42 U.S.C. § 1759a (Supp. IV, 1974) without the need for income certifications from members of individual households, we will not interpose any objection to the use of statistical sampling procedures as set forth by the Assistant Secretary with respect to the particular and unusual circumstances presented by Puerto Rico and the Virgin Islands-- or any other State, as defined by these Acts--in which all school children are provided with free meals.

R.F. KELLER

Acting Comptroller General  
of the United States