

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 12

[Docket No. NRCS–2011–0010]

RIN 0578–AA58

#### Wetland Conservation

**AGENCY:** Office of the Secretary, United States Department of Agriculture (USDA).

**ACTION:** Final rule.

**SUMMARY:** The United States Department of Agriculture is removing obsolete provisions from the Code of Federal Regulations. This action removes provisions concerning the Natural Resources Conservation Service's (NRCS) coordination responsibilities.

**DATES:** *Effective Date:* The rule is effective April 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Terrell Erickson, Director, Ecological Sciences Division, U.S. Department of Agriculture, Natural Resources Conservation Service, Room 6819, South Building, P.O. Box 2890, Washington, DC 20013–2890; Phone: (202) 720–5992; Fax: (202) 720–2646; or E-mail: [Terrell.erickson1@wdc.usda.gov](mailto:Terrell.erickson1@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Certifications

##### *Executive Orders*

This document does not meet the criteria for a significant regulatory action as specified by E.O. 12866. This action also has no federalism or tribal implications, and will not impose substantial unreimbursed compliance costs on States, local governments, or Indian tribal governments. Therefore, impact statements are not required under E.O. 13132 or 13175.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act is not applicable to this rule because neither the Secretary of Agriculture nor NRCS is required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

##### *Environmental Evaluation*

This rule will have no significant effect on the human environment and is categorically exempt under 7 CFR 1b.3(a)(6); therefore, neither an environmental assessment nor an environmental impact statement is required.

##### *Paperwork Reduction Act*

This rule does not contain reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

##### Background

Existing wetland conservation provisions in 7 CFR part 12 require that NRCS' certification of a wetland determination be completed according to procedures agreed to by the Army Corps of Engineers (COE), the Environmental Protection Agency (EPA), and the U.S. Fish and Wildlife Service. In 1994, the Departments of Agriculture and the Interior, the Army, and the Environmental Protection Agency entered into a Memorandum of Agreement (MOA) concerning the delineation of wetlands for purposes of Section 404 of the Clean Water Act (CWA) and Title XII of the Food Security Act of 1985 (FSA). The MOA was developed to streamline the wetland delineation process on agricultural lands, to promote consistency between the CWA and the FSA, and to provide predictability and simplification for USDA program participants. However, subsequent amendments to FSA and court decisions made the MOA and parts of 7 CFR 12.30 no longer applicable, and USDA and COE withdrew from the MOA in January 2005.

1996 amendments to FSA eliminated the concept of "abandonment" for prior converted (PC) cropland. As a result, land may be considered non-wetland for FSA compliance purposes, but considered wetland for CWA purposes. 2002 amendments to FSA prohibit NRCS from sharing confidential producer information, including

geospatial information, to agencies outside USDA. This prohibits NRCS from providing wetland delineations and determinations to the COE and EPA for CWA permitting and enforcement. Finally, as a result of U.S. Supreme Court decisions, a wetland may be subject to FSA Compliance, but no longer regulated by the COE for CWA purposes. These inconsistencies in jurisdiction do not allow the two agencies to have consistent wetland determinations.

##### List of Subjects in 7 CFR Part 12

Administrative practices and procedures, Soil conservation, Wetlands.

For the reasons stated in the preamble, USDA amends part 12 of Title 7 of the Code of Federal Regulations as set forth below:

#### PART 12—HIGHLY ERODIBLE AND WETLAND CONSERVATION

- 1. The authority citation for part 12 continues to read as follows:

*Authority:* 16 U.S.C. 3801 *et seq.*

##### Subpart C—Wetland Conservation

##### § 12.30 [Amended]

- 2. In § 12.30, remove paragraph (a)(8) and remove the second sentence from paragraph (c)(1).

Signed in Washington, DC, on April 5, 2011.

**Thomas J. Vilsack,**  
*Secretary.*

[FR Doc. 2011–9870 Filed 4–22–11; 8:45 am]

**BILLING CODE 3410–16–P**

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 210, 215, 220, 225, 226 and 245

[FNS–2008–0001]

RIN 0584–AD60

#### Direct Certification and Certification of Homeless, Migrant and Runaway Children for Free School Meals

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule amends the regulations affecting the determination of children's eligibility for free meals under the National School Lunch Program and the School Breakfast Program by direct certification and categorical eligibility. Conforming changes and miscellaneous technical changes are also made, as appropriate, for the Special Milk Program for Children, the Child and Adult Care Food Program and the Summer Food Service Program. The Child Nutrition and WIC Reauthorization Act of 2004 (Reauthorization Act) amended the Richard B. Russell National School Lunch Act to require local educational agencies to conduct direct certification in conjunction with the Food Stamp Program, which is now called the Supplemental Nutrition Assistance Program (SNAP). Under the direct certification process, a local educational agency obtains documentation of a child's receipt of SNAP benefits from the State or local SNAP office. This rule also incorporates provisions from the Reauthorization Act concerning the certification of certain children who are homeless, runaway, or migratory.

This rule affects State agencies administering SNAP and the Child Nutrition Programs; local offices administering SNAP; local program operators that administer the School Nutrition Programs; and low income households with school age children. The rule is intended to improve school meal program access for low-income children, reduce paperwork for households and program administrators, and improve the integrity of the free and reduced price meal certification process.

**DATES:** *Effective date:* This rule is effective June 24, 2011. *Comment dates:* Comments on rule provisions: Mailed comments on the provisions in this rule must be postmarked on or before October 24, 2011; e-mailed or faxed comments must be submitted by 11:59 p.m. on October 24, 2011; and hand-delivered comments must be received by 5 p.m. October 24, 2011 to be assured of consideration.

Comments on Paperwork Reduction Act requirements: Comments on the information collection requirements associated with this rule must be received by June 24, 2011.

**ADDRESSES:** The Food and Nutrition Service (FNS) invites interested persons to submit comments on this interim rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* (703) 305-2879, attention Julie Brewer.

- *Mail:* 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 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302-1594, during normal business hours of 8:30 a.m.–5 p.m.

All submissions received in response to this interim rule will be included in the record and will be available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting comments will be subject to public disclosure. FNS may also make the comments publicly available by posting a copy of all comments on <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Address any questions to Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302 or by telephone at 703-305-2590. A regulatory cost-benefit analysis was completed for this rule. It will be available at <http://www.regulations.gov> as part of the docket history for this interim rule.

**SUPPLEMENTARY INFORMATION:** The Reauthorization Act (Pub. L. 108-265; June 30, 2004) phased-in mandatory direct certification provisions with the Food Stamp Program<sup>1</sup> and made children participating in certain other programs categorically eligible for free school meals. In order to provide readers with a chronological account of direct certification, this preamble begins with a history of direct certification which includes a discussion of the relevant changes made in the Reauthorization Act. These amendments are intended to streamline the certification and verification processes by reducing paperwork for both program administrators and households by eliminating the need for submission of free and reduced priced meal applications by these households.

This rule is being issued as an interim rule as authorized by section 501(b) of the Reauthorization Act and because of the specific implementation dates

<sup>1</sup> While the Food, Conservation and Energy Security Act of 2008, Public Law 110-234, renamed the Food Stamp Program as the Supplemental Nutrition Assistance Program, historical references are to the Food Stamp Program, reflecting the Reauthorization Act's language.

therein. The Reauthorization Act also required that regulations be promulgated within two years of enactment which was 2006. In order to accommodate the statutory deadlines imposed for fully phasing-in direct certification with SNAP and to provide access to free meals to children newly added as categorically eligible, the Department implemented the non-discretionary provisions in the Reauthorization Act through guidance as discussed below. In addition, by issuing the guidance, the Department complied with the implementation requirements established in 501(a) of the Reauthorization Act. The delay in issuing this interim rule enabled the Department to develop it using data from the direct certification reports to Congress as well as address issues raised by State and local agencies about the direct certification process as implemented. The Department strongly supports providing any opportunity for public comment from interested parties, which is afforded through the interim rule process. Changes resulting from comments and from experience based on the interim rule would be implemented through a future final rule.

## I. History

### *Eligibility Determinations*

Until 1981 to receive free and reduced price meals or free milk for their children, households were required by statute to complete an application for free or reduced price meals or for free milk, providing income and household size information. The Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, amended the Richard B. Russell National School Lunch Act (NSLA)<sup>2</sup> to include a number of changes to the free and reduced price meal eligibility process. One of those changes allowed submission of documentation showing participation in the Food Stamp Program. This was implemented by permitting households certified to receive benefits under the Food Stamp Program to provide their case number to schools in lieu of completing income information on the free and reduced price meal application. Thus, children who are members of households certified to receive food stamp benefits are "categorically eligible" for free school meals.

The School Lunch and Child Nutrition Amendments of 1986, Public Law 99-661, made further amendments to the NSLA to mandate categorical eligibility for free meals and a simplified verification of eligibility

<sup>2</sup> The NSLA was renamed in 1999.

process for children in food stamp households and children in Aid to Families with Dependent Children (AFDC)<sup>3</sup> assistance units. Since the regulations had already been amended to allow simplified application and verification procedures for food stamp households, the regulations were revised to extend these provisions to AFDC households.

The Child Nutrition and WIC Reauthorization Act of 1989, Public Law 101–147, again amended the NSLA to respond to concerns expressed by program operators regarding the volume of paperwork associated with the Child Nutrition Programs. The NSLA authorized school officials to certify children eligible for free meals, without further application, based on documentation obtained directly from the appropriate State or local agency that the children are part of households receiving assistance under the Food

Stamp Program or AFDC Program. This certification process is commonly referred to as “direct certification.”

Because the Food Distribution Program on Indian Reservations (FDPIR) is authorized by section 4 of the Food and Nutrition Act of 2008, 7 U.S.C. 2013, the same law authorizing SNAP, formerly the Food Stamp Program, and because eligible households on and near reservations have the option of participating in either SNAP or FDPIR, the Department extended the provisions on categorical eligibility and direct certification to include FDPIR households.

*Reauthorization Act 2004 Changes*

In 2004, the Reauthorization Act made several amendments to the NSLA to improve the integrity of the free and reduced price meal certification and verification processes, without hindering access of low-income

children. Section 104 of the Reauthorization Act added section 9(b)(4) to the NSLA, 42 U.S.C. 1758(b)(4) to require local educational agencies to directly certify, without further application, any child who is a member of a household receiving benefits under SNAP. To facilitate this requirement, an agreement between the State agency administering SNAP and the State agency or agencies administering the school meals programs is required. The required direct certification with SNAP is in addition to the previous and still existing optional authority for direct certification with TANF and FDPIR.

In accordance with the Reauthorization Act, the requirement to directly certify children receiving benefits under SNAP was phased-in based on the enrollment of the local educational agency as follows—

The provision was effective as follows	For school districts with enrollments of	
	At least in school year	
July 1, 2006 .....	25,000 students*	2005–2006
July 1, 2007 .....	10,000 students*	2006–2007
July 1, 2008 .....	All local educational agencies.	

\* From prior year's October data collection as required under 7 CFR 210.8(c)(2).<sup>4</sup>

In addition, the 2004 Reauthorization Act included provisions making children who are homeless, runaway, or migratory, as determined by the homeless coordinator for homeless or runaway children or by officials of the Migrant Education Program (MEP) for migratory children, categorically eligible for free meals, effective July 1, 2004. To ensure that the affected children could access free meal benefits as quickly as possible, the Department issued guidance to implement these statutory provisions. The pertinent memoranda are:

- July 19, 2004—Categorical Eligibility for Free Lunches and Breakfasts for Runaway, Homeless, and Migrant Youth: Reauthorization 2004 Implementation Memo SP 4;
- August 16, 2004—Categorical Eligibility for Free Lunches and Breakfasts for Migrant Children; and
- September 17, 2004—Guidance on Determining Categorical Eligibility for Free Lunches and Breakfasts for Youth Served under the Runaway and Homeless Youth Act.

These can be reviewed on our Web site—<http://www.fns.usda.gov/cnd/Governance/policy.htm>.

**II. Direct Certification Implementation and Studies**

Because of the benefits of direct certification relating to improving access and reducing paperwork, the Department felt that it was important to determine both the number of local educational agencies that were doing direct certification and what percentage of the total number of children eligible for free and reduced meals they represented. Studies and surveys conducted by FNS have indicated that, prior to School Year 2007–2008, a little more than 60 percent of local educational agencies were using direct certification. Please note that the majority of these studies were conducted prior to mandatory direct certification with SNAP. This data has given FNS a baseline to measure the success of mandatory direct certification with SNAP. Data for School Year 2009–2010 showed that 83 percent of local

educational agencies conduct direct certification. Studies and sources include—

- “Analysis of Verification Summary Data SY2004–05” (May 2006) which may be found at <http://www.fns.usda.gov/oane/menu/Published/CNP/FILES/CNVerification.pdf>;
- “Preliminary Report on the Feasibility of Computer Matching in the National School Lunch Program” (January 2005) which may be found at <http://www.fns.usda.gov/oane/menu/Published/CNP/FILES/NSLPDataMatch.pdf>;
- “Direct Certification in the National School Lunch Program—Impacts on Program Access and Integrity Study of Direct Certification in the National School Lunch Program” (October 2003, Economic Research Service, USDA, contracted study) which may be found at <http://www.ers.usda.gov/Publications/EFAN03009>;
- “Study of Direct Certification in the National School Lunch Program” (September 2000) which may be found

<sup>3</sup> The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, later replaced the AFDC program with the Temporary Assistance for Needy Families (TANF) Program. Please note that categorical eligibility for

recipients of TANF is subject to the limitation in section 9(b)(12)(A)(ii) of the NSLA, 42 U.S.C. 1758(b)(1)(A)(ii) concerning eligibility standards that were comparable to or more restrictive than those in effect on June 1, 1995. This qualification

will not be repeated in other references to TANF in this preamble.

<sup>4</sup> All other regulatory citations in this preamble shall be considered references to Title 7, Code of Federal Regulations, unless otherwise indicated.

at <http://www.fns.usda.gov/oane/menu/Published/CNP/FILES/directcert.pdf>; and

“Direct Certification in the National School Lunch Program: State Implementation Progress Report to Congress” (December 2008) found at <http://www.fns.usda.gov/oane/menu/Published/CNP/FILES/DirectCert08.pdf>.

“Direct Certification in the National School Lunch Program: State Implementation Progress Report to Congress—October 2009” found at <http://www.fns.usda.gov/ora/MENU/Published/CNP/FILES/NSLP DirectCertification2009.pdf>.

“Direct Certification in the National School Lunch Program: State Implementation Progress School Year 2009–2010” found at <http://www.fns.usda.gov/ora/menu/Published/CNP/FILES/DirectCert2010.pdf>.

### III. Current Procedures for Direct Certification and Categorical Eligibility

#### *Methods Used for Direct Certification*

The studies cited in section II indicated that the methods commonly used for direct certification involve matching and non-matching processes. In the non-matching method, the States’ assistance agencies generate lists or databases of TANF and SNAP households with school age children. The assistance agencies use the lists/databases to send households a letter that includes the necessary direct certification documentation. The letter instructs the household to provide the letter to the school if they want free meals or milk for their children. Children in households that provide the letters to the school or local educational agency are certified eligible for free meals or milk based on this documentation. This procedure is considered the “letter method.”

In the matching method, the State assistance agency databases/lists of SNAP or TANF households with school age children are matched at the State or local educational agency level against student enrollment databases or lists. Most systems involve a matching of two or three identifiers, such as the children’s names and birth dates and/or addresses. Matching at the State level is generally automated, while matching at the local educational agency level may be a manual process, especially in smaller districts or those districts with fewer families receiving benefits from SNAP, TANF or FDPIR. Once eligible children have been identified through direct certification, their parents or guardians are notified, in writing by the local educational agency, that their children are eligible to receive free

meals without any additional application. Further, these households are not subject to verification since the local educational agency has already documented that the child is a member of a household receiving other programs’ benefits.

#### *Frequency of Direct Certification Efforts*

Typically, direct certification is conducted at or around the beginning of the school year. However, a number of States and local educational agencies have the capability of doing direct certification more frequently, on a monthly or even daily basis.

#### *Applications With Case Numbers*

Households receiving assistance from SNAP, TANF or FDPIR may also submit an application with their case number(s) for the child(ren) on the free and reduced price meal or free milk application to establish their categorical eligibility for free meals or milk. The only other information needed on the application is each child’s name and the signature of an adult household member. Should the application be selected for verification of eligibility, the household must submit proof of participation in SNAP, TANF or FDPIR in order to continue program participation.

### IV. Requirements for Direct Certification With SNAP

#### *Scope of Mandatory Direct Certification With SNAP*

All participating NSLP and School Breakfast Program (SBP) schools, including public and private non-profit schools and residential child care institutions (RCCIs), must implement the mandatory direct certification provisions for children who are members of households receiving benefits from the SNAP. RCCIs that operate a day school must conduct direct certification for day students. However, RCCIs that only have residential students are exempted from this requirement. Residential students would not receive SNAP benefits since they are residing in an institution. This exemption is found in this interim rule at paragraph 245.6(b)(1)(ii).

The administering entity for the private schools or RCCIs should contact their State agency to work out the logistics for obtaining information from the agency administering SNAP about the children enrolled in their schools. Please note when determining claiming percentages for Provision 2 or Provision 3, which are the special assistance certification and reimbursement alternatives permitted in § 245.9, direct

certification is required only in base years. This provision may be found at paragraph 245.6(b)(1)(v).

#### *Frequency of Mandatory Direct Certification With SNAP*

As indicated earlier, the NSLA requires that all children in households receiving SNAP benefits be directly certified for free meals and paragraph 245.6(b) is amended by this rule to address mandatory direct certification of children receiving benefits from SNAP.

Because direct certification is a useful tool for schools and reduces paperwork and increases participation, the Department’s ultimate goal for direct certification is for State and local educational agencies to have the capability to conduct on-going direct certification with SNAP, TANF and FDPIR through computer matching that provides the most current information about households receiving benefits from those programs. Once an on-going system becomes operational, the local educational agency would be able to promptly determine when children who were not already certified for free meal benefits become eligible, based on membership in a household recently approved for benefits from SNAP, TANF or FDPIR. The eligibility of children previously directly certified is not affected by more frequent direct certification because, once eligibility is established, it is in effect for the entire school year and up to thirty (30) operating days in the following school year.

To this end, this interim rule requires that local educational agencies conduct direct certification with SNAP at least three times during the school year (July 1 to June 30) beginning no later than School Year 2011–2012. This increased number of matching efforts has the potential to facilitate participation of children in the school meals programs. Of course, more frequent direct certification efforts are permissible and encouraged.

The efforts must be made at or around the beginning of the school year; three months after the beginning of the school year; and six months after the beginning of the school year. For example, if the school classes begin on August 15th, the initial direct certification effort would be in July or August; the second would be in October or November and the last in January or February. Direct certification efforts are required for children who were not initially directly certified and who are currently reduced price or paid. If the local educational agency has the capability, the status of any newly enrolled child must be checked for SNAP eligibility at the time

of enrollment. If this is not possible, the household must be provided with an application so that the child's benefits are not delayed until the next scheduled direct certification update.

Any newly eligible children identified in matches made subsequent to the beginning of the school year must be certified for free meals and the local educational agency must promptly notify their parents or guardians in writing of the new status. This includes children who had been certified for reduced price meals but who are subsequently identified as receiving SNAP benefits. The requirement for the frequency of direct certification efforts with SNAP is found at paragraph 245.6(b)(3) of this interim rule. Please note direct certification with FDPIR and TANF remains optional. The authority for direct certification with FDPIR or TANF is found at paragraph 245.6(b)(2).

#### *Use of the Letter Method*

As discussed earlier, some State and local SNAP or other assistance agencies currently provide letters to households as their method of direct certification. The household takes the letter indicating its receipt of SNAP benefits to the local educational agency in lieu of an application. Studies show that states have been able to improve the effectiveness of their direct certification process by changing from the letter method to an electronic matching approach. Further, since the original availability of direct certification in the early 1990s, sharing information between SNAP and other assistance agencies and State/local educational agencies has become easier and more cost effective.

A 2007 study, *Data Matching in the National School Lunch Program: 2005 Volume 1: Final Report*, available at <http://www.fns.usda.gov/oane/menu/Published/CNP/FILES/DataMatching-V1.pdf>, discussed the effectiveness of the various direct certification methods. This study showed that States with mandatory statewide State-level matching had the highest rates of direct certification, with 74 percent of categorically certified children directly certified. The letter method resulted in a significantly lower rate of direct certification, with only 52 percent of categorically certified children.

Therefore, this interim rule requires, at paragraph 245.6(b)(1)(iii), that, in School Year 2011–2012, all State agencies phase out the letter method as their method for direct certification with SNAP. And for School Year 2012–2013, the letter method can no longer be used to conduct direct certification. This provision is consistent with the

requirement in the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296; December 13, 2010). All State agencies must have a method to exchange eligibility information from SNAP more directly with the local educational agency through some type of automated data-matching process. Currently, there are a range of systems in use. However, State and local agencies may continue to provide letters to families as a secondary method along with use of automated system, especially during the initial use of an automated system. The additional notification to families would help to ensure that they were aware of their children's categorical eligibility.

Please note that the use of the letter method only as a secondary method of identifying categorical eligibility only applies to SNAP. The letter method may continue to be used as the primary method for other sources of categorical eligibility.

#### *Extension of Eligibility to All Children in the Household*

Section 9(b)(12) of the NSLA provides for categorical eligibility for children who are members of households receiving assistance from SNAP, FDPIR, and TANF. The implementing regulations required that a child be a member of the household as determined by the assistance program in order to be categorically eligible for free school meals. For direct certification, this has been an individual match. For applications, each child had to have a case number listed in order to be categorically eligible. For consistency, we did not extend categorical eligibility to newly enrolled siblings in the subsequent school year.

We have heard from various program operators and other stakeholders that this interpretation is problematic administratively and unnecessarily omits eligible children from the direct certification process. For direct certification, school-age children from the same household who are not identified through the match are most likely receiving SNAP or other benefits but are not matched because of minor differences in the identifying information used in the match.

Individual eligibility also results in households with some children directly certified and others for whom an application must be submitted. If some of the children in the family are directly certified, the family may not realize until after school starts that an application is needed for their other children. This sometimes requires the family to pay for meals for the uncertified children until the application is submitted and approved.

For local educational agencies, maintaining different types of eligibility for direct certification and application-based records for the same household may be difficult. It also complicates reporting and may result in misleading information for determining verification sample sizes and other purposes.

Therefore, under this interim rule, if one or more children in the household is also a member of a family receiving assistance under SNAP, FDPIR or TANF, all school-aged children in the household are considered categorically eligible for free meals or free milk. This applies for both direct certification and applications with case numbers. The local educational agency must extend eligibility for free meals to all children that can be identified as members of a household on an application for free or reduced price meals or free milk. If the local educational agency does not have a prior application to refer to, school district enrollment records are acceptable to determine if there any additional children in the household who were not directly certified. For households submitting applications with case numbers for some children, the local educational agency must certify all children as categorically eligible for free meals and disregard income information. This requirement is found at § 245.2 (definition of "Documentation"), paragraph 245.6(b)(7) and paragraph 245.6(c)(5).

#### *Agreement Between SNAP State Agency and the State Agency Administering the School Meals Programs*

To facilitate mandatory direct certification of children receiving benefits from SNAP, the NSLA requires, at section 9(b)(4)(A), 42 U.S.C. 1758 (b)(4)(A), that the State agency responsible for administering SNAP and the State agency responsible for administering the school meals programs enter into an agreement to facilitate the mandatory direct certification with SNAP. The Reauthorization Act included a parallel conforming amendment in section 11(u) of the Food and Nutrition Act of 2008 (formerly the Food Stamp Act) 7 U.S.C. 2020(u).

As specified in the NSLA, the agreements were to be in place by July 1, 2005. In a memorandum dated April 19, 2005 (SP 14, Agreement Checklist for Direct Certification and Direct Verification of Children in Food Stamp Households; [http://www.fns.usda.gov/cnd/governance/Reauthorization\\_Policy\\_04/Reauthorization\\_04/2005-04-19.pdf](http://www.fns.usda.gov/cnd/governance/Reauthorization_Policy_04/Reauthorization_04/2005-04-19.pdf)), the Department provided guidance on initial items that the State agencies responsible for administering

the school meals programs and the State agencies administering SNAP should include in the agreement. All State administering agencies, including those responsible for non-public schools or residential child care institutions, must have an agreement with the State agency administering SNAP. In order to fully support effective direct certification efforts, this interim rule requires that the agreement address how direct certification will be conducted, including frequency; what notification method(s) will be used; how use of the letter method will be phased-out as the primary method and what system will replace it; how the system and procedures will identify additional children in the household who are categorically eligible based on one household members' receipt of benefits; and other specifics needed to ensure efficient operation of direct certification.

The methods used to conduct direct certification can always be improved and expanded and should not be considered static. The more children who are identified as eligible through direct certification assists both families and local educational agencies by simplifying the certification process and by more accurately targeting free meal benefits.

As a result of this interim rule, the State agencies administering the school meals programs may need to amend their existing agreements with the State agencies responsible for SNAP to set up procedures to conduct more frequent direct certification. Because the addenda to the agreement would depend on the system used, State agencies must determine what amendments are needed. The requirement for the agreement is found at paragraph 245.6(b)(1)(iv) of this interim rule.

#### **V. Requirements for Certification of Certain Homeless, Migrant, Runaway and Head Start Children**

The Reauthorization Act also extended categorical eligibility and direct certification to additional programs for homeless, migrant and runaway children.<sup>5</sup> In most cases, we expect that these children will be certified through direct contact with official sources as discussed below. However, it is also possible that the families of some of these children might

identify themselves through the free/reduced price application as categorically eligible. Paragraph 245.6(b)(5) of this interim rule specifies what documentation is needed to substantiate certification with appropriate officials. Officials responsible for free meal or free milk eligibility determinations are not responsible for making the determination that a child is homeless, migrant or a runaway. Rather, they are to coordinate with and accept the documentation from a person or agency authorized to make those determinations.

#### *Homeless Children*

Section 107 of the Reauthorization Act amended the NSLA to extend categorical eligibility for free school meals to children who are homeless, as defined under section 725(2) of the McKinney-Vento Homeless Assistance Act 42 U.S.C. 11434a(2). The McKinney-Vento Homeless Assistance Act defines as homeless individuals those lacking a fixed, regular and adequate nighttime residence.

In accordance with requirements of the McKinney-Vento Homeless Assistance Act, each local educational agency must designate a local educational liaison for homeless children and youth. The local liaison serves as one of the primary contacts between homeless families and school staff and district personnel, shelter workers and other service providers. The shelter director or local educational liaison for homeless children and youth provides the necessary documentation for direct certification to be used by local educational agencies. A memorandum dated July 19, 2004, "SP 4 Categorical Eligibility for Free Lunches and Breakfasts of Runaway, Homeless and Migrant Youth (<http://www.fns.usda.gov/cnd/Governance/policy.htm>) advised State agencies of categorical free meal or free milk eligibility provisions relating to homeless children and youth mandated by the Reauthorization Act.

School officials must accept documentation which meets regulatory requirements and confirms that identified children are homeless from the local educational agency's liaison for homeless children. School officials also must accept a letter or other document from the director of the homeless shelter where the child resides. This provision is found at paragraph 245.6(b)(6)(ii). In addition, this interim rule provides at paragraph 245.6(b)(5) that documentation to substantiate free meal or milk eligibility includes the child's name or a list of

names, a statement that certifying that the children are eligible for that program and the signature of the local educational liaison or the director of the homeless shelter and the date of the signature. This rule provides that documentation is acceptable in lieu of a free and reduced price meal or free milk application. We continue to encourage local educational agencies to identify and work with the local educational agency liaison for homeless children and with directors of homeless shelters where children may reside to expedite benefits to homeless children.

#### *Runaway Children*

Section 107 of the Reauthorization Act made children served by a runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*) categorically eligible for free school meals. A child who is a runaway must be participating in a runaway and homeless youth grant program under the Runaway and Homeless Youth Act to be categorically eligible for free meal benefits and for direct certification. The Family and Youth Services Bureau (FYSB), part of the Administration on Children and Families of the United States Department of Health and Human Services, awards funding to local community agencies to offer services to young people and their families. There are three grant programs for runaways under that title—Basic Center Program, Transitional Living Program and the Street Outreach Program. The agencies receiving grants under these three programs are referred to as either FYSB grantees, or Runaway and Homeless Youth (RHY) service providers.

Additionally, the 2003 Reauthorization of the RHY Program directed FYSB to coordinate with local educational agency liaisons under the McKinney-Vento Homeless Assistance Act to assure that RHY are provided information about the educational services available to them and to ensure they receive support services guaranteed under the law. Therefore, the first source for documentation for these children is the local educational agency's homeless liaison.

This interim rule provides in paragraph 245.6(b)(5)(iii) that documentation to substantiate free meal or milk eligibility must consist, at a minimum, of the youth's name, or a list of names, a statement certifying that the children are eligible for that program, the signature of the McKinney-Vento local educational agency's liaison or the RHY service provider(s) and the date signed. Documentation which meets the regulatory requirements must be

<sup>5</sup> Please note that the Healthy, Hunger-Free Kids Act of 2010 extended categorical eligibility to foster children. This provision was implemented through a policy memorandum, SP 17-2011, CACFP 08-2011, SFSP 05-2011-Revised, Categorical Eligibility of Foster Children, dated March 11, 2011. This new requirement will be incorporated into the regulations in a separate rulemaking.

accepted in lieu of a free meal or milk application. It is important that schools/ local educational agencies become familiar with their local RHY service providers and their McKinney-Vento local educational agency's liaison in order to facilitate the service of free school meals or milk for youth in the programs administered by the FYSB.

#### *Migrant Children*

The Reauthorization Act extended categorical eligibility to migratory children as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (ESEA). In general, a migrant child is one who has moved across local educational agency boundaries, within the last three years, to accompany or join a parent or guardian who has moved to seek or obtain temporary or seasonal work in agriculture or fishing. Please note, however, that it is not necessary for local educational agency personnel to apply the ESEA definition because there are State educational agency and local MEP staff who are responsible for identifying (and maintaining supporting documentation) for each eligible migrant child under ESEA.

As recognized in paragraph 245.6(b)(6)(ii) of this interim rule, local educational agencies will benefit from working directly with MEP coordinators or, where appropriate, the State MEP director, to identify migrant children and to document their eligibility for free school meals. Pursuant to paragraph 245.6(b)(5)(iii), local educational agencies must accept documentation that the children are migrant children from the MEP coordinator. Such documentation of migrant status to substantiate free meal eligibility may be a list that includes each child's name, a statement certifying that the children are eligible for that program, and the signature of the MEP coordinator or the State MEP director and the date of the signature. This list serves as documentation of categorical eligibility for or migrant children.

#### *Newly Enrolled Homeless, Runaway or Migrant Students*

It is important that newly enrolled homeless, runaway and migrant children in the local educational agency be identified and certified for free meals or milk as promptly as possible. The *Eligibility Guidance for School Meals Manual* (<http://www.fns.usda.gov/cnd/Guidance/default.htm>) indicates that, to the extent possible, applications should be processed immediately. This includes determination of eligibility through sources such as the homeless liaison. Local educational agencies need

to establish procedures with the coordinators/liasons to assure they are notified when the coordinators/liasons identify a new homeless, runaway or migrant child so these children may be promptly certified at any time during the school year. Children also may be determined eligible through the standard application process. If the child is not identified through coordinators/liasons and an application is not submitted, paragraph 245.6(d) of the existing regulations allows school officials to complete an application on the child's behalf noting the child is homeless, etc. and giving the source for his/her knowledge. This must be done only on a case-by-case basis.

#### *Children Enrolled in Head Start Programs*

This interim rule also adds as categorically eligible children who are enrolled as participants in Head Start programs authorized under the Head Start Act. Until enactment of the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110–134), only children enrolled in Head Start who met that program's prescribed low-income criteria were categorically eligible for free school meals. However, section 29(c) of Public Law 110–134 amended section (9)(b)(12)(A)(iii) and section 17(c)(5) of the NSLA to extend categorical eligibility for free meals and free milk to all Head Start enrollees. The original policy on limited categorical eligibility was issued in a memorandum dated April 14, 1995 and the most recent policy was issued in a memorandum dated May 16, 2008, "SP–23–2008, CACFP 07–2008, SFSP 06–2008, Automatic Eligibility for Free Meal Benefits Extended to All Children Enrolled in Head Start" (<http://www.fns.usda.gov/cnd/Governance/policy.htm>). We are now incorporating the most recent statutory requirement into the regulations. Therefore, a definition of a Head Start child is added to § 245.2 and a definition of categorically eligible is added which states that children enrolled in Head Start are categorically eligible for free school meals.

#### **VI. Other Provisions and Technical Amendments**

##### *Confidentiality and Prevention of Overt Identification*

Paragraph 245.6(b)(9) of this interim rule addresses the confidentiality of information obtained through the direct certification process and the prevention of overt identification of children eligible for free or reduced-price meals or free milk. This paragraph

incorporates the provisions found in paragraph 245.6(b)(1) prior to the effective date of this rule. However, the wording has been revised to improve readability and to clarify that information obtained about the child's participation in SNAP, FDIPIR or TANF must be used for direct certification purposes only and information regarding a child's eligibility status in the Child Nutrition Programs may be used or disclosed solely in accordance with the disclosure provisions in section 9(b)(6) of the NSLA.

##### *Providing Application Materials*

The existing provision that schools are not required to provide application materials to children who were approved for free meals through the direct certification process was moved in this interim rule from paragraph 245.6(b)(2) to paragraph 245.6(b)(10).

##### *Notice of Approval*

The existing provision concerning the notification of households in writing of children determined eligible for free meals or free milk through the direct certification process was moved from paragraph 245.6(b)(2) to paragraph 245.6(c)(6)(ii). The current provision also requires that households have an opportunity to decline school meals benefits for their children. A written notice to the household is not required if the direct certification documentation is provided to the school by the household, such as a letter indicating receipt of benefits from SNAP. By providing the school with documentation, the household is indicating that they want free meals or milk for their children. Paragraph 245.6(c)(5) is also being revised in this interim rule to include the new categories of children (homeless, Head Start, runaways and migrants) who may be directly certified.

##### *Definitions*

The following outlines changes, made by Public Law 108–265 and Public Law 110–134, which are addressed in § 245.2, Definitions, to reflect statutory amendments and for clarification purposes.

**Categorically eligible**—This rule adds a new definition, "Categorically eligible," in § 245.2. "Categorically eligible" means that children are eligible for free meals or free milk, as applicable, based on the child's status as—

- A member of a household receiving assistance under SNAP or FDIPIR or a member of a family receiving benefits under the TANF program;
- An enrollee in the Head Start Program;

- A runaway child served by grant programs established under the Runaway and Homeless Youth Act;
- A homeless child as defined under the McKinney-Vento Homeless Assistance Act; or
- A migratory child as specified under the Migrant Education Program.

This definition also clarifies that categorical eligibility and automatic eligibility may be used synonymously. Direct certification—This rule adds a new definition of “Direct certification” in § 245.2. Although the regulations have not previously included a definition for this term, it has generally been understood to mean the process of determining eligibility for certain categories of children by obtaining information directly from the State or local agency authorized to certify children’s status as being members of households receiving assistance from SNAP, TANF or FDPIR. A child is directly certified in lieu of completion of an application. Children who are homeless, migrant, or runaway or enrolled in a Head Start Program are directly certified by obtaining information from an individual or agency to certify that the child is participating in one of these programs.

Documentation—Paragraph (2) of the definition of “Documentation” in § 245.2 defines documentation for direct certification purposes as the name of the child; a statement certifying that the child is receiving assistance from SNAP, FDPIR or TANF program; information in sufficient detail to match the child attending school in the local educational agency; the signature of the appropriate SNAP, FDPIR, or TANF official; and the date. The definition also clarifies that when the signature is impracticable to obtain, such as in computerized operations providing an electronic signature, other arrangements may be accepted if the local educational agency has a method to ensure that a responsible official from the assistance program can attest to the accuracy of the information provided. This interim rule revises the definition of “Documentation” to address acceptable documentation from SNAP, FDPIR or TANF Program; acceptable documentation for children in a family with at least one member receiving benefits from SNAP, FDPIR or TANF; acceptable documentation for Head Start children, homeless and migrant children and runaway children who participate in the respective Federal program.

Head Start child, Homeless child, Migrant child and Runaway child—Definitions for each of these are added

consistent with the intent of Section 107 of the Reauthorization Act.

#### *Technical Amendments*

Pursuant to section 12(a) of the NSLA and current regulations, local educational agencies agree to maintain files of currently approved and denied applications and documentation for direct certification as part of their agreement to administer the program at the school district level. Paragraph 210.9(b) is being revised by this rule to include the new categories of children who may be directly certified (i.e., homeless, certain runaway and migrant children and Head Start enrollees). The review requirements in paragraph 210.18(g) are also amended to add the new categories of children who may be directly certified. Paragraph 210.18(g)(1)(B) is also being amended to conform with changes made in the November 13, 2007, interim regulation (72 FR 63785) that established year-long eligibility for free and reduced price meals.

We are also using this opportunity to clarify the relationship between delayed implementation of Provision 2 as permitted in paragraph 245.9(b)(6)(ii) and use of a child’s prior year’s eligibility status for the first 30 operating days in the new school year (“carryover”) in paragraph 245.6(c)(2). Delayed implementation permits schools establishing claiming percentages for Provision 2 to charge participating students for meals in the first claiming period of the base year. This exception is permitted to assist schools in securing completed free and reduced price applications from households which might not otherwise submit an application if there is no charge for meals. With the State agency’s approval, schools may delay implementing Provision 2 for a period not to exceed the first claiming period of the base year. When the carryover provision was added in the interim rulemaking dated November 13, 2007, (72 FR 63793), we did not address how it applied to delayed implementation. Therefore, we are revising paragraph 245.6(c)(2) to indicate that carryover is not required when schools are approved to use the delayed implementation in relation to Provision 2.

We are also making technical amendments to paragraph 210.18(g)(1)(i)(A)(3) to reflect the recent changes to the carryover provision that no longer permit the State agency to establish a different timeframe. Other technical changes are to correct an omission in the introductory text of paragraph 210.19(c) by adding a reference to paragraph 210.19(c)(iii),

which was inadvertently left out, and to correct a citation in the definition of “School in severe need” in § 220.2 that should refer to paragraph 220.9(d), not paragraph 220.9(e).

We are also using this interim rule to correct a number of obsolete names, addresses, terms of usage, and spelling errors that may appear in parts 210, 215, 220, 225, 226, and 245.

As mandated by the Food, Conservation and Energy Act of 2008, effective October 1, 2008, the Food Stamp Program was renamed as the Supplemental Nutrition Assistance Program or SNAP. This interim rule amends parts 210, 215, 225, 226, and 245 to reflect this change.

The new name of the General Accounting Office, the Government Accountability Office (GAO), is made to paragraphs 225.6(h)(vii) and 226.10(d). This interim rule also replaces the term “handicap” with the term “disability” in paragraphs 225.8(g)(i), 225.15(e), 226.23(c)(5), 226.23(e)(2)(iv), and 226.23(h). Other corrections are a reference to CACFP in paragraph 226.23(e)(1)(iii)(E) and the spelling of “labeled” in paragraph 225.15(e).

Paragraph 245.3(b) is also revised to improve the readability of regulations and to delete a procedure applicable only to single child applications, which may no longer be used by local educational agencies.

## **VII. 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 interim rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

### Regulatory Impact Analysis

#### Need for Action

The 2004 Reauthorization Act requires local educational agencies to establish systems to directly certify SNAP participant children for free



school meals no later than School Year 2008–2009. The Reauthorization Act also extends categorical eligibility and provides for the direct certification of certain homeless, migrant, or runaway children. This interim rule makes necessary changes to implement these statutory requirements.

#### Benefits

The rule is expected to enhance access to the school meals and milk programs by needy children, decrease duplicative paperwork for households, decrease the administrative costs of processing and reviewing applications, and improve program integrity. Mandatory direct certification based on SNAP participation increased certifications for free school meals by an estimated 190,000 children in School Year 2008–2009. The interim rule's requirement that local educational agencies conduct direct certification at least three times per year beginning in School Year 2011–2012 may increase the number of children certified for free meals (for at least part of the school year) by an additional 270,000.

#### Costs

Direct certification increases the number of children certified to receive free school meals, which raises the cost of federal meal reimbursements to participating schools. State and local education, SNAP, and child welfare agencies also incur administrative costs associated with direct certification. Total meal reimbursement and administrative costs are estimated to have increased by more than \$114 million over the five fiscal years from 2005 through 2009. (State SNAP and Child Nutrition Agencies begin to incur administrative costs in fiscal year 2005, the year prior to the mandatory implementation of direct certification by large LEAs under the terms of the 2004 Reauthorization Act.) The estimated ten-year cost of the rule, through FY 2014, is nearly \$760 million. More than \$730 million of this amount is the cost of Federal reimbursement to schools for free meals served to newly certified children.

#### Regulatory Flexibility Act

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act. It is certified that this interim rule will not have a significant economic impact on a substantial number of small entities. Determining children eligible for free meals or free milk by obtaining eligibility information directly from another agency will reduce duplicative paperwork for households who have

already established their need for assistance to certain programs which serve low-income children and adults, and will streamline the free and reduced price application and certification process for schools. The provisions of this rule will enhance access to these programs by needy children. Although there may be some initial burdens associated with implementation of this rule, the burdens will not be significant and will be outweighed by the long-term benefits of direct certification and expanded categorical eligibility.

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes a requirement 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. This is done for proposed and final rules that have Federal mandates which may result in expenditures of \$100 million or more in any one year by State, local, or tribal governments, in the aggregate, or by the private sector. When this 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. It must then adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates of \$100 million or more in any one year (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this interim rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Executive Order 12372

The National School Lunch Program, Special Milk Program, School Breakfast Program Summer Food Service Program, and Child and Adult Care Food Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555, 10.556, 10.553, 10.559 and 10.558, 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.

#### Federalism Summary Impact Statement

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 regulation describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

#### Prior Consultation With State Officials

Prior to drafting this rule, we received input from State and local agencies at various times. The Child Nutrition Programs (CNP) are State administered, federally funded programs. Staff from FNS' headquarters and regional offices had informal and formal discussions with State and local officials on an ongoing basis regarding program implementation and performance. This arrangement allows State and local agencies to provide feedback that helps form the basis for any discretionary decisions in this and other CNP rules. Additionally, we convened a meeting of representative Federal and State administrators of SNAP and CNP State directors to discuss their current direct certification procedures. Department officials have also provided overviews of the changes made in the certification process at meetings attended by local educational agency representatives, advocacy groups and other interested parties. These sessions provided FNS officials with insights into areas of concerns from these groups and allowed us to obtain background into how local and State administrators are currently doing certification and direct certification and how the statutory changes will affect these procedures.

#### Nature of Concerns and the Need To Issue This Rule

State and local agencies are generally concerned about improving the integrity of the free and reduced price meal eligibility process without hindering access to the programs. They also are concerned about the paperwork and financial burdens placed on food service to determine free and reduced price meal eligibility and the initial cost of implementing direct certification.

The issuance of this regulation is required by amendments made to the Richard B. Russell National School Lunch Act by the Reauthorization Act. Prior to those amendments, program officials were permitted to directly certify children in households receiving benefits from SNAP, TANF and FDPIR. This rule now requires local educational agencies to directly certify children in households receiving benefits from SNAP and permits the direct certification of children in households

receiving TANF or FDPIR benefits, as well as homeless, some runaway children and migrant children.

#### Extent to Which We Meet These Concerns

By extending categorical eligibility to all children in a family based on one (or more) children's receipt of SNAP, FDPIR or TANF benefits, access to free meals is improved and the application process streamlined for both families and local educational agencies. Integrity is also addressed in this provision because the large majority of these other children are otherwise income eligible for free meals or are actually receiving assistance from these programs but were not readily identified. Additionally, children whose eligibility is determined through the direct certification process are exempt from the verification of eligibility process which reduces the burden placed on households. The inclusion of all children in the family as categorically eligible if other children are identified through direct certification eliminates the need for an application and further reduces the number of applications subject to verification. Local educational agencies can reduce the number of applications/households that are subject to verification by using direct certification as much as possible. These amendments will reduce paperwork and financial burdens placed on local educational agencies.

This rule is intended to have a preemptive effect on any State law that conflicts with its provisions or that would otherwise impede its full implementation. To the extent the rule includes discretionary changes, the Department has established compliance timeframes which give due consideration to State agency processes for notification of customers and stakeholders for the implementation of the new procedures in local offices.

#### Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. It 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 impede its full implementation. This rule is not intended to have retroactive effect unless that is specified in the Effective Date section of the preamble of the rule. Before any judicial challenge to the provisions of this rule or the application of its provisions, all administrative procedures that apply must be followed. The only administrative appeal procedures relevant to this interim rule

are the hearings that local educational agencies must provide for decisions relating to eligibility for free and reduced price meals and free milk (\$ 245.7 for the NSLP, SBP, and SMP in schools).

#### Civil Rights Impact Analysis

FNS has reviewed this interim rule in accordance with the Department Regulations 4300-4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on children on the basis of race, color, national origin, sex, age or disability. After a careful review of the rule's intent and provisions, FNS has determined that this interim rule facilitates the participation of all eligible participants and does not establish any new burdens.

#### Executive Order 13175

USDA will undertake, within six months after this rule becomes effective, a series of Tribal consultation sessions to gain input from 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.

The policies contained in this rule would not have Tribal implications that preempt Tribal law.

#### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; see 5 CFR 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 new provisions in this rule, which do increase burden hours, affect the information collection requirements that will be merged into the National School Lunch Program, OMB Control Number #0584-0006, expiration date March 31, 2012, and the Determining Eligibility for Free and

Reduced Price Meals, OMB Control #0584-0026, expiration date March 31, 2013. The current collection burden inventory for the National School Lunch Program (7 CFR 210) is 11,846,904; and the current collection burden inventory for Determining Eligibility for Free and Reduced Price Meals (7 CFR part 245) is 1,073,432. 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 interim rule must be received by June 24, 2011. 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 Lynn Rodgers-Kuperman, 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 Lynn Rodgers-Kuperman 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:* Direct Certification and Certification of Homeless, Migrant and Runaway Children for Free School Meals.

*OMB Number:* 0584-NEW.

*Expiration Date:* Not Yet Determined.

*Type of Request:* New Collection.

*Abstract:* Under the mandatory direct certification process, the local educational agency (note: this term replaces the term school food authority for the purposes of determining eligibility for free or reduced price

school meals) must directly certify, as eligible for free school meals, children who are members of a household that is receiving benefits from the Supplemental Nutrition Assistance Program (SNAP). In addition, they will continue to have the option of directly certifying children who are members of households receiving assistance under the Food Distribution Program on Indian Reservations (FDPIR), or Temporary Assistance for Needy Families (TANF) program. The local educational agency obtains documentation from the State or local agency administering SNAP, FDPIR or TANF. The documentation establishes children's automatic eligibility for free meals because of receipt of benefits from the SNAP, FDPIR or TANF. Direct certification is done in lieu of a family filing a free and reduced price application.

This interim rule also establishes categorical eligibility for free meals for children in other programs. These are— children enrolled in a Head Start program; children identified as homeless under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a (2)); children identified as migratory under section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399); and children identified as runaways receiving assistance under a program under the Runaway and Homeless

Youth Act (42 U.S.C. 5701 *et seq.*). These children are identified by officials responsible for administering these programs or by school officials responsible for identifying these children who are enrolled in their school districts. For example, each school district must have a local liaison who identifies homeless, runaway or migratory children. In addition, Head Start officials or representatives of the local Migrant Education Program may provide the names of eligible children.

For mandatory direct certification with SNAP, optional direct certification with FDPIR or TANF and eligibility determinations made for children who are categorically eligible based on Head Start participation and the other programs discussed above, the paperwork burden for the local educational agency is due to the requirement to obtain documentation and retain it for review purposes.

This interim rule will increase the recordkeeping burden on the current collection burden inventory for the National School Lunch Program, OMB Control Number #0584–0006, because local educational agencies will be required to retain additional records containing the names of children directly certified for National School Lunch Program. This interim rule will increase the recordkeeping burden and decrease the reporting burden on the current collection burden inventory for

Determining Eligibility for Free and Reduced Price Meals, OMB Control #0584–0026, because State agencies must maintain additional agreements and fewer households will be required to complete an application form. The interim rule will not change the recordkeeping nor the reporting burden on the current collection burden inventory for School Breakfast Program, OMB Control #0584–0012, as those respondents participating in the School Breakfast Program also participate in the National School Lunch Program; thus the burden associated with the School Breakfast Program will be carried in the National School Lunch Program. 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, National School Lunch Program, 7 CFR 210

- Respondents for this Interim Rule:* Local Educational Agencies.
- Estimated Number of Respondents for this Interim Rule:* 20,948.
- Estimated Number of Responses per Respondent for this Interim Rule:* 4.
- Estimated Total Annual Responses:* 83,792.
- Estimated Total Annual Burden on Respondents for this Interim Rule:* 52,370.

**ESTIMATED ANNUAL BURDEN FOR 0584—NEW, NATIONAL SCHOOL LUNCH PROGRAM, 7 CFR 210**

	Section	Estimated number of respondents	Frequency of responses	Average annual responses	Average burden per response	Annual burden hours
<b>Recordkeeping (Local Educational Agencies)</b>						
Names of children approved for meals based on documentation certifying that the child is included in a household currently approved to receive benefits under SNAP.	7 CFR 210.9 (b)(19) and 7 CFR 210.15 (b)(4).	20,948	3	62,844	0.5	31,422
Names of children approved for meals based on documentation certifying that the child is included in a household currently approved to receive benefits under FDPIR, TANF, or is a homeless child, migrant child, Head Start child, or a runaway child.	7 CFR 210.9 (b)(19) and 7 CFR 210.15 (b)(4).	20,948	1	20,948	1	20,948
Total Recordkeeping for Interim Rule	.....	20,948	4	83,792	0.625	* 52,370
Total Existing Recordkeeping Burden for Part 210.	.....	.....	.....	.....	.....	8,903,547
Total Burden Increase for Part 210 ...	.....	.....	.....	.....	.....	51,620
Total Recordkeeping Burden for Part 210 with Interim Rule.	.....	.....	.....	.....	.....	8,955,167

\* Includes 750 hours already in existing rule for this purpose, so net change is 51,620.

Estimated Annual Burden for 0584—NEW, Determining Eligibility for Free and Reduced Price Meals, 7 CFR 245

Estimated Number of Respondents for this Interim Rule: 8,262,097.

Estimated Total Annual Responses: 8,453,997.

Respondents for this Interim Rule: Households (8,262,043) and State Education Agencies (54).

Estimated Number of Responses per Respondent for this Interim Rule: 1.0232267.

Estimated Total Annual Burden on Respondents for this Interim Rule: 673,665.710.

ESTIMATED ANNUAL BURDEN FOR 0584—NEW, DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS, 7 CFR 245

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
<b>Reporting (Households)</b>						
Households complete application form.	7 CFR 245.6(a)	8,262,043	1	8,262,043	0.07	578,343.01
Households assemble written evidence and send to local educational agency.	7 CFR 245.6a (a)(7)(i).	190,000	1	167,441	0.5	95,000.00
Households cooperate by providing collateral contacts.	7 CFR 245.6a (a)(7)(ii).	1,900	1	1,900	0.167	317.30
Total Reporting for Interim Rule ....		8,262,043	1	8,453,943	0.079686	*673,660.31
Total Existing Reporting Burden for Part 245.						1,067,387.132
Total Burden Decrease for Part 245.						(113,070.55)
Total Reporting Burden for Part 245 with Interim Rule.						954,316.582

\* Represents reduction of 113,070.55 from existing burden.

ESTIMATED ANNUAL BURDEN FOR 0584—NEW, DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS, 7 CFR 245

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
<b>Recordkeeping</b>						
State agency must maintain agreements with local educational agencies conducting eligibility determinations for SNAP.	7 CFR 245.6(b) ... (1)(iv) .....	54	1	54	0.1	5.40
Total Recordkeeping for Interim Rule		54	1	54	0.1	5.40
Total Existing Recordkeeping Burden for Part 245.						6,045.000
Total Recordkeeping Burden for Part 245 with Interim Rule.						6,050.400

SUMMARY OF BURDEN (OMB #0584—NEW) 7 CFR 210

TOTAL NUMBER of RESPONDENTS .....	20,948
AVERAGE NUMBER of RESPONSES PER RESPONDENT .....	4
TOTAL ANNUAL RESPONSES .....	83,792
AVERAGE HOURS PER RESPONSE .....	.625
TOTAL BURDEN HOURS FOR PART 210 WITH INTERIM RULE .....	11,898,524
CURRENT OMB INVENTORY FOR PART 210 .....	11,846,904
DIFFERENCE (NEW BURDEN REQUESTED WITH INTERIM RULE) .....	51,620

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

TOTAL NUMBER of RESPONDENTS .....	8,262,097
AVERAGE NUMBER of RESPONSES PER RESPONDENT .....	1.0232266
TOTAL ANNUAL RESPONSES .....	8,453,997
AVERAGE HOURS PER RESPONSE .....	0.079686
NEW TOTAL REPORTING AND RECORDKEEPING BURDEN HOURS FOR PART 245 WITH INTERIM RULE .....	960,366.98
PROPOSED OMB INVENTORY FOR PART 245 .....	1,073,432.000
DIFFERENCE (NEW BURDEN REDUCTION REQUESTED WITH INTERIM RULE) .....	(113,065.10)

## E-Government Act Compliance

FNS is committed to compliance with the 2002 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.

## Public Participation

This action is being issued without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). In recognition of the need to implement the provisions on direct certification and expanded categorical eligibility in order to facilitate participation of needy students and to reduce the burden on local educational agencies, section 501(b) of the Reauthorization Act allows the Department to issue interim rules on these and other provisions in that law. Thus, the Department has determined in accordance with 5 U.S.C. 553(b) that Notice of Proposed Rulemaking and an opportunity for prior public comment is unnecessary and contrary to the public interest and, in accordance with 5 U.S.C. 553(d), finds that good cause exists for making this action effective without prior public comment. However, as noted earlier in this preamble, the Department recognizes that there are some discretionary areas inherent in these provisions and has concluded that it is important to provide an opportunity for public comment to facilitate policy development through the rulemaking process. In addition, several of the discretionary provisions have long implementation timeframes.

## List of Subjects

## 7 CFR Part 210

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

## 7 CFR Part 215

Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements.

## 7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

## 7 CFR Part 225

Food assistance programs, Grant programs—health, Infants and children, Labeling, Reporting and recordkeeping requirements.

## 7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, 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, 215, 220, 225, 226 and 245 are 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. In § 210.9:

- a. Revise paragraph (b)(18);
- b. Redesignate paragraphs (b)(19) and (b)(20) as paragraphs (b)(20) and (b)(21), respectively; and
- c. Add a new paragraph (b)(19).

The revision and addition read as follows:

**§ 210.9 Agreement with State agency.**

\* \* \* \* \*

(b) \* \* \*

(18) Maintain files of currently approved and denied free and reduced price applications which must be readily retrievable by school.

(19) Maintain files of the names of children currently approved for free meals through direct certification with the supporting documentation, as specified in § 245.6(b)(5) of this chapter, which must be readily retrievable by school. Documentation for direct certification must include information obtained directly from the appropriate State or local agency, or other appropriate individual, as specified by FNS, that:

(i) A child in the *Family*, as defined in § 245.2 of this chapter, is receiving benefits from *SNAP*, *FDPIR* or *TANF*, as defined in § 245.2 of this chapter; if one child is receiving such benefits, all children in that family are considered to be directly certified;

(ii) The child is a homeless child as defined in § 245.2 of this chapter;

(iii) The child is a runaway child as defined in § 245.2 of this chapter;

(iv) The child is a migrant child as defined in § 245.2 of this chapter; or

(v) The child is a Head Start child as defined in § 245.2 of this chapter.

\* \* \* \* \*

■ 3. Section 210.18 is amended by revising paragraph (g)(1)(i)(A)(3); paragraph (g)(1)(i)(A)(4); and the second sentence of paragraph (g)(1)(i)(B) to read as follows:

**§ 210.18 Administrative reviews.**

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) \* \* \*

(3) Evaluate if the previous year's eligibility determinations were used as required in § 245.6(c)(2) of this chapter.

(4) In the case where children are determined eligible for free lunches through direct certification, as specified in § 245.6 of this chapter, establish that the documentation for direct certification of children is official and from the appropriate State or local agency or another appropriate individual, as approved by FNS; establish that all information required under § 245.6 of this chapter is complete and the children were enrolled in the school under review during the review period.

(B) \* \* \* The State agency shall determine whether the system for issuing benefits and updating children's eligibility status is adequate and, within the timeframes established in § 210.7(c)(1)(ii)(B), reflects changes due to verification findings, transfers, or a household's decision to decline benefits.

\* \* \* \* \*

**§ 210.19 [Amended]**

■ 4. Section 210.19 is amended in paragraph (c)(6) introductory text by removing the phrase “paragraphs (c)(6)(i) and (ii)” and adding in its place “paragraphs (c)(6)(i) through (c)(6)(iii)”; and paragraph (c)(6)(ii) by removing the term “food stamp” and adding in its place “SNAP”.

**§ 210.23 [Amended]**

■ 5. Section 210.23 is amended in paragraph (b), last sentence, by removing the words “FNS Instruction 113–6” and adding in their place the words “FNS Instruction 113–1”.

**PART 215—SPECIAL MILK PROGRAM FOR CHILDREN**

■ 6. The authority citation for part 215 continues to read as follows:

**Authority:** 42 U.S.C. 1772 and 1779.

**§ 215.13a [Amended]**

■ 7. Section 215.13a is amended in paragraph (f) by removing the term “Food Stamp” and adding in its place “SNAP”.

**PART 220—SCHOOL BREAKFAST PROGRAM**

■ 8. The authority citation for part 220 continues to read as follows:

**Authority:** 42 U.S.C. 1773, 1779, unless otherwise noted.

**§ 220.2 [Amended]**

■ 9. Section 220.2, the definition of “School in severe need” is amended by removing “§ 220.9(e)” and adding in its place “§ 220.9(d)”.

■ 10. Section 220.7 is amended by revising paragraph (e)(14) to read as follows:

**§ 220.7 Requirements for participation.**

\* \* \* \* \*

(e) \* \* \*

(14) Retain documentation of free or reduced price eligibility as follows:

(i) Maintain files of currently approved and denied free and reduced price applications which must be readily retrievable by school for a period of three years after the end of the fiscal year to which they pertain; or

(ii) Maintain files with the names of children currently approved for free meals through direct certification with the supporting documentation, as specified in § 245.6(b)(4) of this chapter, which must be readily retrievable by school. Documentation for direct certification must include information obtained directly from the appropriate State or local agency, or other appropriate individual, as specified by FNS, that:

(A) A child in the *Family*, as defined in § 245.2 of this chapter, is receiving benefits from *SNAP*, *FDPIR* or *TANF*, as defined in § 245.2 of this chapter; if one child is receiving such benefits, all children in that family are considered to be directly certified;

(B) The child is a homeless child as defined in § 245.2 of this chapter;

(C) The child is a runaway child as defined in § 245.2 of this chapter;

(D) The child is a migrant child as defined in § 245.2 of this chapter; or

(E) The child is a Head Start child, as defined in § 245.2 of this chapter.

\* \* \* \* \*

**PART 225—SUMMER FOOD SERVICE PROGRAM**

■ 11. The authority citation for part 225 continues to read as follows:

**Authority:** Secs. 9, 13 and 14, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a)

■ 12. In § 225.2:

■ a. The introductory text of paragraph (b) and paragraph (b)(1) of the definition of “Documentation” are amended by removing the term “food stamp,” and adding in its place “SNAP,”;

■ b. Remove the definition of “Food stamp household”; and

■ c. Add a definition of “SNAP household” in alphabetical order to read as follows:

**§ 225.2 Definitions.**

\* \* \* \* \*

*SNAP household* means any individual or group of individuals which is currently certified to receive assistance as a household from SNAP, the Supplemental Nutrition Assistance Program, as defined in § 245.2 of this chapter.

\* \* \* \* \*

**§ 225.6 [Amended]**

■ 13. In § 225.6:

■ a. In paragraph (c)(2)(i)(L), the second sentence is amended by removing the term “food stamps,” and adding in its place “SNAP benefits,”;

■ b. The last sentence of paragraph (c)(4)(ii)(B) is amended by removing the term “food stamp,” and adding in its place “SNAP,” and

■ c. Paragraph (h)(2)(vii) is amended by removing the words “General Accounting Office” and adding in their place the words “Government Accountability Office”.

**§ 225.7 [Amended]**

■ 14. Section 225.7 is amended in paragraph (g)(1) by removing the word “handicap” and adding in its place the word “disability”;

■ 15. Section 225.15 is amended by:  
■ a. Removing the term “food stamp” and adding in its place “SNAP” wherever it appears in the following paragraphs:

■ i. The third sentence of paragraph (e);

■ ii. The heading of the introductory text of paragraph (f)(3);

■ iii. Paragraph (f)(3)(i);

■ iv. Paragraph (f)(4)(ii);

■ v. Paragraph (f)(4)(iv);

■ vi. Paragraph (f)(4)(viii);

■ vii. Paragraph (f)(5)(i); and

■ viii. Paragraph (f)(5)(vi).

■ b. In paragraph (e) by removing the word “labelled” and adding in its place

the word “labeled” and by removing the word “handicap” and adding in its place the word “disability”.

**PART 226—CHILD AND ADULT CARE FOOD PROGRAM**

■ 16. The authority citation for part 226 continues to read as follows:

**Authority:** Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 17. In § 226.2:

■ a. Amend the definition *Documentation* by removing the term “food stamp” and adding in its place “SNAP” in paragraph (b) introductory text, paragraph (b)(1), paragraph (d) introductory text, and paragraph (d)(1);

■ b. Amend the definition *Free meal* by removing the term “food stamp” and adding in its place “SNAP,” each time it appears;

■ c. Amend the definition *Verification* by removing the term “food stamp” and adding in its place “SNAP,” each time it appears;

■ d. Remove the definition of “Food Stamp household”, and add a definition of *SNAP household* in alphabetical order to read as follows:

*SNAP household* means any individual or group of individuals which is currently certified to receive assistances as a household from *SNAP*, the Supplemental Nutrition Assistance Program, as defined in § 245.2 of this chapter.

\* \* \* \* \*

**§ 226.6 [Amended]**

■ 18. In § 226.6, paragraph (f)(1)(viii)(E) is amended by removing the term “Food Stamp Program” and adding in its place “SNAP” each time it appears.

**§ 226.10 [Amended]**

■ 19. Section 226.10 is amended in paragraph (d) by removing the words “General Accounting Office” and adding in their place the words “Government Accountability Office”;

**§ 226.23 [Amended]**

■ 20. Section 226.23 is amended by:  
■ a. Removing the term “food stamp” and adding in its place “SNAP” each time it appears in the following paragraphs:

■ i. Paragraph (c)(2);

■ ii. Paragraph (d);

■ iii. Paragraph (e)(1)(i);

■ iv. Paragraph (e)(1)(iii)(E), first and seventh sentence;

■ v. Paragraph (e)(1)(iv) introductory text;

- vi. Paragraph (e)(1)(iv)(B);
- vii. Paragraph (e)(1)(v) introductory text;
- viii. Paragraph (e)(1)(v)(A);
- ix. Paragraph (e)(1)(v)(B);
- x. Paragraph (e)(2)(vii)(A);
- xi. Paragraph (h)(2)(i)(A);
- xii. Paragraph (h)(2)(i)(B);
- xiii. Paragraph (h)(2)(iii)(A);
- xiv. Paragraph (h)(2)(iv) introductory text;
- xv. Paragraph (h)(2)(iv)(A);
- xvi. Paragraph (h)(2)(v)(C), second sentence.
- b. Removing the term “Food stamp” and adding in its place “SNAP” each time it appears in the following paragraphs:
  - i. Paragraph (e)(1)(ii)(F);
  - ii. Paragraph (e)(1)(iv)(A);
  - iii. Paragraph (h)(2)(v)(A).
  - c. In paragraph (e)(1)(iii)(E), and in paragraph (h)(2)(vi), by removing the words “food stamps” and adding in their place the word “SNAP”.
  - d. In paragraphs (d), (e)(2)(iv) and (h) by removing the word “handicap” and adding in its place the word “disability”;
  - e. In paragraph (e)(1)(iii)(E) by removing the term “CCFP” and adding in its place the term “CACFP”;
  - f. In paragraph (h)(2)(iv) introductory text, first sentence by removing the words “the Food Stamp, FDPIR or TANF program” and adding in their place the words “SNAP, FDPIR or TANF”;
  - g. In paragraph (h)(2)(iv) introductory text, second sentence by removing the words “Food Stamp, FDPIR or TANF program” and adding in their place the words “SNAP, FDPIR or TANF” and by removing the words at the end of the sentence “in the Food Stamp, FDPIR or TANF Programs” and adding in their place the words “in SNAP, FDPIR or TANF”;
  - h. In paragraph (h)(2)(iv) introductory text, fourth sentence by removing the words “in the Food Stamp Program” and adding in their place the word “SNAP”;
  - i. In paragraph (h)(2)(iv)(A), first sentence by removing the words “Food Stamp” and adding in their place the word “SNAP”.

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

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

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

- 22. In § 245.2:

- a. Remove the definitions of “Food Stamp Program”, and “Food Stamp Household”;
- b. In the definition *Documentation*, paragraphs (1)(ii) and (2) are revised;

- c. In the definition *Verification*, the fourth sentence is amended by removing the term “Food Stamp Program” and adding in its place “SNAP”; and removing the term “food stamps” and adding in its place “SNAP”;
- d. Add definitions of “Categorically eligible”, “Direct certification”, “Head Start child”, “Homeless child”, “Migrant child”, “Runaway child”, “SNAP”, and “SNAP household” in alphabetical order.

The additions and revision read as follows:

#### **§ 245.2 Definitions.**

\* \* \* \* \*

*Categorically eligible* means considered income eligible for free meals or free milk, as applicable, based on documentation that a child is a member of a *Family*, as defined in this section, and one or more children in that family are receiving assistance under *SNAP*, *FDPIR* or the *TANF* program, as defined in this section. A *Homeless child*, a *Migrant child*, a *Head Start child* and a *Runaway child*, as defined in this section, are also categorically eligible. Categorical eligibility and automatic eligibility may be used synonymously.

\* \* \* \* \*

*Direct certification* means determining a child is eligible for free meals or free milk, as applicable, based on documentation obtained directly from the appropriate State or local agency or individuals authorized to certify that the child is a member of a household receiving assistance under *SNAP*, as defined in this section; is a member of a household receiving assistance under *FDPIR* or under the *TANF* program, as defined in this section; a *Homeless child*, a *Migrant child*, a *Head Start child* and a *Runaway child*, as defined in this section.

\* \* \* \* \*

*Documentation* means:

(1) \* \* \*

(ii) For a child who is receiving assistance under *SNAP*, *FDPIR* or *TANF*, as defined in this section, the child’s name and appropriate SNAP or TANF case number or FDPIR case number or other FDPIR identifier and signature of an adult household member.

(2) In lieu of completion of the free and reduced price meal application:

(i) Information obtained from the State or local agency responsible for administering *SNAP*, *FDPIR* or *TANF*, as defined in this section. Documentation for these programs includes the name of the child; a statement certifying that the child is a

member of a household receiving assistance under *SNAP*, *FDPIR* or *TANF*, as defined in this section; information in sufficient detail to match the child attending school in the local educational agency with the name of a child who is a member of one of the applicable programs as defined in this section; the signature of the official from the applicable program who is authorized to provide such documentation on behalf of that program and the date that the official signed the certification statement;

(ii) (A) A letter or other document provided to the household by the agency administering *FDPIR* or the *TANF* program, as defined in this section or by the entity or official authorized to administer an eligible program for a *Migrant child*, *Homeless child*, *Runaway child*, or *Head Start child*, as defined in this section; or

(B) A letter or document from the agency administering the *SNAP* program that was voluntarily submitted by the household to the local educational agency;

(iii) Information from the local educational agency, such as enrollment information or information from applications submitted for free or reduced price meals, or from SNAP, FDPIR or TANF program officials that indicate there are children in a *Family*, as defined in this section, who were not documented as receiving assistance under SNAP, FDPIR or TANF, in order to extend categorical eligibility to such children as found in § 245.6(b)(7).

Documentation for these purposes is the information discussed in paragraph (2)(i) of this definition, plus a written statement by a local educational agency official briefly explaining how the presence of additional children in the family was determined.

(iv) Information obtained from an official responsible for determining if a child is a *Homeless child*, a *Migrant child*, a *Head Start child* and a *Runaway child*, as defined in this section.

Documentation for these children includes the name of the child; a statement certifying that the child has been determined eligible for that program or is enrolled in the Head Start Program; information in sufficient detail to match the child attending school in the local educational agency with the name of a child who has been determined eligible for that program or is enrolled in an eligible Head Start Program; the signature of the official from the program who is authorized to provide such documentation on behalf of that program and the date that the official signed the certification statement. Documentation may also be a

list of children or a computer match that includes this information.

(v) When a signature is impracticable to obtain, such as in a computer match, the local educational agency shall have a method to ensure that a responsible official can attest to the accuracy of the information provided.

\* \* \* \* \*

*Head Start child* means a child enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 *et seq.*)

*Homeless child* means a child identified as lacking a fixed, regular and adequate nighttime residence, as specified under section 725(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)) by the local educational agency liaison, director of a homeless shelter or other individual identified by FNS.

\* \* \* \* \*

*Migrant child* means a child identified as meeting the definition of migrant in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399) by the State or local Migrant Education Program coordinator or the local educational liaison, or other individual identified by FNS.

\* \* \* \* \*

*Runaway child* means a child identified as a runaway receiving assistance under a program under the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*) by the local educational liaison, or other individual in accordance with guidance issued by FNS.

\* \* \* \* \*

*SNAP* means the Supplemental Nutrition Assistance Program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*) and operated under parts 271 and 283 of this chapter.

*SNAP household* means any individual or group of individuals currently certified to receive assistance as a household from *SNAP*.

\* \* \* \* \*

■ 23. Section 245.3(b) is revised to read as follows:

**§ 245.3 Eligibility standards and criteria.**

\* \* \* \* \*

(b) Each participating local educational agency and all participating schools under its jurisdiction must adhere to the eligibility criteria specified in this part. Local educational agencies must include these eligibility criteria in their policy statement as required under § 245.10 and it must be publicly announced in accordance with the provisions of § 245.5. Additionally, each State agency, or FNSRO where

applicable, must require that local educational agencies accept as income eligible for free meals and free milk, children who are categorically eligible for those benefits based on documentation of eligibility, as specified in § 245.6 (b).

\* \* \* \* \*

■ 24. Section 245.5 is amended as follows:

■ a. In paragraph (a)(1)(iv) remove the term “food stamp” and add in its place “SNAP”;

■ b. Redesignate paragraphs (a)(1)(x) and (a)(1)(xi) as paragraphs (a)(1)(xi) and (a)(1)(xii), respectively, and add a new paragraph (a)(1)(x) to read as follows:

**§ 245.5 Public announcement of the eligibility criteria.**

(a) \* \* \*

(1) \* \* \*

(x) An explanation that Head Start enrollees and certain migrant, homeless, and runaway children are categorically eligible for free meals and free milk and their families should contact the school for more information.

\* \* \* \* \*

■ 25. Section 245.6 is amended as follows:

■ a. Paragraph (a)(6) is amended by removing the term “Food Stamp Program” and adding in its place “SNAP” and by removing the term “food stamp” and adding in its place “SNAP”;

■ b. Paragraph (a)(8)(i) is amended by removing the term “Food Stamp” and adding in its place “Supplemental Nutrition Assistance Program (SNAP)”;

■ c. Amend paragraph (a)(8)(ii) by adding two new sentences at the end;

■ d. Revise paragraph (b);

■ e. Amend paragraph (c)(2) by adding two sentences at the end;

■ f. Revise paragraph (c)(5);

■ g. In paragraph (c)(6)(ii), the first sentence is amended by removing “Food Stamp Program, FDPIR or TANF Program” and adding in its place “SNAP, FDPIR or TANF”; and

■ h. In paragraph (c)(6)(ii), the last sentence is amended by removing the term “food stamp” and adding in its place “SNAP”;

■ i. Amend paragraph (c)(6)(ii) by adding a new sentence at the end.

The addition and revisions read as follows:

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

(a) \* \* \*

(8) \* \* \*

(ii) \* \* \* Also, certain migrant, homeless, and runaway children and children enrolled in a Head Start

program are categorically eligible for free meals and free milk. If you are completing an application for these children, contact the school for more information.

\* \* \* \* \*

(b) *Direct certification.* In lieu of requiring a household to complete the free and reduced price meal or free milk application, as specified in paragraph (a) of this section, the local educational agency must certify children as eligible for free meals or free milk in accordance with paragraph (b)(1)(i) of this section or may certify children as eligible for free meals or free milk in accordance with paragraph (b)(2) of this section. If a household also submits an application for directly certified children, the direct certification eligibility determination will take precedence.

(1) *Mandatory direct certification of children in SNAP households.* (i) All local educational agencies conducting eligibility determinations must directly certify children who are members of a household receiving assistance under *SNAP*, as defined in § 245.2, in School Year 2008–2009, which begins on July 1, 2008, and each subsequent school year.

(ii) Schools participating only in the Special Milk Program authorized under part 215 of this chapter may directly certify children for that program but are not required to conduct direct certification with *SNAP*. In addition, residential child care institutions, as defined in paragraph (c) of the definition of *School* in § 210.2 of this chapter, that do not have non-residential children are also not required to conduct direct certification with *SNAP*.

(iii) Beginning in School Year 2012–2013, direct certification shall be conducted using a data matching technique only and letters to household for direct certification may be used only as an additional means to notify households of children’s eligibility based on receipt of *SNAP* benefits. The last period that letters to households may be used as the primary method for direct certification is School Year 2011–12.

(iv) Each State agency must enter into an agreement with the State agency conducting eligibility determinations for *SNAP*. The agreement must specify the procedures that will be used to facilitate the direct certification of children who are members of a household receiving assistance under *SNAP*, as defined in § 245.2. The agreement must address procedures to comply with the requirements of paragraphs (b)(3) through (b)(9) of this section. Direct



certification must allow for notifying parents that their children have been determined eligible for free meals or free milk, as applicable, and that no further application is required. Such agreements must address how phase-out of non-electronic matches as the primary method for conducting direct certification for SNAP will be completed by School Year 2012–2013. The agreement shall be maintained by the State agency.

(v) Schools applying to use Provision 2 or Provision 3, as permitted under § 245.9, are required to conduct direct certification only in base years. However, schools may elect to conduct direct certification at other times, such as streamlined base years, when eligibility determinations are made.

(2) *Children who may be directly certified.* The local educational agency may directly certify children for free meals or free milk based on documentation received from the appropriate State or local agency that administers *FDPIR* or *TANF*, as defined in § 245.2, when that agency indicates that the children are members of a household receiving assistance under one of these programs. In addition, the local educational agency may directly certify children for free meals or free milk based on documentation from the appropriate State or local agency or other appropriate individual, as specified by FNS, that the child is a *Migrant child*, a *Homeless child*, a *Runaway child*, or a *Head Start child*, as defined in § 245.2.

(3) *Frequency of direct certification contacts with SNAP.* (i) Until School Year 2011–2012, local educational agencies must conduct direct certification activities with *SNAP* at least at the beginning of the school year.

(ii) (A) Beginning in School Year 2011–2012, at a minimum, all local educational agencies must conduct direct certification as follows:

(1) At or around the beginning of the school year;

(2) Three months after the initial effort; and

(3) Six months after the initial effort.

(B) The information used shall be the most recent available.

(iii) The names of all newly enrolled children and all children not certified for free meals shall be submitted for the direct certification required in paragraph (b)(3)(ii)(B) and paragraph (b)(3)(ii)(C) of this section. Newly enrolled children must be provided with application materials in order to alleviate a delay in receipt of free meals or free milk if direct certification for these children cannot be completed promptly upon enrollment.

(iv) State agencies are encouraged to conduct direct certification more frequently to obtain information about newly enrolled children or children who may be newly certified for that program's benefits.

(4) *Frequency of direct certification with other programs.* Local educational agencies opting to conduct direct certification activities with *FDPIR* or *TANF* should conduct such activities at or around the beginning of the school year. Obtaining information about homeless, migrant, runaway children or *Head Start* enrollees should be done, at a minimum, at or around the beginning of the school year and when newly enrolled children or children newly eligible for those programs are being certified.

(5) *Direct certification documentation.*

(i) The required documentation for direct certification is provided in paragraph (2) of the definition of *Documentation* in § 245.2.

(ii) (A) Beginning in School Year 2012–2013, direct certification with *SNAP* shall be conducted using a data matching technique only. Letters to households for direct certification may be used only as an additional means to notify households of children's eligibility based on receipt of *SNAP* benefits. The last period that letters to households may be used as the primary method for direct certification is School Year 2011–2012. While such notices cannot be the primary method used by a state to document receipt of *SNAP*, the local educational agency shall accept such a letter if presented by a household.

(B) Letters or other documents may be used as the primary method for direct certification to document receipt of *FDPIR* or *TANF* benefits.

(iii) Individual notices from officials of eligible programs for a *Migrant child*, *Homeless child* or *Runaway child*, as defined in § 245.2, or for a *Head Start child*, as defined in § 245.2 may continue to be used. These notices are provided to school officials who must certify these children as eligible for free meals or free milk, as applicable, without further application, upon receipt of such notice.

(6) *Officials who can provide documentation for direct certification.*

(i) The local educational agency must accept documentation from officials of the State or local agency that administers *SNAP*, certifying that a child is a member of a household receiving assistance under *SNAP* as defined in § 245.2, or officials of the State or local agency that administers *FDPIR* or *TANF*, as defined in § 245.2, certifying that a child is a member of a

household receiving assistance under one of those programs.

(ii) In the case of a child who is a *Homeless child*, as defined in § 245.2, the director of a homeless shelter or the local educational liaison for homeless children and youth may provide the appropriate documentation. The Migrant Education Program coordinator or the local educational liaison, as applicable, may provide the supporting documentation for a *Migrant child*, as defined in § 245.2. For a *Head Start child*, as defined in § 245.2, an official from that program may supply the documentation indicating enrollment in the *Head Start* program. Once the appropriate official has provided the direct certification documentation to the local educational agency, the child must have free benefits made available as soon as possible but no later than three operating days after the date the local educational agency receives the direct certification documentation.

(7) *Extension of eligibility to all children in a family.* If any child is identified as a member of a household receiving assistance under *SNAP*, *FDPIR*, or *TANF*, all children in the *Family*, as defined in § 245.2, shall be categorically eligible for free meals or free milk. This applies to children identified through direct certification or through a free and reduced price application.

(8) *Migrant, Runaway, Homeless or Head Start Children.* To be categorically eligible as a *Migrant child*, *Runaway child*, *Homeless child* or a *Head Start child*, the child's individual eligibility or participation for these programs shall be established. Categorical eligibility based on these programs shall not be extended to other children in the household.

(9) *Confidential nature of direct certification information.* Information about children or their households obtained through the direct certification process must be kept confidential and is subject to the limitations on disclosure of information in section 9 of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1758. Therefore, information that a household is receiving benefits from *SNAP*, *FDPIR* or *TANF* or that a child is participating in another program which makes children categorically eligible for free school meals or free milk must be used solely for the purposes of direct certification for determining children's eligibility for free school meals or free milk and as otherwise permitted under § 245.6(f).

(10) *Notification to families.* For children who are directly certified, local educational agencies are not required to provide application materials and notice

to parents informing them of the availability of free and reduced price meal benefits, as specified in § 245.5(a), when that information is distributed by mail, individualized student packets, or other method which prevents overt identification of children eligible for direct certification.

(c) \* \* \*

(2) \* \* \* Schools conducting an initial base year for Provision 2 that are approved to delay implementation as permitted under § 245.9(b)(6)(ii) are not required to carryover children's prior year eligibility status as outlined in this paragraph (c). Carryover cannot be used when returning to standard meal counting and claiming under § 245.9(c)(2)(i), when establishing a new base year under § 245.9(c)(2)(ii) or establishing a streamlined base year under § 245.9(c)(2)(iii).

\* \* \* \* \*

(5) *Categorical eligibility.* (i) *SNAP, FDPIR, TANF* When a household submits an application containing the required SNAP, FDPIR or TANF documentation, as defined under *Documentation* in § 245.2, all children in that household shall be categorically eligible for free meals or free milk. Additionally, when the local educational agency obtains confirmation of eligibility for these programs through direct certification, all children who are identified as members of a *Family*, as defined in § 245.2, shall be categorically eligible for free meals or milk.

(ii) *Homeless, migrant, runaway children and Head Start enrollees.* Upon receipt of *Documentation*, as defined in paragraph (2)(ii) and (2)(iv) of the definition in § 245.2, the local educational agency must approve such children for free benefits without further application.

(6) \* \* \*

(ii) \* \* \* The local educational agency must notify, in writing, households with children who are approved on the basis of documentation that they are *Categorically eligible*, as defined in § 245.2, that their children are eligible for free meals or free milk, and that no application is required.

\* \* \* \* \*

■ 26. Section 245.6a(1)(i) is revised to read as follows:

**§ 245.6a Verification requirements.**

(a) \* \* \*

(1) \* \* \*

(i) *SNAP*, as defined in 245.2;

\* \* \* \* \*

**§ 245.9 [Amended]**

■ 27. Section 245.9 is amended by removing the term "Food Stamp

Program" and adding in its place "SNAP" paragraphs (c)(1)(i) and (e)(1)(i).

■ 28. Section 245.10 is amended by revising the last two sentences of paragraph (a)(3) to read as follows:

**§ 245.10 Action by local educational agencies.**

(a) \* \* \*

(3) \* \* \* Additionally, the local educational agency must include the specific procedures it will use for obtaining documentation for determining children's eligibility through direct certification, in lieu of an application. Local educational agencies shall also provide households that are directly certified with a notice of eligibility, as specified in § 245.6(c)(2) and shall include in their policy statement a copy of such notice.

\* \* \* \* \*

■ 29. Section 245.11 is amended by removing the term "Food Stamp" and adding in its place "SNAP" in paragraph (h)(4)(iv).

Dated: April 13, 2011.

**Kevin W. Concannon,**

*Under Secretary, Food, Nutrition, and Consumer Services.*

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**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 26**

[NRC-2011-0084]

RIN 3150-AI94

**Interim Enforcement Policy for Minimum Days Off Requirements**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy statement; revision.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is revising its Enforcement Policy to include a provision allowing licensees enforcement discretion if they implement an alternative approach to meet the NRC's requirements for managing worker fatigue at operating nuclear power plants. This interim policy affects licensees subject to the minimum days off (MDO) requirements of the NRC's fitness for duty regulations and will remain in place until the NRC publishes a revised rule associated with the MDO requirements for managing fatigue.

**DATES:** This revision is effective April 25, 2011. The NRC is not requesting comments on this revision to its Enforcement Policy at this time.

**ADDRESSES:** You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. The Enforcement Policy is also accessible via ADAMS accession number ML093480037. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

- *Federal Rulemaking Web site:* This revision to the NRC's Enforcement Policy can be found at <http://www.regulations.gov> by searching on Docket ID NRC-2011-0084. Address questions about NRC dockets to Carol Gallagher, telephone: 301-492-3668, e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

The NRC also maintains the Enforcement Policy on its Web site at <http://www.nrc.gov>; select Public Meetings and Involvement, then Enforcement, and then Enforcement Policy.

**FOR FURTHER INFORMATION CONTACT:**

Gerry Gulla, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2872; e-mail: [Gerald.Gulla@nrc.gov](mailto:Gerald.Gulla@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

On March 31, 2008 (73 FR 17176), the NRC published a final rule in the **Federal Register** amending Title 10 of the Code of Federal Regulations, Part 26, "Fitness for Duty Programs." The Commission updated the requirements in 10 CFR part 26 by reorganizing the rule and adding Subpart I, "Managing Fatigue." Subpart I establishes requirements for managing worker fatigue at operating nuclear power plants, which was in response to a need for clear and enforceable requirements for the management of worker fatigue. Although the rule was effective on April 30, 2008, the NRC permitted an