

(3) If an individual with ported coverage returns to Federal service, any valid court order on file remains in effect.

(d) When an individual submits a request to elect portability for Option B coverage, the employing office must send the originals of all designations, assignments, and court orders on file to the Portability Office.

**§ 870.1208 Return to active service.**

(a)(1) When an individual with ported coverage returns to Federal service, the agency must notify the Portability Office.

(2) The Portability Office must terminate the ported coverage and send the originals of all designations, assignments, and court orders to the new employing office.

(b) The employee will get back the number of multiples of Option B he/she had before the terminating event. Exceptions:

(1) A person who cancels a multiple or multiples of Option B coverage after electing portability will get back only the number of multiples remaining.

(2) A person whose ported coverage cancels for nonpayment of premiums will not get back any Option B coverage automatically.

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 210 and 245

RIN 0584-AB35

#### Direct Certification of Eligibility for Free and Reduced Price Meals and Free Milk in Schools

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends the regulations governing the determination of eligibility for free and reduced price school meals under the National School Lunch Program and School Breakfast Program or free milk in schools participating in the Special Milk Program. The rule codifies procedures that allow school food authorities and State agencies to certify children eligible for free meals or free milk based on information obtained directly from the appropriate State or local agency administering the Food Stamp Program, the Food Distribution Program on Indian Reservations or the Temporary Assistance for Needy Families Program

(previously the Aid to Families with Dependent Children Program). This rule affects State agencies and participating school food authorities and households. These amendments respond to certain provisions in the Child Nutrition and WIC Reauthorization Act of 1989, comments received on the proposed rule published on May 28, 1991 (56 FR 24033), and provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. These amendments are intended to reduce administrative paperwork burdens, simplify the certification process for free and reduced price benefits, and facilitate the feeding of needy children.

**EFFECTIVE DATE:** These provisions are effective January 27, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302 or phone (703) 305-2620.

**SUPPLEMENTARY INFORMATION:**

**What Is the Background of This Rule?**

Section 323 of Public Law (Pub. L.) 99-500 (Oct. 18, 1986) added section 9(b)(6) to the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et. seq.) (NSLA) to make children from food stamp households and children from Aid to Families with Dependent Children (AFDC) assistance units in States where the standard of eligibility for the assistance did not exceed 130 percent of the Federal poverty level automatically eligible for free meals or free milk. In keeping with this provision, households have been permitted to list their food stamp or AFDC case number on the free and reduced price application for school meals or milk in lieu of providing detailed household size and income information and a social security number for the adult household member signing the application. The statute also specified that proof of participation in the Food Stamp Program or the AFDC Program would be sufficient to verify eligibility. The regulations implementing these provisions are currently found at 7 CFR 245.5, 7 CFR 245.6 and 7 CFR 245.6a.

Subsequently, section 202(b)(1) of the Child Nutrition and WIC Reauthorization Act of 1989, Pub. L. 101-147, enacted on November 10, 1989, amended section 9(b)(2)(C) of the NSLA to allow school food authorities to certify children eligible for free or reduced price lunches or breakfasts, without further application, by directly communicating with the appropriate

State or local agency to obtain documentation that the children are members of either a household receiving food stamps or an assistance unit receiving AFDC. This certification process is commonly referred to as "direct certification." That provision also specified that school food authorities that obtain such information shall use the information *only* for the purpose of determining eligibility for participation in programs under the NSLA and the Child Nutrition Act (42 U.S.C. 1771 et seq.) (CNA). Additionally, a statement adopted by key members of the House and Senate indicated their intent that school food authorities should provide parents the opportunity to decide whether or not they want their children to receive free meals by notifying parents that their children are eligible for free meal benefits and asking them to inform the school if they do not want their children to receive free meals. (135 Cong. Rec. H 6866 (Oct. 10, 1989) and S 14027 (Oct. 24, 1989)). The legislative history further indicated that school officials are to assume consent if they do not hear from the household within a certain number of days as specified by the Secretary.

On May 28, 1991, we published a proposed rule at 56 FR 24033 to amend 7 CFR part 245 to include direct certification. Moreover, we proposed to extend the direct certification provisions to include certification for free milk under the Special Milk Program operated in schools to maintain consistency between the school meal programs and the Special Milk Program in schools. Other institutions participating in the Special Milk Program are not authorized to use direct certification, because the statute limited direct certification to school food authorities. Further, although the law provided that the food stamp information or information provided under the AFDC Program may be used to determine eligibility for free or reduced price meals, under the proposed rule and this final rule, we deleted the references to reduced price meals because children who are members of food stamp households or members of households certified eligible for AFDC are automatically eligible only for free meal benefits under section 9(b)(6) of the NSLA.

We received fifty comments on the proposed rule during the 60-day public comment period. The majority viewed direct certification as a burden reduction measure and as a means to reach greater numbers of children. Please note that the May 28, 1991, rule also proposed to make the agreement

between the State agency and institutions operating the child nutrition programs and the school food authority's free and reduced price policy statement permanent documents. We addressed the permanency of the agreement and policy statement under a separate rulemaking published on September 20, 1999 at 64 FR 50735. This final rule addresses the direct certification provisions.

### Is There Still an AFDC Program?

Since publication of the proposed rule, section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104-193) replaced the AFDC Program, the Job Opportunities and Basic Skills Program and the Emergency Assistance Program with a block grant program under part A of title IV of the Social Security Act. Section 109(g) of PRWORA also made a conforming amendment to sections 9(b)(2)(C)(ii)(II) and (b)(6)(A)(ii) of the NSLA to remove references to AFDC and insert in its place, "the State program funded under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995." The new program is generally known as Temporary Assistance for Needy Families (TANF), although some States call the program by another name.

Thus, the automatic eligibility provisions and direct certification provisions that applied to AFDC households now apply to households certified eligible to participate in TANF in States in which the Secretary has determined that the standards under the State's TANF program are "comparable to or more restrictive than those in effect [for AFDC] on June 1, 1995." We asked State agencies to notify the appropriate Food and Nutrition Service (FNS) regional office, in writing, whether the new program in their State is comparable to or more restrictive than their AFDC Program that was in effect on June 1, 1995, and indicate the information used to make the comparison. We also asked State agencies to inform FNS when there is a change that would no longer make households participating in TANF automatically eligible for free school meals. This final rule amends § 245.11(g) to include these requirements.

In States in which the State standards for TANF are comparable to or more restrictive than those for the AFDC program that was in effect on June 1,

1995, school officials may determine free meal or milk eligibility based on a TANF case number in lieu of detailed household size and income information and may also directly certify children in TANF households. Additionally, proof of participation in TANF is sufficient to satisfy any verification of eligibility efforts.

This rule also makes a number of changes throughout parts 210 and 245 to replace the term "AFDC" with the term "TANF." Additionally, although not proposed, this rule removes the definition, "AFDC assistance unit" in § 245.2(a-1) and adds a new definition "TANF" at § 245.2(k). To avoid confusion, when describing the proposed rule, we will use TANF rather than AFDC as if TANF had been proposed.

The change from AFDC to TANF is required by PRWORA and is nondiscretionary. Additionally, in accordance with the NSLA, the change in programs will not affect current policies and provisions relating to automatic free meal eligibility in States in which the new program is comparable to or more restrictive than the AFDC program it replaced. Therefore, the FNS Administrator has determined that taking comments on this change is unnecessary in accordance with 5 U.S.C. 553.

### How Is "Documentation" Defined?

Section 245.2(a-4) currently defines "documentation" as the completion of specific information on a free and reduced price application. For direct certification, we proposed to amend § 245.2(a-4) to include (1) a list of names of children, (2) a statement certifying that the children are members of households currently certified to receive food stamps or TANF benefits, (3) information in sufficient detail to match the children attending schools in the school food authority with the names of children identified as currently certified to receive food stamps or TANF benefits, (4) the signature of the official of the food stamp or TANF office, and (5) the date. Proposed § 245.6(b) also included these documentation provisions.

Several commenters were concerned that the proposed definition of documentation implies that the only way direct certification may be accomplished is through a computer match. They believed that flexibility is needed in the regulation to allow a variety of ways to "directly certify" in addition to a computer match. Other commenters suggested that the definition be rewritten to include a notice of eligibility originating from the

food stamp/TANF office that is brought to the school by the household. Commenters stated that if this method were used, there would be no need for the school to provide households with a notice of approval and information about the opportunity to decline benefits, as required under proposed § 245.6(c)(1), since households would take the notice to the school only if they wanted benefits for their children.

The goal of direct certification is to reduce paperwork burdens while maintaining program integrity. We concur with commenters that flexibility is needed in the direct certification process. The proposed rule did not intend to limit direct certification to computer matches. This final regulation amends proposed §§ 245.2(a-4) (now § 245.2(a-3)) and 245.6(b) to make clear that school food authorities and food stamp or TANF offices without sophisticated computer systems may participate in direct certification. The amendments allow a member of a food stamp household or TANF household to deliver a letter or notice directly to the school containing the required documentation, as long as the required information is completed by officials from the food stamp or TANF office. In these instances, the household member would be acting as a conduit of information between the food stamp or TANF offices and the school, and the household would not be required to submit any additional information concerning eligibility.

One commenter suggested that we allow the food stamp or TANF office to notify households of their eligibility for free meals or free milk and include an abbreviated application for the household to complete and return to the school. We wish to emphasize that this is allowed, but is not considered a direct certification procedure. Rather, the household would simply be submitting a variation on the school's application. Requiring any kind of application is inconsistent with the direct certification procedure, because the food stamp or TANF office would not be able to certify that the information is accurate. Under direct certification, information is obtained from the agency administering the food stamp or TANF program.

Eight commenters maintained that the requirement that documentation include the signature of a food stamp or TANF official is too restrictive and that a signature may not always be available, particularly in the case of computer matches. Several commenters suggested that the requirement for a signature be expanded to include a signed agreement between the food stamp/TANF office or a signature facsimile like that produced

by a reproduction. We agree with these commenters. Therefore, this final rule (§ 245.2(a-3)(2)) specifies that the requirement for the signature of the food stamp or TANF official who certifies that the child is a member of a food stamp household or TANF household may be fulfilled with a copy of the individual's signature.

The proposed rule would have required documentation in sufficient detail to match the names of the children identified as receiving food stamp or TANF benefits with the names of children attending school in the school food authority. Two commenters believed that no further information beyond children's names and addresses is necessary, and one commenter asked that we more clearly define "sufficient detail." We did not define the exact type of identifiers that would be required because we still believe that officials in the school food authority can best determine appropriate identifiers. Therefore, this final rule continues to allow school food authorities to determine which identifiers they will use. However, because several children in a large school may have similar or nearly similar names, we emphasize that it is essential that documentation include some type of specific identifying information that is available to both the school and the food stamp or TANF office to ensure that benefits are directed to the correct children. This information may include children's addresses, parents' names, birth dates, or other types of information, including social security numbers.

#### **What About the Distribution of Letters/ Notices and Applications to Households About the Availability of Free and Reduced Price School Meals or Free Milk?**

Section 9(b)(2)(B) of the NSLA and current § 245.5(a)(1) require school food authorities to distribute free and reduced price meal or free milk applications and letters announcing the availability of benefits to parents/guardians of all children in attendance at the school at the beginning of the school year. We recognized, however, that there could be confusion and duplication if households with children directly certified for free meals or free milk later receive these applications and letters. To avoid this confusion and possible overlapping of activity, we proposed to amend §§ 245.5(a)(1) and 245.6(b)(3) to exempt school food authorities that implement direct certification from the requirement to send the notice or letter and application to those households determined eligible under direct certification. Rather, these

households would receive a notice that their children had been determined eligible for free meals or free milk by direct certification. We cautioned that school food authorities that do not distribute the letter and application in such a way as to prevent overt identification of children determined eligible under direct certification would have to distribute the letter and application to *all* households.

One commenter suggested that the distribution of the letter to households and the application be limited to households of children who were eligible for benefits the previous year. All other households would receive a letter notifying them that applications are available and explaining how an application may be obtained, if necessary. According to this commenter, this procedure would greatly reduce paperwork. Another commenter advised that the proposed provision created a burden since the school food authority would have to personalize the distribution of letters/notices and applications and the notices of eligibility under direct certification. According to this commenter, the best use of the direct certification provision would be to reach children whose parents/guardians did not complete an application. Therefore, the letters or notices and applications should continue to be distributed to all households. School officials could then use direct certification after the application process to increase participation among eligible children whose households did not apply for school meals or milk. Two other commenters believed that it would be difficult to prevent overt identification unless direct certification is done prior to the new school year.

We believe that distributing the notice or letter and application only to households with children who were eligible the prior year and only notifying all other households of how to obtain an application would be contrary to the statute. Section 9(b)(2)(B) of the NSLA requires that applications be distributed to all parents or guardians of children in attendance at the school. We believe when a school food authority uses direct certification to supplement the application process that the notice of eligibility satisfies this requirement. The intent of the provision is to simplify the certification process. Neither the proposal nor this final rule prohibits the distribution of applications to households with children who are directly certified. Rather, this is just one implementation option. Therefore, school officials have a great deal of flexibility in deciding how to use direct

certification. For these reasons, we are adopting the provision regarding the distribution of letters and applications as proposed. This provision is found at § 245.5(a)(1) and § 245.6(b)(2).

#### **Must the State Agency Approve of School Food Authorities' Use of Direct Certification?**

Proposed § 245.6(b) specifies that school food authorities may implement direct certification with State agency approval. Two commenters objected to the need for State agency approval because this implies that the State agency could decide to approve or disapprove school food authorities' use of direct certification. We agree with these commenters. Section 9 (b)(2)(C)(ii) of the NSLA specifically gives the option of implementing the direct certification provision to school food authorities, although State agencies may assume this responsibility for their school food authorities or otherwise assist in the direct certification process. Therefore, we have removed the proposed reference to State agency approval from § 245.6(b) in this final rule. However, as with the distribution and acceptance of applications, State agencies are responsible for the *manner* in which direct certification is implemented. Therefore, this final rule amends § 245.10(a)(3) to stipulate that a school food authority's procedures for direct certification must be made a part of its permanent policy statement, which may be amended as necessary.

#### **Must Households Be Notified That They Have Been Directly Certified?**

Under current § 245.6(b) and proposed § 245.6(c)(1), all households that submit *applications* for free and reduced price meals or free milk must be promptly notified of the approval or denial of their application for benefits. Households whose applications are denied, however, must be notified in writing. They also must be provided with information about how to appeal the determination and how to reapply should their circumstances change. Proposed § 245.6(c)(1) further specified that households with children determined eligible based on direct certification be provided with the following information in writing: (1) That the household does not have to complete a free and reduced price application at this time to establish the children's eligibility; (2) that the household must notify the school if they do not want their children to receive free meal or milk benefits; and (3) that the household must notify the school when they are no longer eligible for food stamps or TANF for their children.

Additionally, under the proposal, school officials would have to discontinue benefits as soon as possible if notified by the household that they do not want benefits for their children. Moreover, should the household subsequently notify school officials that they are no longer eligible for food stamps or TANF for their children, school officials would follow the notice procedures specified in § 245.6a(e). The notice informs the household that their free meal benefits will stop 10 days from the date the notice is sent and contains other pertinent information, such as appeal procedures. The household would also be informed that if it wishes to continue to receive free or reduced price benefits for its children, the household must complete an application giving household size and detailed income information.

A few commenters misinterpreted the notification requirements in proposed § 245.6(c)(1). They believed that the proposed rule expanded the notification requirements to require written notification of eligibility status to *all* households. We would like to clarify that, although we encourage school food authorities to notify all households in writing of the approval of their applications, school officials are required to provide *written* notification only to households approved under direct certification and to households who are denied benefits. For households determined eligible based on an application, school food authorities may provide notification in another manner, for example, by telephone or with the issuance of a free or reduced price ticket. The proposed regulation did not change this option.

We proposed that school food authorities notify households certified eligible under direct certification through written notification for the following reasons. First, because the household does not submit an application, the household could be confused when the child automatically receives free meals. Second, unless the household is specifically advised not to submit an application, it is likely to do so, which undermines the value of direct certification. Finally, a written notification is the only means to inform households that they may decline the benefits.

We recognize, however, that if households are provided a written document by the food stamp or TANF office to take to the school, a notice from the school notifying them of their eligibility may not be necessary. Additionally, the submission of the document by the household makes it clear that the household wishes to

receive benefits. Thus, this final rule amends § 245.6(c)(1) to provide an exception to the written notification requirement. The school food authority is not required to provide a written notice of eligibility to households that transmit the documentation provided by the food stamp or TANF office to the school.

#### **Must Households Be Notified That They Can Decline Benefits?**

Several commenters addressed the possibility that households may decline free benefits. A few commenters did not believe that school food authorities should have to advise households that they may decline benefits, because this requirement is burdensome and expensive. Rather, they suggested that the names of all children certified under direct certification should be placed on the roster. Then if households really do not want meals for their children, the child can decline to pick up meal tickets. If households later decide that they do want free meals, the benefits are still available for the child without the need for the household to apply. One commenter asked for clarification of the type of documentation necessary to substantiate that households have declined benefits. Another commenter recommended that the number of days a school food authority has to terminate benefits after the household has notified the school that they do not want free benefits be a local decision. Finally, several commenters noted that they have concerns about providing benefits prior to consent, but most agreed that households will appreciate not having to complete another form to receive free meal or milk benefits for their children.

As noted previously, Congress intends that households are notified of their children's eligibility under direct certification and that they are given the opportunity to decline benefits. We do not believe it is sufficient to put this responsibility with the child by allowing the child to decline to pick up a ticket or token. Additionally we believe that a household's right to decline benefits must be honored by the school as expeditiously as possible. Therefore, in § 245.6(c)(1), the final rule maintains the proposed requirement to terminate benefits if the household indicates they do not want these benefits.

With respect to the method the household uses to decline benefits, the ideal method would be for the school to request that the household return the notice of eligibility under direct certification with an indication that the household does not want free benefits. However, if the household verbally

declines benefits, this should be documented and be available for review. We are only mandating that the school maintain documentation for households that decline benefits, but not stipulating the form of that documentation. If the household notifies the school that it does not want benefits, a notice of adverse action is not needed. However, in accordance with § 210.7(c)(1)(ii), the school must make the change as soon as possible, but no later than 10 operating days from the date it receives the household's notification. In response to commenters who expressed concern about providing benefits prior to consent, we agree that this creates a potentially sensitive situation. Our experiences to date, however, indicate that households' refusals of benefits are rare, and we believe the participation of eligible children should not be delayed for this reason.

#### **What Happens When a Household Notifies the School That They Are No Longer Eligible for Food Stamps or TANF Benefits?**

When the household or the State or local agency administering the Food Stamp or TANF Program notifies the school that the household is no longer eligible for the Food Stamp or TANF program, § 245.6(c)(1) of this final rule requires the school food authority to follow the procedures in § 245.6a(e) *Adverse action* and inform the household that they must submit an application with income information to establish continued eligibility. The children must be provided free benefits during the 10-day advance notice of the pending change and through the appeal process.

#### **What Records Must Be Kept?**

The recordkeeping provisions in § 210.9(b)(17), 215.7(d)(8) and 220.7(e)(14) require school food authorities to maintain free and reduced price applications on file for 3 years after the end of the fiscal year to which they pertain. Thus, we proposed to amend § 245.6(b) to require that school food authorities maintain the documentation obtained from the food stamp/TANF office for 3 years, because this documentation substantiates children's eligibility for benefits in lieu of the free and reduced price application. Consistent with other recordkeeping requirements, this information also shall be maintained beyond the 3 year period for as long as required to resolve issues raised if the school is audited. Only one commenter addressed this provision, and this commenter concurred with the 3 year retention provision. This final rule

maintains the 3 year requirement, although it can now be found at § 245.6(e).

We would like to remind readers that, when documentation substantiating eligibility determinations under direct certification is maintained at the school food authority level, the documentation must be retrievable by school. This is currently specified in § 210.9(a)(18).

#### **Are There Any Confidentiality Concerns?**

Proposed § 245.6(b)(2) specified that school food authorities must maintain the confidentiality of information obtained under the direct certification process. Such information could be used solely for the determination of eligibility for free meal or milk benefits.

Nine commenters addressed the issue of confidentiality of information under direct certification. For the most part, these commenters believed that school officials should be allowed to use the information obtained under direct certification for other purposes, such as for free books or vocational education. Four commenters stated that school food authorities should be allowed to add a release to the notice of eligibility sent to households, giving parents the option of allowing school officials to use the eligibility information for other purposes. One commenter believed that the release more appropriately should be included on the application households complete to receive food stamp or TANF benefits. This option would assure recipients that their personal information does not move from agency to agency without their knowledge or consent. Finally, one commenter asked that school officials be allowed to use aggregate data for school purposes which benefit the child.

Section 202(b)(1) of Pub. L. 101-147 amended section 9(b)(2)(C) of the NSLA to specify that school food authorities may use the information obtained directly from food stamp/TANF offices only for the purpose of determining eligibility for participation in programs under the NSLA and the CNA. However, section 108 of Pub. L. 103-448 further amended section 9(b)(2)(C) of the NSLA to allow limited use or disclosure of any information obtained from the free and reduced price application or information obtained from food stamp or TANF officials. We provided guidance on the use and disclosure of information about children eligible for free and reduced price meals in December 1998. A proposed rule on the issue will be published soon. Therefore, § 245.6(b)(1) of this final rule specifies that information about the child or household obtained directly from food

stamp or TANF officials must be kept confidential and may only be used to determine free meal or milk eligibility or as otherwise permitted under section 9 of the NSLA.

#### **How does Direct Certification Affect the Verification of Eligibility Requirement?**

Current § 245.6a(a) requires school food authorities to verify a sample of approved *applications*. Under the proposed § 245.6a(a)(5), eligibility determinations based on direct certification obtained directly from the food stamp or TANF office would not be subject to this verification requirement. Although several commenters agreed that determinations made under direct certification should not be included in the verification requirement, one commenter believed that these certifications should still be counted as part of the universe for the purpose of calculating the sample size. We made this proposal because the client certification process for food stamps and TANF is more detailed than the process for applying for free/reduced price meal benefits and consequently may eliminate some of the need for verification.

We do not believe that direct certifications should be included in the formula when determining the number of applications which must be verified because under direct certification, there is no school meal or milk application and, therefore, nothing to select for verification. Consequently, the result of the commenter's suggestion would be to artificially inflate the number of applications to verify by including a large number of determinations not currently subject to verification. For these reasons, we did not accept this suggestion. We do note, however, that local officials may always verify more than the minimum number of applications and could elect to adopt this suggestion at the local level.

#### **Are There Any Technical Amendments?**

Subsequent to the publication of the proposed rule, we determined that households that participate in the Food Distribution Program on Indian Reservations (FDPIR) should be categorically eligible for free school meals or free milk. The FDPIR is authorized by Section 4(b) of the Food Stamp Act of 1977. Under this section, eligible households may elect to participate in either the Food Stamp Program or the FDPIR, but may not participate in both programs at the same time. Thus, since eligible households are afforded the option to participate in either program and may switch from

one program to the other, we believe that households participating in FDPIR should be treated the same as if they were participating in the Food Stamp Program. Therefore, when applying for free and reduced price meals for their children, a household participating in the FDPIR may submit the child's name, their FDPIR case number or an equivalent identifier used by FDPIR and the signature of an adult household member to establish free meal or free milk eligibility. Additionally, documentation of participation in FDPIR is adequate to verify eligibility for free meals or free milk. In lieu of free and reduced price applications, the direct certification procedures described in this rulemaking may be extended to households certified to receive benefits under FDPIR.

To implement categorical eligibility for households participating in FDPIR, this rulemaking adds a definition of FDPIR to § 245.2. This rule will also add a reference to FDPIR to all provisions affecting food stamp and TANF households. We notified State agencies of our interpretation that the categorical eligibility and direct certification provisions extend to children from households participating in FDPIR through policy memoranda dated January 3, 1992 and August 27, 1992. We believe that this action is technical in nature and that prior notice and comment would be unnecessary and contrary to the public interest. For these reasons, the Administrator of the Food and Nutrition Service has determined, in accordance with 5 U.S.C. 553(b) and (d), that good cause exists to waive the solicitation of public comments prior to codifying these amendments.

This rulemaking also corrects an omission in section 245.6a(a), which specifies the minimum number of applications that school officials must verify. In accordance with that paragraph, school officials using the focused sampling technique must verify a minimum of the lesser of 1 percent or 1000 applications selected from non-food stamp households claiming income within a specified amount and the lesser of one half of 1 percent or 500 applications of food stamp households that provide a case number. When Pub. L. 99-500 mandated the categorical eligibility of TANF households, we inadvertently neglected to amend section 245.6a(a) to include applications from households that provide an TANF case number when determining sample sizes. This rule corrects that omission and also references FDPIR. This correction is technical in nature and does not result in a substantive change.

Proposed § 245.6(c) included a provision that school officials may seek verification of eligibility and that school officials would take the income and frequency information provided by the household and calculate the household's total current income. This section also set forth the criteria under which school officials would approve households for free and reduced price meals or free milk. Three commenters suggested that the statement regarding verification appeared to be inappropriately placed in § 245.6(c). We concur with this observation and note that when the regulation implementing the Coordinated Review Effort was published in the **Federal Register** on July 17, 1991 (56 FR 32920), this statement was moved to § 245.6a(a), Verification requirements. Secondly, a final rule establishing requirements for free and reduced price applications published on July 24, 1991, (56 FR 33857) eliminated the requirement for households to indicate the frequency with which they receive individual income amounts, such as monthly, weekly, every 2 weeks and etc. Households are asked to report their monthly income by household member and source of the income. Accordingly, the language in § 245.6 of this final rule reflects this change.

#### **Executive Order 12866**

This final rule was determined non significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

#### **Public Law 104-4**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, 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 Food and Nutrition Service generally prepares 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 Food and Nutrition Service 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 rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### **Regulatory Flexibility Act**

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the FNS has certified that this rule will not have a significant economic impact on a substantial number of small entities. Most affected by this rulemaking will be State agencies and school food authorities. This rulemaking will increase administrative options for those entities and help streamline the overall free and reduced price eligibility administrative process.

#### **Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program, School Breakfast Program and Special Milk Program the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures established pursuant to 7 CFR 210.18(q) and 220.14(e); school food authority appeals of FNS findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3) and 220.14(g); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS Administrative Review Process established pursuant to 7 CFR 235.11(f).

#### **Executive Order 12372**

This rule affects the School Breakfast Program, National School Lunch Program and Special Milk Program, which are listed in the Catalog of Federal Domestic Assistance under Nos. 10.553, 10.555 and 10.556, respectively. These programs are subject to the provisions of Executive Order 12372,

which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V and final rule-related notice at 48 FR 29112, June 24, 1983.)

#### **Information Collection**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the reporting and recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) for parts 210 and 245 under control numbers 0584-0006 and 0584-0026, respectively.

#### **List of Subjects**

##### *7 CFR Part 210*

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

##### *7 CFR Part 245*

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

Accordingly, 7 CFR parts 210 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.

##### **§ 210.9 [Amended]**

2. In § 210.9(b)(18), remove the words "Food Stamp or the Aid to Families with Dependent Children Programs" at the end of the first sentence and add the words "Food Stamp Program, Food Distribution Program for Households on Indian Reservations (FDPIR) or Temporary Assistance for Needy Families (TANF)" in their place.

3. In § 210.18:

a. Revise paragraph (g)(1)(i)(A)(4); and  
b. Amend the last sentence of paragraph (g)(1)(i)(B) by removing the words "food stamp or AFDC" and add in their place the words "food stamp, Food Distribution Program for Households on Indian Reservations (FDPIR) or Temporary Assistance for Needy Families (TANF)".

The revision reads as follows:

##### **§ 210.18 Administrative reviews.**

\* \* \* \* \*

(g) *Critical areas of review.* \* \* \*  
(1) *Performance Standard 1 (All free, reduced price and paid lunches claimed*

for reimbursement are served only to children eligible for free, reduced price and paid lunches, respectively; and are counted, recorded, consolidated and reported through a system which consistently yields correct claims.) \* \* \*

(j) \* \* \*  
(A) \* \* \*

(4) In the case where children are determined eligible for free lunches based on documentation from the local food stamp, Food Distribution Program on Indian Reservations (FDPIR) or Temporary Assistance for Needy Families (TANF) office which certifies that the children are currently members of households receiving benefits under the Food Stamp Program, FDPIR or TANF, determine that the certification from the Food Stamp Program, FDPIR or TANF is official; all the information required under § 245.6 of this part is complete; and such children were enrolled in the school under review during the review period.

\* \* \* \* \*

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

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

**Authority:** 42 U.S.C. 1772, 1773, 1779; and 42 U.S.C. 1751-60.

2. In § 245.2:

a. Remove paragraph (a-1) and redesignate paragraphs (a-2), (a-3) and (a-4) as paragraphs (a-1), (a-2) and (a-3), respectively.

b. Revise newly redesignated paragraph (a-3);

c. Redesignate paragraph (b-1) as paragraph (b-2) and add a new paragraph (b-1);

d. Redesignate paragraph (k) as paragraph (l) and add a new paragraph (k); and

e. Revise the last sentence of newly designated paragraph (l).

The revisions and additions read as follows:

**§ 245.2 Definitions.**

\* \* \* \* \*

(a-3) *Documentation means:*

(1) The completion of a free and reduced price school meal or free milk application which includes:

(i) For households applying on the basis of income and household size, names of all household members; income received by each household member, identified by source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security and other cash income);

the signature of an adult household member; and the social security number of the adult household member who signs the application or an indication that he/she does not possess a social security number; or

(ii) For a child who is a member of a food stamp, FDPIR or TANF household: the child's name and appropriate food stamp or TANF case number or FDPIR case number or other identifier; and the name and signature of an adult household member; and

(2) In lieu of completion of the free and reduced price application, information obtained from the State or local agency responsible for the Food Stamp Program, FDPIR or TANF which includes the name of the child; a statement certifying that the child is a member of a currently certified food stamp, FDPIR or TANF household; information in sufficient detail to match the child attending school in the school food authority with the name of the child certified as a member of a food stamp, FDPIR or TANF household; the signature or a copy of the signature of the individual authorized to provide the certification on behalf of the Food Stamp, FDPIR or TANF office, as appropriate; and the date. When the signature is impracticable to obtain, such as in a computer match, other arrangements may be made to ensure that a responsible official can attest to the data.

\* \* \* \* \*

(b-1) *FDPIR* means the food distribution program for households on Indian reservations operated under part 253 of this title.

\* \* \* \* \*

(k) *TANF* means the State funded program under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995. This program is commonly referred to as Temporary Assistance for Needy Families, although States may refer to the program by another name.

(l) \* \* \* However, if a food stamp or TANF case number or a FDPIR case number or other identifier is provided for a child, verification for such child shall only include confirmation that the child is included in a currently certified food stamp, TANF or FDPIR household.

3. In § 245.5:

a. Revise the first sentence of paragraph (a)(1) introductory text;

b. Remove the reference to “§ 245.2(a-4)” in paragraph (a)(1)(iii), and add a reference to “§ 245.2(a-3) in its place;

c. Revise paragraphs (a)(1)(iv) and (a)(1)(vi).

The revisions read as follows:

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

(a) \* \* \*

(1) Except as provided in § 245.6(b), a letter or notice and application distributed on or about the beginning of each school year, to the parents of all children in attendance at school. \* \* \*

\* \* \* \* \*

(iv) An explanation that households with children who are members of currently certified food stamp, FDPIR or TANF households may submit applications for these children with the abbreviated information described in § 245.2(a-3);

\* \* \* \* \*

(vi) An explanation that households receiving free or reduced price benefits must notify school officials during the school year of any decreases in household size and any increases in income of over \$50 per month or \$600 per year (or a lesser amount if established by the State) or, in the case of households that provided a food stamp or TANF case number or a FDPIR case number or other identifier to establish eligibility for free meals or free milk for a child, of any termination of benefits for such children under the Food Stamp, FDPIR or TANF Programs.

\* \* \* \* \*

4. In § 245.6:

a. Revise the section heading;

b. Revise the seventh sentence of introductory paragraph (a);

c. Revise paragraph (a)(1);

d. Redesignate paragraph (b) introductory text, paragraphs (b)(1) and (b)(2) and paragraph (c) as paragraph (c) introductory text, paragraphs (c)(2) and (c)(3) and paragraph (d) respectively;

e. Add new paragraphs (b) and (c)(1);

f. Revise newly redesignated paragraph (c) introductory text; and

g. Add a new paragraph (e).

The additions and revisions read as follows:

**§ 245.6 Certification of children for free and reduced price meals and free milk.**

(a) \* \* \* However, if application is being made for a child who is a member of a food stamp, FDPIR or TANF household, the application shall enable the household to provide the appropriate food stamp or TANF case number or FDPIR case number or other identifier in lieu of names of all household members, household income information and social security number. \* \* \*

(1) “Section 9 of the National School Lunch Act requires that, unless your

child's food stamp case number/FDPIR case number or other identifier or TANF case number is provided, you must include the social security number of the adult household member signing the application or indicate that the household member signing the application does not have a social security number. Provision of a social security number is not mandatory, but if a social security number is not given or an indication is not made that the signer does not have such a number, the application cannot be approved. The social security number may be used to identify the household member in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp, TANF or FDPIR office to determine current certification for receipt of these benefits, contacting the State employment security office to determine the amount of benefits received and checking the documentation produced by household members to prove the amount of income received. These efforts may result in a loss or reduction of benefits, administrative claims or legal actions if incorrect information is reported." State agencies and School Food Authorities shall ensure that the notice complies with section 7 of Pub. L. 93-579 (Privacy Act of 1974); and

\* \* \* \* \*

(b) *Direct certification.* In lieu of determining eligibility based on information provided by the household on the free and reduced price meal or milk application specified in paragraph (a) of this section, school food authorities may determine children eligible for free meals or milk based on documentation obtained from the appropriate State or local agency responsible for the administration of the Food Stamp Program, FDPIR and/or the TANF Program, hereafter referred to as direct certification. The documentation for direct certification shall include the information specified in § 245.2(a-3)(2). The food stamp, FDPIR or TANF office may provide school officials with a list which includes all required documentation, or documentation may be obtained through a computerized match in which computerized lists of names of children from food stamp, FDPIR or TANF households and other identifying information are matched against a list of names and other identifying information of schoolchildren. When computer

matches are used or the signature of the food stamp, FDPIR or TANF official is otherwise impracticable to obtain, the signature of the food stamp, FDPIR or TANF official is not required. However, other arrangements must be made to ensure that a responsible official can attest to the data. Additionally, the food stamp, FDPIR and/or TANF office may provide food stamp, FDPIR and/or TANF households with individual notices which contain all required documentation. The household may then transmit the notice to the school.

(1) Information about the child or the household obtained directly from the food stamp, FDPIR or TANF office must be kept confidential and shall be used solely for the purpose of determining the child's eligibility for school meal or milk benefits, or as otherwise permitted by section 9 of the National School Lunch Act.

(2) School food authorities are not required to provide the letter specified in § 245.5(a) to the parents of children who are eligible for free meals under paragraph (b) of this section when the school food authorities distribute the letters or notices with application forms and the notice to households concerning eligibility for benefits under direct certification, specified in paragraph (c)(1) of this section, through the mail, individualized student packets, or other method which prevents the overt identification of children eligible for direct certification.

(c) *Determination of eligibility.* Prior to the processing of applications or the completion of direct certification procedures for the current school year, children from households with approved applications or documentation of direct certification on file from the preceding year may be served reimbursable free and reduced price meals or free milk. However, applications and documentation of direct certification from the preceding year may be used to determine eligibility only during the 30 operating days following the first operating day at the beginning of the school year, or during a timeframe established by the State agency, provided that any State agency timeframe does not exceed the 30 operating day limit. The school food authority must take the income information provided by the household on the application and calculate the household's total current income. When a household submits an application containing complete documentation, as specified in § 245.2(a-3)(1)(i), and the household's total current income is at or below the eligibility limits specified in the Income Eligibility Guidelines, the children in that household must be

approved for free or reduced price benefits, as applicable. When a household submits an application containing the required food stamp, FDPIR or TANF documentation, as specified in § 245.2(a-3)(1)(ii), the children in that household must be approved for free benefits. Additionally, when the school food authority obtains documentation from the State or local agency responsible for the administration of the Food Stamp Program, FDPIR and/or TANF Program that children are members of currently certified food stamp, FDPIR or TANF households, as specified in § 245.2(a-3)(2), the school food authority must approve such children for free benefits without applications from the households.

(1) *Notice of approval.* The school food authority must promptly notify the household of their children's eligibility and provide them the benefits to which they are entitled. Households approved for benefits based on documentation provided by the appropriate State or local agency responsible for the administration of the Food Stamp Program, FDPIR or TANF Program must be notified, in writing, that their children are eligible for free meals or free milk, that households must contact the school when their children are no longer eligible for food stamp, FDPIR or TANF benefits, and that no application for free and reduced price school meals is required at this time. The notice of eligibility must also inform households that they must notify the school if they do not want their children to receive free benefits. When the household transmits the notice of eligibility containing the above information and the documentation provided by the food stamp, FDPIR or TANF office to the school, the school food authority is not required to provide a separate notice of eligibility. Children from households that notify the school that they do not want free benefits must have their benefits discontinued as soon as possible. Any notification from the household declining benefits must be documented and maintained on file, in accordance with paragraph (e) of this section. Additionally, a school food authority that is notified by the household that they are no longer eligible to receive food stamp, FDPIR or TANF benefits must follow the procedures specified in § 245.6a(e), and inform the household that it must submit an application with income information to establish continued eligibility.

\* \* \* \* \*



(e) The school food authority must maintain documentation substantiating eligibility determinations on file for 3 years after the date of the fiscal year to which they pertain, except that if audit findings have not been resolved, the documentation must be maintained as long as required for resolution of the issues raised by the audit.

5. In § 245.6a,

a. Amend the seventh sentence of paragraph (a) by removing the words "of food stamp households that provided food stamp case numbers" and add the words "of food stamp, FDPIR or TANF households that provided a food stamp or TANF case number or FDPIR case number or other identifier" in their place;

b. Revise paragraph (a)(2)(i);

c. Revise the second sentence of paragraph (a)(2)(iv);

d. Revise the fourth sentence of paragraph (a)(2)(v);

e. Revise the heading and first three sentences of paragraph (a)(3);

f. Add a sentence at the end of paragraph (a)(5); and

g. Revise the second sentence of paragraph (b)(3).

The revisions and addition read as follows:

**§ 245.6a Verification requirements.**

(a) \* \* \*

(2) *Notification of selection.* \* \* \*

(i) Section 9 of the National School Lunch Act requires that unless the child's food stamp case number/FDPIR case number or other identifier or TANF case number is provided, households selected for verification must provide the social security number of each adult household member;

\* \* \* \* \*

(iv) \* \* \* These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting a food stamp, FDPIR or TANF office to determine current certification for receipt of these benefits, contacting the State employment security office to determine the amount of benefits received and checking documentation produced by household members to prove the amount of income received. \* \* \*

(v) \* \* \* Selected households must also be informed that, in lieu of any information that would otherwise be required, they can submit proof of current food stamp, FDPIR or TANF certification as described in paragraph (a)(3) of this section to verify the free meal eligibility of a child who is a member of a food stamp, FDPIR or TANF household. \* \* \*

(3) *Food stamp, FDPIR or TANF recipients.* On applications where

households have furnished food stamp or TANF case numbers or FDPIR case numbers or other identifiers, verification shall be accomplished either by confirming with the local food stamp, FDPIR, or TANF office that each child, for whom application was made and a case number or other identifier was provided, is a member of a currently certified food stamp, FDPIR or TANF household; or by obtaining from the household a copy of a current "Notice of Eligibility" for the Food Stamp Program, FDPIR or TANF Program or equivalent official documentation issued by the food stamp, FDPIR or TANF office which confirms that the child is a member of a currently certified food stamp, FDPIR or TANF household. An identification card for either program is not acceptable as verification unless it contains an expiration date. If it is not established that the child is a member of a currently certified food stamp, TANF or FDPIR household, the procedures for adverse action specified in paragraph (e) of this section must be followed. \* \* \*

\* \* \* \* \*

(5) \* \* \* Verification of eligibility is not required of households when the determination of eligibility was based on documentation provided by the State or local agency responsible for the administration of the Food Stamp Program, FDPIR or TANF Program, as described in § 245.6(b).

(b) *Sources of information.* \* \* \*

(3) *Agency records.* \* \* \* Information concerning income, household size, or food stamp, FDPIR, or TANF eligibility maintained by other government agencies to which the State agency, school food authority or school can legally gain access may be used to confirm a household's income, size, or receipt of benefits. \* \* \*

\* \* \* \* \*

6. In § 245.10, revise paragraph (a)(3) to read as follows:

**§ 245.10 Action by School Food Authorities.**

(a) \* \* \*

(3) The specific procedures the school food authority will use in accepting applications from families for free and reduced price meals or for free milk. Additionally, if the school food authority has opted to determine eligibility for children from food stamp, FDPIR or TANF households based on documentation obtained from the State or local agency responsible for the Food Stamp, FDPIR or TANF Program, in lieu of an application, the school food authority shall include the specific procedures it will use to obtain the required documentation. Additionally,

school food authorities that have implemented direct certification and that must provide households a notice of eligibility, as specified in § 245.6(b), must also include in their policy statement a copy of the notice to households regarding their children's eligibility under the direct certification provision.

\* \* \* \* \*

6. In § 245.11, add a new paragraph (g) to read as follows:

**§ 245.11 Action by State agencies and FNSROs.**

\* \* \* \* \*

(g) The State agency must notify FNS whether the TANF Program in their State is comparable to or more restrictive than the State's Aid to Families with Dependent Children Program that was in effect on June 1, 1995. Automatic eligibility and direct certification for TANF households is allowed only in States in which FNS has been assured that the TANF standards are comparable to or more restrictive than the program it replaced. State agencies must inform FNS when there is a change in the State's TANF Program that would no longer make households participating in TANF automatically eligible for free school meals.

Dated: December 16, 1999.

**Samuel Chambers, Jr.,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 99-33179 Filed 12-27-99; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Part 225**

**RIN 0584-AC23**

**Summer Food Service Program;**

**Implementation of Legislative Reforms**

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

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

**SUMMARY:** This interim rule amends Summer Food Service Program (SFSP) regulations to incorporate nondiscretionary changes made by the Healthy Meals for Healthy Americans Act of 1994, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and the William F. Goodling Child Nutrition Reauthorization Act of 1998. Program changes include easing restrictions of participation by private nonprofit