

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 245

RIN 0584-AC25

#### National School Lunch Program and School Breakfast Program: Alternatives to Standard Application and Meal Counting Procedures

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the regulations governing the procedures for determining eligibility for free and reduced price meals in the National School Lunch Program and the School Breakfast Program. Existing regulations provide school food authorities with two alternatives to the standard requirements for the annual determinations of eligibility for free and reduced price school meals and daily meal counts by type, commonly termed "Provision 1" and "Provision 2". This proposed rule would allow for an extension of Provision 2 procedures and provide for a new alternative, "Provision 3". For schools choosing to participate in one of the alternate application and meal counting procedures, this proposed rule would also codify the alternate counting and claiming provisions of Public Law 103-448 which have been implemented, and codify revisions to the counting and claiming provisions authorized by Public Laws 104-193 and 105-336. This proposed rule would streamline program operations for program administrators and participants. State agency and school food authority recordkeeping burdens are expected to decrease because the determinations of eligibility for free and reduced price meals would not be made as frequently. In addition, for those schools electing to participate, this proposed rule may increase participation in nutritious school meal programs, thereby helping

students develop lifelong healthy eating habits. A primary reason for the increase in participation is that local schools would be offering meals at no charge to all enrolled students.

**DATES:** To be assured of consideration, comments must be postmarked on or before April 7, 2000.

**ADDRESSES:** Comments must be sent to: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302 or via E-Mail at [CNDPROPOSAL@fns.usda.gov](mailto:CNDPROPOSAL@fns.usda.gov). All written submissions, as well as the Regulatory Impact Analysis, will be available for public inspection in Room 1007, 3101 Park Center Drive, Alexandria, Virginia during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Mary Jane Whitney or Todd Barrett at the above address, by telephone at 703-305-2620. Copies of the Regulatory Impact Analysis are available upon request.

#### SUPPLEMENTARY INFORMATION:

##### Background

Generally, schools must collect applications on an annual basis from the households of enrolled children and make annual determinations of their eligibility for free or reduced price school meals. They must also count the number of free, reduced price, and paid meals at the point of service on a daily basis in order to claim Federal reimbursement. However, school food authorities may participate in alternatives to annual eligibility determinations and daily meal counts by type (free, reduced price and paid) which are intended to reduce some of this administrative burden. These alternatives are commonly referred to as Provision 1, Provision 2 and Provision 3. This proposed rule would make no changes to Provision 1, codify changes to Provision 2 and codify the implementation of Provision 3. A brief description of each Provision as authorized by the National School Lunch Act (42 U.S.C. 1759a) follows:

##### Provision 1

Provision 1 reduces application burdens by allowing free eligibility to be certified for a 2 year period in schools where at least 80 percent of the children

enrolled are eligible for free or reduced price meals.

Notification of program availability and certification of children already certified eligible for free meals may be reduced to once every 2 consecutive school years. All other households must be notified of program availability, provided a meal application, and allowed to apply for meal benefits each school year.

All other program rules are unchanged. Provision 1 schools are not required to serve meals at no charge to all students. Schools must continue to record daily meal counts of meals served to children by type as the basis for calculating reimbursement claims.

##### Provision 2

Provision 2 reduces application burdens and simplifies meal counting and claiming procedures by allowing a school to establish claiming percentages that apply for a 4-year period provided the school serves meals to participating children at no charge.

During the first, or base, year the school takes applications, makes eligibility determinations, and records meal counts by type, just as it would under normal program rules, with the exception that all reimbursable meals are provided at no charge to the students. During the next 3 years, the school counts only the total number of reimbursable meals served each day. Reimbursement during these years is determined by applying the percentages of free, reduced price and paid meals during the corresponding month of the base year to the total meal count for the claiming month. After the base year, the school makes no new eligibility determinations (for as long as they remain operating under the Provision). The base year is included as part of the 4 years. At the end of each 4-year period, the State agency may approve an extension for 4 years if the income level, as adjusted for inflation, of the school's population has remained stable.

Schools electing this alternative must pay the difference between Federal reimbursement and the cost of providing all meals at no charge. The statute requires that money to pay for this difference must be from sources other than Federal funds.

##### Provision 3

Provision 3 reduces application burdens and meal counting and

claiming procedures by allowing a school to simply receive a comparable level of Federal cash and commodity assistance each year as it received in the base year, provided the school serves all meals at no charge. Provision 3 schools serve reimbursable meals to all participating children at no charge for a period of up to 4 years, or longer if an extension is granted.

Provision 3 schools receive the level of Federal cash and commodity support paid to them for the last year in which they made eligibility determinations and meal counts by type under regular program rules; this is the base year. For each successive year that the school remains in Provision 3, the level of Federal cash and commodity support is adjusted to reflect changes in enrollment and inflation. After the base year, the school makes no new eligibility determinations for as long as it remains in the Provision. The base year is not included as part of the 4 years. At the end of each 4 year period, the State agency may approve 4-year extensions if the income level, as adjusted for inflation, of the school's population has remained stable.

Schools electing this alternative must pay the difference between Federal reimbursement and the cost of providing all meals at no charge. The statute requires that money to pay for this difference must be from sources other than Federal funds. In order to make this procedure available promptly, Provision 3 was implemented via memorandum in 1995.

#### *History of the Provisions and Changes Being Implemented*

No changes are being made to Provision 1. The changes being made to Provisions 2 and 3 are in response to statutory changes and the experience gained from operating the Provisions via policy memorandum.

Under current regulations for Provision 2, schools that elect: (a) To serve reimbursable meals at no charge to all children for 3 successive school years regardless of the household's ability to pay, and (b) to pay the difference between the meal service costs and the Federal reimbursement, from sources other than Federal funds, may conduct public notification and make eligibility determinations once every 3 school years. During the first year of the 3-year cycle (the base year), free and reduced price eligibility determinations are made and daily meal counts are taken according to the eligibility status of the child served, even though all meals are served at no charge. In the second and third year of the cycle, schools are not required to

count meals by type. Instead, they submit claims based on the total number of meals served each month. The school's reimbursement amount is determined by applying the percentages of free, reduced price and paid meals served during the corresponding month of the first year to the total meal count for the claim month.

Section 111 of Public Law 103-448, the Healthy Meals for Healthy Americans Act of 1994, enacted on November 2, 1994, amended section 11(a)(1)(C) of the NSLA to allow an extension to the initial 3-year Provision 2 cycle by an additional 2 years if the school food authority established, through available and approved socioeconomic data, that the income level of the population of the school remained stable since free and reduced price applications were taken. These extensions were limited to those schools participating under Provision 2 on November 2, 1994. Subsequently, section 704(a) of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, enacted August 22, 1996, removed the November, 1994 limitation so that any Provision 2 school could extend the initial 3-year cycle an additional 2 years with subsequent 5-year cycles provided the available and approved socioeconomic data established that the income level of the school's population has remained stable. At the end of the 3 year/2 year cycle, and each subsequent 5-year cycle, the State agency could approve an extension of Provision 2 procedures if the school food authority established that the income level of the school's population remained stable when compared with the income level of the school's population during the base year.

Section 103 of Public Law 105-336, the William F. Goodling Child Nutrition Reauthorization Act of 1998, enacted on October 31, 1998, amended section 11(a)(1)(C) and (D) of the NSLA to make the period of operation for Provision 2 consistent with that of Provision 3. The statute eliminated Provision 2's initial 3-year cycle, 2-year extension and subsequent 5-year extensions. As a result of Public Law 105-336, the initial cycle for operating Provision 2 is now 4 years. In addition, State agencies may grant extensions to operate Provision 2 for an additional 4 years in those schools where the available and approved socioeconomic data identifies that the income level of the school's population has remained stable. Schools currently operating Provision 2 must finish their cycle under previous requirements and the new 4-year timeframe will be effective upon

application for, and approval of, an extension.

Public Law 103-448 added a new alternative, Provision 3, to section 11(a)(1)(E) of the NSLA. Under Provision 3, schools elect to serve reimbursable meals at no charge to all children for a period of 4 successive school years. Provision 3 schools receive the level of Federal cash and commodity assistance paid to them for the last year in which they made eligibility determinations, known as the base year, adjusted annually to reflect changes in enrollment and inflation. The implementation of Provision 3 does not affect a school food authority's receipt of bonus commodities. At the end of the 4-year cycle (not including the base year) and each subsequent 4-year cycle, the State agency may approve an extension of Provision 3 procedures if the school food authority can establish that the income level of the school's population remained consistent with the income level of the population of the school during the base year. The school food authority of a school implementing Provision 3 must use available and approved socioeconomic data and submit the data to their State agency for approval. (Approved data sources are discussed later in this preamble.)

An analysis of this proposed rule identified that it would offer significant benefits for school food authorities and households. During non-base years, school food authorities of schools operating under Provisions 2 and 3 would experience a significant reduction of administrative burdens associated with making eligibility determinations, counting meals by type (free, reduced price and paid), operating a payment system for children eligible for reduced price and paid meals and conducting verification. Similarly, households with children enrolled in schools under Provision 2 or Provision 3 would not be required to submit paperwork documenting their eligibility.

The analysis also finds that State agencies would experience some additional burden through this rule due to the responsibility of making extension determinations and reporting information on usage of Provision 2 and Provision 3 and possibly having to report information on extension determinations. The analysis asserts that once State agencies and school food authorities are accustomed with Provisions 2 and 3, the extension determination burden on State agencies would be minimal and the reporting burdens would be noticeable, but not significant. However, the significant

reduction in burdens by eliminating eligibility determinations, meal counts by type, verification and a payment system for reduced price and full price meals offsets the insignificant increase in burdens associated with extension determinations.

The remainder of this preamble discusses the proposed changes to the regulations to reflect the extensions for Provision 2 schools and to codify the implementation of Provision 3.

#### Definitions

Section 245.2(f-2), *Operating day*, would be added to the definitions to define an operating day as a day that reimbursable meals are offered to eligible students under the National School Lunch Program or School Breakfast Program.

Section 245.2(j), *Special assistance certification and reimbursement alternatives*, would be amended to remove the reference to "two" optional alternatives and replace it with "three" optional alternatives.

#### Provision 2

Section 245.9(b), *Provision 2*, of this proposed rule would restate the existing regulatory language although a number of editorial changes would be made to parallel the new Provision 3, including the addition of a definition of "Provision 2 base year". The proposal would define the Provision 2 base year to mean the last year for which eligibility determinations were made and meal counts by type were taken or the year in which a school conducted a streamlined base year as outlined under § 245.9(c)(2)(iii). Under a Provision 2 base year, schools would offer reimbursable meals to all students at no charge. The Provision 2 base year would be included in the 4-year cycle. The Department would take this opportunity to provide Provision 2 schools with additional areas of flexibility as discussed below.

Section 245.9(b)(1), *Free meals*, would clarify that schools participating under Provision 2 must serve reimbursable meals, as determined by a point of service observation, to all participating children at no charge.

Section 245.9(b)(2), *Cost differential*, would restate the existing requirement that the school food authority of a school participating in Provision 2 must pay, with funds from non-Federal sources, the difference between the cost of serving meals at no charge to all participating children and Federal reimbursement.

Section 245.9(b)(3), *Meal counts*, would set forth the meal counting methodology for Provision 2. Paragraph

(b)(3)(i), *Monthly percentages*, would restate the existing meal count provision which converts the monthly meal counts, by type, in the first year into percentages which are then applied to the total counts for the corresponding months in the second, third and fourth consecutive years and in years for which extensions of Provision 2 have been granted. Paragraph (b)(3)(ii), *Annual percentages*, would add a new method of meal claiming based on annual percentages.

Under the annual percentages option, the actual number of all meals served, by type, during the base year would be converted to an annual percentage for each type of meal. Schools that begin Provision 2 at a point in time other than the beginning of a school year would be required to complete the equivalent of a full school year to develop annual percentages. For example, a school implementing Provision 2 in January and continuing through June of one school year, would be required to take applications and obtain meal counts by type for September through December of the following school year in order to develop annual percentages for each meal type. These three percentages would then be multiplied by the total number of all meals served (free, reduced price and paid) in each month of the second, third and fourth consecutive school years, and in years for which extensions of Provision 2 have been granted, in order to calculate reimbursement claims for free, reduced price and paid meals each month.

#### Extension of Provision 2

Under § 245.9(c), *Extension of Provision 2*, of this proposed rule, State agencies may authorize a school food authority to continue under Provision 2 without taking new free and reduced price applications and daily meal counts by type. Schools approved for Provision 2 would continue to use the claiming percentages calculated during the most recent base year.

State agencies would be allowed to grant such an extension of Provision 2 if the school food authority could establish through available and approved socioeconomic data that the income level of the school population, as adjusted for inflation, remained stable, declined or had only negligible improvement since free and reduced price applications and meal counts by type were taken in the most recent base year. (The terms "negligible improvement" and "approved data sources" are discussed later in this preamble.) State agencies would be responsible for reviewing all available and approved socioeconomic data

submitted by school food authorities requesting an extension. Prior to granting or denying an extension, State agencies would be required to evaluate the data to determine whether it is reflective of the school's population, provides equivalent data for both the base year and the last year of the current cycle, and demonstrates that the income level of the school's population, as adjusted for inflation, remained stable, declined or had only negligible improvement.

State agencies would not be allowed to approve an extension for those schools for which the available and approved socioeconomic data did not reflect the school's population, was not equivalent data for the base year and last year of the current cycle or indicated more than a negligible improvement in the income level of the school's population after adjusting for inflation. (The term "negligible improvement" is discussed later in this preamble.) Such schools would be required to: (1) Return to standard meal counting and claiming procedures; (2) establish a new Provision 2 base year by taking new free and reduced price applications, making new free and reduced price determinations and counting meals as described in § 245.9(b); (3) establish a new Provision 2 base year by using the streamlined process as described in § 245.9(c)(2)(iii); or, (4) establish a new Provision 3 base year or streamlined base year as described in § 245.9(d) and (e)(2)(iii).

Under the option presented in paragraph (c)(2)(ii), *Establish a new base year*, schools electing to continue to operate Provision 2 would be allowed to establish a new Provision 2 base year by taking new free and reduced price applications, making new eligibility determinations and taking meal counts, by type, for the first year of the new Provision 2 cycle. These meal counts would be converted into claiming percentages pursuant to § 245.9(b)(3). These percentages would then be used for the purpose of claiming reimbursement in the remaining years of the 4 year cycle and any extensions.

Alternately, paragraph (c)(2)(iii), *Establish a streamlined base year*, would permit a streamlined application process for schools with changed socioeconomic data that choose to continue to operate Provision 2 or begin operating Provision 3. In lieu of taking new free and reduced price applications for the enrolled population, such schools could, in accordance with guidance established by FNS, determine program eligibility on the basis of household size and income for a statistically valid portion of the school's

enrollment as of October 31, or other date approved by the State agency, of the first year of the new cycle. Using the data obtained from the sample, enrollment based claiming percentages would be developed and applied to total daily meal counts of reimbursable meals at the point of service. These percentages represent the proportion of the school's population that are eligible for free, reduced price and paid meals. These enrollment based claiming percentages would then be used for each year of the new cycle and any extensions.

Finally, paragraph (c)(2)(iv), *Establish a Provision 3 base year*, would permit schools with changed socioeconomic conditions to convert to Provision 3. Schools electing to convert to Provision 3 would be allowed to establish a Provision 3 base year by taking new free and reduced price applications, making new eligibility determinations and taking meal counts, by type, for the first year of the new Provision 3 cycle by using the procedures outlined in § 245.9(d) or by using the streamlined base year procedures set forth in § 245.9(e)(2)(iii).

#### *Provision 3*

Under § 245.9(d), *Provision 3*, of this proposed rule, schools implementing Provision 3 would be required to serve reimbursable meals at no charge to all participating children in the school for up to 4 successive school years. Schools would be required to continue serving complete meals that meet the requirements for reimbursement during the successive years. Provision 3 schools would receive Federal cash and commodity assistance at the same level as the school received in the base year, as adjusted annually for enrollment, inflation and, if applicable, operating days when the difference in operating days affects the number of meals. This proposed rule would define the term base year to mean the last year for which eligibility determinations were made and meal counts by type were taken or the year in which a school conducted a streamlined base year as outlined in § 245.9(e)(2)(iii). The Provision 3 base year immediately precedes, and is not included in, the 4-year cycle. Reimbursable meals may be offered to all students at no charge or students eligible for reduced price and paid meals may be charged for meals during the Provision 3 base year. School food authorities are encouraged to consider offering all meals at no charge during the base year in order to optimize participation and develop a level of cash and commodity assistance that may be more reflective of

participation during successive years. This proposed rule would also require upward and downward adjustments to be made in those school years when the number of operating days in the current year differs from the number of operating days in the base year and the difference affects the number of meals. These adjustments are further discussed under § 245.9(d)(4).

To participate as a Provision 3 school, several conditions would apply. Paragraph (d) sets forth these operating conditions. Commenters are asked to pay particular attention to these operating conditions and address their feasibility in written comments to this rulemaking.

Paragraph (d)(1), *Free meals*, would require participating schools to serve reimbursable meals, as determined by a point of service observations, to all participating children at no charge during non-base years of operation.

Paragraph (d)(2), *Cost differential*, would require the school food authority of a participating school to pay, with funds from non-Federal sources, the difference between the cost of serving meals at no charge to all participating children and the establishment of Federal reimbursement.

Paragraph (d)(3), *Meal counts*, would require schools to take daily meal counts of reimbursable meals at the point of service during the non-base years of operation. Commenters should note that this provision would require total meal counts at the point of service, not meal counts by eligibility category.

Unlike the standard meal counting system and Provision 2, these meal counts would not provide the basis for financial assistance under Provision 3. However, the Department believes that total meal counts at the point of service remain a good management tool. Obtaining meal counts would provide a system to evaluate whether there has been a decline in participation, compared to the base year, even though a school food authority would continue to receive the same level of reimbursement and commodities as their base year (adjusted for inflation, enrollment and operating days if the difference in operating days affects the number of meals). Such a decline in participation may be indicative of decreased meal quality and would require the State agency to consider providing technical assistance. For this reason, this proposed rule would require meal counts to be retained at the local level per § 245.9(g).

Records of such counts would be required to be maintained for the period of time specified under paragraph (g). The submission of the total daily meal

counts on the school food authority's Claim for Reimbursement or through other means could be required by the State agency if the State agency believed that submission of such data would enhance program integrity. In addition, school food authorities must establish a system of oversight using the daily meal counts to ensure that participation has not declined significantly from base year. If participation declines significantly, the school food authority shall provide the school with technical assistance, adjust the level of financial assistance received through the State agency or return the school to standard application and meal counting procedures, as appropriate.

The Department also recognizes that there may be situations in residential child care institutions (RCCIs) where meal counts would not be necessary for a system operating under Provision 3. For example, an RCCI may have a fixed number of children enrolled and be a closed campus with a pre-plate meal service. In such a case, the RCCI may not experience a change in enrollment or participation from year-to-year and would not need to obtain total daily meal counts. Therefore, the Department would provide State agencies the discretion to approve such sites for Provision 3 without the requirement to obtain a total daily meal count during "non-base" years of operation.

Paragraph (d)(4), *Annual adjustments*, would require the State agency or school food authority to make annual adjustments for enrollment and inflation to the total Federal cash and commodity assistance received by a Provision 3 school in the base year. The annual adjustments for enrollment would be effected by comparing the school's current year enrollment as of October 31, to the school's base year enrollment as of October 31. The adjustments would reflect the changes in the number of children with access to the program(s). State agencies would be responsible for checking actual enrollment annually on October 31 of each year against the October 31 enrollment for the base year in order to determine any changes that must be made in reimbursement and the value of commodities for the school year. The State agency would be allowed to approve the use of data from an alternate date if it is determined to be a more accurate reflection of the school's enrollment or if it accommodates the reporting system in effect for that State agency. In addition, State agencies could, at their discretion, make additional adjustments to a participating school's enrollment more frequently than once per school year. If

more frequent enrollment adjustments were calculated, it would be required to be applied for both upward and downward adjustments. The adjustments to enrollment would begin with the month the enrollment data is collected and applied to any outstanding Claims for Reimbursement.

The Department adjusts the rates of reimbursement for meals served in schools annually to reflect changes in inflation. Therefore, the adjustment for inflation for the Provision 3 school meals would automatically occur when the school food authority's adjusted meal counts would be processed through the State agency's claim payment system using updated reimbursement rates. The formula for calculating commodity assistance would remain unchanged.

Paragraph (d)(4) also would require an adjustment for the number of operating days to the extent that the number of operating days in the current school year differs from the number of operating days in the base year and the difference affects the number of meals. Under this paragraph (d)(4), State agencies would be required to make an upward adjustment to the level of cash and commodity assistance for any "non-base" school year in which the number of operating days is more than the number of operating days in the base year and the difference in operating days affects the number of meals. Similarly, paragraph (d)(4) would require State agencies to make a downward adjustment to the level of cash and commodity assistance for any "non-base" school year in which the number of operating days is less than the number of operating days in the base year and the difference affects the number of meals. No operating day adjustment would be required if the number of operating days in a non-base year is the same as the number of operating days in the base year. Under this proposed rule, operating days means those days that meals are offered to eligible children under the National School Lunch Program or School Breakfast Program.

Paragraph (d)(4) would allow two methods for making adjustments to the base year level of assistance as a result of differences in the number of operating days between the base year and subsequent years when the difference in operating days affects the number of meals. In cases where the school food authority would be paid based on meal counts (*i.e.*, base year meal counts adjusted by enrollment), State agency or local officials would multiply the average daily meals claimed, by type, for the current school

year by the difference in the number of serving days between the base year and the current school year. The resulting adjustments would be reflected in the final Claim for Reimbursement submitted by the school food authority for the school year or on the respective monthly Claim for Reimbursement. When making monthly adjustments, each month's Claim for Reimbursement would be adjusted for changes in the number of operating days between the month being reported in the current year and the corresponding month of the base year. In cases where the school food authority would be paid the value of base year assistance, State agency or local officials would multiply the dollar amount otherwise payable (*i.e.*, the base year level of assistance as adjusted by enrollment and inflation) by the ratio of the number of operating days in the current year to the number of operating days in the base year. Such adjustments could also be made on a monthly basis.

Paragraph (d)(5), *Reporting requirements*, would require the State agency to submit to the Department on the monthly FNS-10, the Report of School Program Operations, the number of meals, by type, as an adjustment to base year meal counts (adjusted for enrollment and, if applicable, operating days) or the number of meals, by type, constructed to reflect the adjusted level of cash assistance.

This proposed rule outlines two methods to effect payment of reimbursement for Provision 3 schools. The preferred method would be for State agencies or school food authorities to make adjustments to school food authorities base year meal counts on the monthly Claim for Reimbursement. Changes due to enrollment and/or operating days would be reflected in the adjusted meal counts and inflation would be automatically adjusted by the State agency's payment system using the annually updated reimbursement rates. A second option would be for State agencies to provide the same level of cash assistance as the base year, adjusted for enrollment, operating days and inflation.

Under paragraph (e), *Extension of Provision 3*, of this proposed rule, the State agency could allow a school to continue under Provision 3 for subsequent 4-year periods without taking new applications and daily meal counts by type. State agencies would be able to grant an extension of Provision 3 if the school food authority could establish, through available and approved socioeconomic data, that the income level, as adjusted for inflation, of the population of the school remained stable, declined, or had only

negligible improvement since the most recent base year. The school food authority of a school implementing Provision 3 would be required to use available and approved socioeconomic data and submit the data to their State agency for approval. (Approved data sources are discussed later in this preamble). These schools would continue to receive reimbursement and commodity assistance at the same level as the school received in the base year, adjusted for changes in inflation, enrollment and, if applicable, operating days.

State agencies would not be allowed to approve an extension for those schools in which the available and approved socioeconomic data does not reflect the school's population, was not equivalent data or the data indicated more than a negligible improvement in the income level of the school population, as adjusted for inflation. Such schools would be required to: (1) Return to standard meal counting and claiming procedures; (2) establish a new Provision 3 base year as described in § 245.9(d); (3) establish a new Provision 3 base year by using the streamlined process as described in § 245.9(e)(2)(iii); or, (4) establish a new Provision 2 base year or streamlined base year as described in § 245.9(b) and (c)(2)(iii).

Paragraph (e)(2)(iii), *Establish a streamlined base year*, would permit a streamlined application process for schools with changed socioeconomic data that choose to continue to operate under Provision 3. In lieu of taking new free and reduced price applications for the enrolled population, such schools could, in accordance with guidance established by the Secretary, determine program eligibility on the basis of family size and income for a statistically valid portion of the school's enrollment as of October 31, or other date approved by the State agency. Using the data obtained from the sample, enrollment-based claiming percentages would be developed and applied to total daily meal counts of reimbursable meals at the point of service during the new base year. Schools choosing to implement the streamlined base year for Provision 3 would be required to offer meals at no charge to all participating students during the newly established base year. In the subsequent 4-year period, the school would continue to receive reimbursement and commodity assistance at the same level as the school received in the newly established streamlined base year, adjusted for changes in inflation, enrollment and, if applicable, operating days.

Paragraph (e)(2)(iv), *Establish a Provision 2 base year*, would allow

schools which were not approved for an extension of Provision 3 to establish a Provision 2 base year or Provision 2 streamlined base year.

#### *Approved Data Sources*

Paragraphs (c)(1) and (e)(1) of § 245.9 of this proposed rule would permit Provision 2 and Provision 3 school food authorities to use available and approved socioeconomic data to determine whether the income level of the school population, as adjusted for inflation, remained consistent with the income level of the population of the school in the last school year for which the school accepted applications (i.e., the base year).

Pre-approved sources of socioeconomic data would include local data developed or collected by city or county zoning and economic planning offices or unemployment data for the area from which the school draws attendance which measures the stability of the income level of the school's population. Local food stamp data could also be used. Because schools may determine children eligible for free meals based on information obtained directly from the agency administering food stamps that the children are from households certified to receive food stamps (hereafter referred to as "direct certification"), a school that had been using direct certification would be allowed to produce a current direct certification roster for the school. The percentage of enrolled students directly certified during the base year would be compared to the percentage of enrolled students currently eligible because of their participation in the Food Stamp Program to assess whether the income level of the school's population remained stable. (Since this method uses food stamp participation data, and food stamp eligibility standards account for inflation, this method would inherently adjust for inflation). Additional sources include Food Distribution Program on Indian Reservations data, statistical sampling of the school's population using the application or equivalent income measurement process and the Temporary Assistance for Needy Families data (provided that the eligibility standards were the same or more restrictive in the base year as the current year with allowance for inflation).

If a school food authority of a participating school would like to establish the income level of the school's population using alternate sources of socioeconomic data, the use of such data sources would have to be approved by FNS. The school food

authority of a participating school would submit a request to use alternate sources of socioeconomic data through their State agency to their FNS Regional Office for review and approval. School food authorities would be required to use socioeconomic data reflective of the area from which the school draws attendance or data reflective of the school's population. In selecting alternate sources of socioeconomic data, school food authorities would also need to consider: (a) Whether the data effectively measures the income level of the school's population and (b) whether equivalent data is available for both the base year and the current year. Generally, census data would only be acceptable if it provided information reflective of both the base year and the current year.

Under this proposed rule, the local school food authority of a participating school would be responsible for collecting and evaluating the socioeconomic data to establish that the income level of the school's population remained stable, declined or had only negligible improvement. State agencies would be responsible for reviewing and approving or denying the socioeconomic data as submitted by school food authorities. FNS Regional Offices would be responsible for approving the use of alternate sources of socioeconomic data. For both pre-approved and alternate sources of socioeconomic data, relative measurements (such as the percentage of families living below the Federal Poverty Level or median family income) would be considered a better measurement of the income composition of the area than absolute measures (such as the number of households living below the Federal Poverty Level). Under this proposed rule, the State agency's approval of an extension would allow a school to continue receiving reimbursement through one of the alternate meal counting procedures. Therefore, State agencies are reminded that, under this proposed rule, any improper payments resulting from a State agency's approval of extension requests would be subject to the recovery provisions of § 210.19(c).

Paragraphs (c)(1)(ii) and (e)(1)(ii) would establish that the income level of the school population would be considered to have had negligible improvement if there is a 5.0% or less improvement over the base year (after adjusting for inflation) in the level of the socioeconomic indicator which is used to establish the income level of the school's population. The Department believes that "5.0% or less" allows for minor fluctuations in data and at the

same time ensures that any meaningful improvement in economic conditions would preclude a school from receiving an extension.

For example, 74 percent of the school's population is certified to receive food stamps in the base year. Five percent of 74 percent is equal to 3.7 percentage points ( $.05 \times .74 = .037$ ). Therefore, an extension may be granted if the percentage of the population currently certified to receive food stamps is no lower than 70.3% ( $.74 - .037 = .703$  or 70.3%). Note that rounding rules do not apply. In this example, current food stamp eligibility standards account for inflation so separate inflationary adjustments would not need to be made.

#### *The Free and Reduced Price Policy Statement*

Section 245.9(f), *Policy statement requirement*, of this proposed rule would require school food authorities to amend their Free and Reduced Price Policy Statement to include a list of all schools participating in Provision 1, Provision 2, and Provision 3 and, for each school, the initial year of implementing the provision, the years the cycle is expected to remain in effect, the year the provision must be reconsidered, and the available and approved socioeconomic data that will be used in the reconsideration. Additionally, the school food authority would be required to certify that the school(s) meet the criteria for participating in the special assistance provisions, as specified in § 245.9, as appropriate.

#### *Record Retention*

Section 245.9(g), *Recordkeeping*, of this proposed rule would require that school food authorities of schools participating under Provision 2 or Provision 3 retain records for the base year and succeeding years for specified time periods. The Department believes that it is imperative that accurate records be retained by the school food authority of a school implementing one of the provisions. Accordingly, paragraph (g) stipulates that the failure to maintain records would result in the State agency requiring the school to return to standard meal counting and claiming procedures because the level of federal reimbursement could not be justified. The failure to maintain records could also result in fiscal action. Be aware that base year records would need to be retained during the time Provision 2 or Provision 3 is in force, plus 3 years for audit or review purposes. Commenters should note that while base year records would be retained for

several years, other records such as free and reduced price applications and verification documentation, would not be generated during non-base years and, therefore, would provide some offset to the base year record retention.

Paragraph (g)(1), *Base year records*, would require school food authorities of schools participating under Provision 2 or Provision 3 to retain all records as listed in § 210.15(b) and § 220.7(e) which relate to the base year and support subsequent year earnings. In addition, enrollment data for the base year would have to be retained for schools under Provision 3. Such base year records would be required to be retained during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement for the fiscal year which employed base year data. For example, a school may have established a Provision 2 base year in school year 1998–99, received two 4-year extensions, then returned to standard procedures school year 2010–11. If the school food authority of the Provision 2 school filed the final Claim for Reimbursement for fiscal year 2010 in November 2010, the Provision 2 base year records would be required to be retained until November 2013 (or longer if there are open audit issues).

School food authorities that conduct a streamlined base year would be required to retain all records related to the statistical methodology and the determination of new claiming percentages. Such records would have to be retained during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement for the fiscal year which employed streamlined base year data. In either case, if audit findings had not been resolved, base year and extension records would have to be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

Paragraph (g)(2), *Non-base year records*, would require school food authorities of schools participating under Provision 2 or Provision 3 to retain records of total daily meal counts of reimbursable meals, edit checks, on-site review documentation. In addition, school food authorities of schools participating under Provision 3 would be required to retain records of annual enrollment data which is used to adjust the level of assistance and the number of operating days for each Provision 3 school. Such records would have to be retained for three years after submission of the final Claim for Reimbursement for the fiscal year. School food authorities

which receive an extension of a provision would be required to retain records of the available and approved socioeconomic data used to determine the income level of the school's population for the base year and year(s) in which extension(s) were made. State agencies would also be required to retain copies of all records of the available and approved socioeconomic data which was used to determine the income level of a school's population for any school granted an extension. Such records would be required to be retained during the period the provision was in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement for the fiscal year which employed base year data. If audit findings have not been resolved, records would have to be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

The provisions of this proposed rule are intended to affect only those reporting or recordkeeping provisions associated with the implementation of Provision 2 or Provision 3. The reporting and recordkeeping requirements associated with the implementation of 7 CFR parts 210 and 220 which are unrelated to the implementation of Provisions 2 or 3 would remain unchanged.

#### *Availability of Documentation*

Under redesignated § 245.9(h), *Availability of documentation*, of this proposed rule, school food authorities would be required to make documentation available for purposes of monitoring and audit, upon request. In addition, upon request from FNS, school food authorities under Provision 2 or Provision 3 or a State agency would be required to submit to FNS all data and documentation used in granting extensions. FNS intends to review such data to evaluate the procedures for granting extensions.

#### *Return to Standard Procedures*

Under redesignated § 245.9(i), *Return to standard meal counting and claiming*, of this proposed rule, the words "in the following year" would be removed and the words "at any time" would be added in their place to permit schools to return to standard notification and application procedures in the current year if standard procedures better suit the school's program needs.

#### *Puerto Rico and Virgin Islands*

Redesignated § 245.9(j), *Puerto Rico and Virgin Islands*, of this proposed rule would be amended to include Provision

3 by adding a reference to paragraphs (c), (d) and (e), as applicable.

#### *Statistical Sampling*

Section 245.9(k), *Statistical income measurements*, of this proposed rule would provide the minimum requirements for statistical validity for income measurements used under this section. In order to be considered statistically valid, such measurements must meet five standards. First, the sample frame, or pool of students from which the sample of students will be selected, must be limited to enrolled students who have access to the school meals program. Second, students must be randomly selected from the sample frame. Third, the response rate to the survey shall be at least 80 percent. This means that all information necessary to compute household income as a percentage of the poverty level shall be collected from at least 80 percent of the students in the sample. Fourth, the number of households that complete the survey shall be sufficiently large so that it can be asserted with 95 percent confidence that the true percentage of students who are: (1) Enrolled in the school; (2) have access to the school meals program; and (3) are eligible for free meals is within plus or minus 2.5 percentage points of the point estimate determined from the sample. For example, if a sample's point estimate of the percentage of students who are: (1) Enrolled in the school; (2) have access to the school meals program; and (3) are eligible for free meals is 85 percent and the 95 percent confidence interval ranges from 84.2 percent to 86.5 percent, then it can be asserted with 95 percent confidence that the interval 84.2 percent to 86.5 percent contains the true percentage of students eligible for free meals. Fifth, to minimize statistical bias, data from all households that complete the survey instrument must be used when calculating enrollment based claiming percentages. For example, if 92% of randomly selected students responded to the survey, the school could not discard a selection of 12% of the respondents to bring the response rate to the minimally acceptable rate of 80%.

#### *Action by State Agencies and FNSROs*

Section 245.11, *Action by State agencies and FNSROs*, paragraph (h) of this proposed rule would require the State agency to take action to ensure the proper implementation of Provisions 1, 2, and 3. State agencies would be required to remind schools through written notification, sent on or before February 15 of the fourth year of a school's cycle, that the school must

return to standard procedures unless they exercise the option to request an extension. The Department is proposing that the notice be sent by February 15 to allow school food authorities sufficient time to gather appropriate data to request an extension or prepare for returning to standard procedures, a new provision or a streamlined base year.

Under this proposed rule, if a State agency determined at any time that the school or school food authority did not maintain records for a participating school, the State agency would require the school to return to standard application and meal counting procedures.

In addition, a State agency would be required to take action if it determined at any time that: (1) The school or school food authority did not correctly implement Provision 1, Provision 2 or Provision 3; (2) meal quality declined because of the implementation of the provision; (3) participation in the program declined over time; (4) eligibility determinations were incorrectly made; or (5) meal counts were incorrectly taken or incorrectly applied. State agency actions could include technical assistance, adjustments to the level of financial assistance for the current school year, or requiring that the school return to standard application and meal counting procedures, as appropriate.

Paragraph (h)(4), *State agency recordkeeping*, would require State agencies to retain records of the following information annually for the month of October and, upon request, submit to FNS:

1. The number of schools using Provision 2 and Provision 3 for NSLP;
2. The number of schools using Provision 2 and Provision 3 for SBP only;
3. The number of extensions granted to schools using Provision 2 or Provision 3 during the previous school year;
4. The number of extensions granted during the previous year on the basis of Food Stamp/FDPIR data;
5. The number of extensions granted during the previous year on the basis of Temporary Assistance for Needy Families (TANF) data;
6. The number of extensions granted during the previous year on the basis of local data collected by the city or county zoning and economic planning office;
7. The number of extensions granted during the previous year on the basis of applications collected from enrolled students;
8. The number of extensions granted during the previous year on the basis of

statistically valid surveys of enrolled students; and

9. The number of extensions granted during the previous year on the basis of alternate data as approved by the State agency's respective FNS Regional Office.

#### **Executive Order 12866**

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

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

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally prepares a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

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

#### **Regulatory Flexibility Act**

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The Under Secretary for Food, Nutrition, and Consumer Services has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would reduce school food authority administrative burdens, streamline program operations and enhance access to the programs by needy children. The Department of Agriculture (the Department or USDA) does not anticipate any significant fiscal impact would result from implementation of this proposed rulemaking.

#### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule, when finalized, would 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 proposed rule would not have retroactive effect unless so specified in the DATES section of the final rule preamble. Prior to any judicial challenge to the provisions of this rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program and the School Breakfast 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 as established pursuant to 7 CFR 210.18(q) and 220.14(e); (2) 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 as established pursuant to 7 CFR 235.11(f).

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other agencies to comment on proposed information collection.

Written comments on this proposed information collection must be received on or before April 7, 2000.

Comments concerning the information collection aspects of this proposed rule should be sent to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for the Food and Nutrition Service. A copy of these comments may also be sent to Mr. Robert Eadie at the address listed in the **ADDRESS** section of this preamble. Commenters are asked to separate their comments on the information collection requirements from their comments on the remainder of the proposed rule.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation between 30 to 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having full

consideration if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulation.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information. The chart below identifies only the burden hours associated with those sections of 7 CFR part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, that are proposed to be amended under this rule, Alternatives to Standard Application and Meal Counting Procedures. These burden hours represent proposed changes to the current reporting and recordkeeping requirements and incorporate additional proposed requirements.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

	Section 7 CFR	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
<b>SFAs develop notice to parents containing eligibility criteria and maintain documentation. Not required for Provision 2 and 3</b>					
Existing .....	245.5(a)(1)	20,780	1	.25	5,195
Proposed .....	245.9(b-e)	20,280	1	.25	5,070
<b>SFA recordkeeping requirements for Provision 2 and 3</b>					
Existing .....	.....	0	0	0	0
Proposed .....	245.9(h)	500	1	4	2,000
<b>SFAs amend Free and Reduced Price Policy statement</b>					
Existing .....	245.9(c)	121	1	.10	12
Proposed .....	245.9(f)	500	1	.50	250
<b>SFAs develop and distribute a public release with information similar to letter to parents. Not required for Provision 2 and 3</b>					
Existing .....	245.5(a)(2)	20,780	1	.25	5,195
Proposed .....	245.9(b-e)	20,280	1	.25	5,070
<b>SFAs develop and distribute supplies of form to be used by households to apply for benefits. Not required for Provision 2 and 3</b>					
Existing .....	245.6(a)	20,780	1	1	20,780
Proposed .....	245.9(b-e)	20,280	1	1	20,280
<b>SA recordkeeping requirements for Provision 2 and 3</b>					
Existing .....	.....	0	0	0	0
Proposed .....	245.9(g)	54	1	12	648
<b>SAs maintain information on schools participating and extensions granted</b>					
Existing .....	.....	0	0	0	0
Proposed .....	245.11(h)	54	1	3	162
<b>Schools distribute applications forms to households. Not required for Provision 2 and 3</b>					
Existing .....	245.6	101,000	1	.25	25,250
Proposed .....	245.9	97,000	1	.25	24,250
<b>Schools review applications and make eligibility determinations. Not required for Provision 2 and 3</b>					
Existing .....	245.6(b)	101,000	41	.052	215,332
Proposed .....	245.9	97,000	41	.052	206,804
Total Existing Recordkeeping for Part 245 ..	.....	.....	.....	.....	369,782
Total Proposed .....	.....	.....	.....	.....	362,552
Difference .....	.....	.....	.....	.....	-7,230

\* SA—State agency; SFA—school food authority.

ESTIMATED ANNUAL REPORTING BURDEN

	Section 7 CFR	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
<b>SFAs submit to SAs data and documentation used in granting extensions under Provision 2 and 3</b>					
Existing .....	.....	0	0	0	0
Proposed .....	245.9(h)	500	1	.25	125
<b>SAs submit to FNS data and documentation used in granting extensions under Provision 2 and 3</b>					
Existing .....	.....	0	0	0	0
Proposed .....	245.11 (h)(4)	54	1	4	216
Total Existing Reporting for Part 245 .....	.....	.....	.....	.....	658,367
Total Proposed .....	.....	.....	.....	.....	658,708
Difference .....	.....	.....	.....	.....	+341

\* SA—State agency; SFA—school food authority.

*Title:* 7 CFR Part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

*OMB Number:* 0584–0026.

*Expiration Date:* 09/30/2001.

*Type of Request:* Revision of existing collection

*Abstract:* This proposed rule would amend the regulations governing the procedures for determining eligibility for free and reduced price meals in the National School Lunch Program and the School Breakfast Program. This proposal would allow for an extension of Provision 2 procedures for an additional 4 years and provide for a new alternative, “Provision 3”. Under Provision 3, schools serve reimbursable meals at no charge to all children for 4 consecutive years. State agencies and school food authorities would be required to maintain specific documents that were used to determine the eligibility of a school to serve free meals to all children participating in the school nutrition programs, and also would be required to submit such data to FNS upon request. For schools choosing to participate in one of the alternate application and meal counting procedures, this proposed rule would also codify the alternate counting and claiming provisions of Public Law 103–448 which have been implemented, and codify revisions to the counting and claiming provisions authorized by Public Laws 104–193 and 105–336. State agencies and school food authorities recordkeeping burdens would initially increase but after the “base year” the burden hours are expected to decrease because the determinations of eligibility for free and reduced price meals would not be made as frequently. Reporting hours would also increase marginally due to the

requirement to track participation in these provisions.

**Executive Order 12372**

The National School Lunch Program and the School Breakfast Program, which are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.556, respectively, 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 published at 48 FR 29114, June 24, 1983.)

**List of Subjects in 7 CFR Part 245**

Food assistance programs, Grant programs-education, Civil rights, Food and Nutrition Service, Grant Programs-health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR Part 245 is proposed to be amended as follows:

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

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

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

2. In § 245.2:

a. Paragraph (f-2) is added; and

b. Paragraph (j) is amended by removing the word “two” and adding, in its place, the word “three”.

The addition reads as follows:

**§ 245.2 Definitions.**

\* \* \* \* \*

(f-2) *Operating day* means a day that reimbursable meals are offered to

eligible students under the National School Lunch Program or School Breakfast Program.

\* \* \* \* \*

3. In § 245.9:

a. A heading is added to paragraph (a) to read “*Provision 1.*”;

b. Paragraphs (b)–(g) are revised and paragraphs (h)–(k) are added.

The revisions and additions read as follows:

**§ 245.9 Special assistance certification and reimbursement alternatives.**

\* \* \* \* \*

(b) *Provision 2.* A school food authority may certify children for free and reduced price meals for up to 4 consecutive school years if a school serves meals at no charge to all enrolled children in that school; provided that public notification and eligibility determinations shall be in accordance with § 245.5 and § 245.3, respectively, during the base year. For purposes of this paragraph (b), the term *base year* means the last year for which eligibility determinations were made and meal counts by type were taken or the year in which a school conducted a streamlined base year as authorized under paragraph (c)(2)(iii) of this section. Schools shall offer reimbursable meals to all students at no charge during the Provision 2 base year. The Provision 2 base year is the first year, and is included in the 4-year cycle. The following requirements apply:

(1) *Free meals.* Participating schools shall serve reimbursable meals, as determined by a point of service observation, to all participating children at no charge.

(2) *Cost differential.* The school food authority of a school participating in Provision 2 shall pay, with funds from non-Federal sources, the difference between the cost of serving lunches

and/or breakfasts at no charge to all participating children and Federal reimbursement.

(3) *Meal counts.* During the base year, even though meals are served to participating students at no charge, schools shall take daily meal counts of reimbursable meals by type (free, reduced price, and paid) at the point of service. During the non-base years, participating schools shall take total daily meal counts (not by type) of reimbursable meals at the point of service. For the purpose of calculating reimbursement claims in the non-base years, school food authorities shall establish monthly or annual percentages, as follows:

(i) *Monthly percentages.* The monthly meal counts of the actual number of meals served by type (free, reduced price, and paid) during the base year shall be converted to monthly percentages for each meal type. These percentages shall be derived by dividing the monthly total number of meals served of one meal type (e.g., free meals) by the total number of meals served in the same month for all meal types (free, reduced price and paid meals). The percentages for the reduced price meal and paid meal types shall be calculated exactly as the above example for free meals. These three percentages calculated at the end of each month of the first school year, shall be multiplied by the corresponding monthly meal count total of all reimbursable meals served in the second, third and fourth consecutive school years, and applicable extensions, in order to calculate reimbursement claims for free, reduced price and paid meals each month: or,

(ii) *Annual percentages.* The actual number of all meals served by type (free, reduced price, and paid) during the base year shall be converted to an annual percentage for each meal type. Annual percentages shall be based on a full school year, or equivalent number of months. Each percentage is derived by dividing the annual total number of meals served of one meal type (e.g., free meals) by the total number of meals served for all meal types (i.e., free, reduced price and paid). The percentages for the reduced price meal and paid meal types are calculated using the same method as the above example for free meals. These three percentages shall be multiplied by the monthly meal count total of all reimbursable meals served in each month of the second, third and fourth consecutive school years, and applicable extensions, in order to calculate reimbursement claims for free,

reduced price and paid meals each month.

(c) *Extension of Provision 2.* At the end of the initial cycle, and each subsequent 4-year cycle, the State agency may allow a school to continue under Provision 2 for another 4 years using the claiming percentages calculated during the most recent base year if the school food authority can establish, through available and approved socioeconomic data, that the income level of the school's population, as adjusted for inflation, has remained stable, declined or has had only negligible improvement since the base year.

(1) *Extension criteria.* School food authorities must submit to the State agency available and approved socioeconomic data to establish whether the income level of a school's population, as adjusted for inflation, remained constant with the income level of the most recent base year.

(i) *Available and approved sources of socioeconomic data.* Pre-approved sources of socioeconomic data which may be used by school food authorities to establish the income level of the school's population are: Local data collected by the city or county zoning and economic planning office; unemployment data; local Food Stamp certification data including direct certification; Food Distribution Program on Indian Reservations data; statistical sampling of the school's population using the application or equivalent income measurement process; and, Temporary Assistance for Needy Families data (provided that the eligibility standards were the same or more restrictive in the base year as the current year with allowance for inflation). In order to grant an extension using pre-approved socioeconomic data sources, State agencies must review and evaluate the socioeconomic data submitted by the school food authority to ensure that it is reflective of the school's population, provides equivalent data for both the base year and the last year of the current cycle, and demonstrates that the income level of the school's population, as adjusted for inflation, has remained stable, declined or had only negligible improvement. If the school food authority wants to establish the income level of the school's population using alternate sources of socioeconomic data, the use of such data must be approved by FNS. Data from alternate sources must be reflective of the school's population, be equivalent data for both the base year and the last year of the current cycle, and effectively measure whether the income level of the school's

population, as adjusted for inflation, has remained stable, declined or had only negligible improvement.

(ii) *Negligible improvement.* The change in the income level of the school's population shall be considered negligible if there is a 5.0% or less improvement, after adjusting for inflation, over the base year in the level of the socioeconomic indicator which is used to establish the income level of the school's population.

(2) *Extension not approved.* The State agency shall not approve an extension of Provision 2 procedures in those schools for which the available and approved socioeconomic data does not reflect the school's population, is not equivalent data for the base year and the last year of the current cycle, or shows over 5.0% improvement, after adjusting for inflation, in the income level of the school's population. Such schools shall:

(i) *Return to standard meal counting and claiming.* Return to standard meal counting and claiming procedures;

(ii) *Establish a new base year.* Establish a new Provision 2 base year by taking new free and reduced price applications, making new free and reduced price eligibility determinations, and taking point of service counts of free, reduced price and paid meals for the first year of the new cycle. For these schools, the new Provision 2 cycle will be 4 years. Schools electing to establish a Provision 2 base year shall follow procedures contained in paragraph (b) of this section;

(iii) *Establish a streamlined base year.* In accordance with guidance established by FNS, establish a new Provision 2 base year by determining program eligibility on the basis of household size and income for a statistically valid portion of the school's enrollment as of October 31, or other date approved by the State agency. The statistically valid measurement of the school's enrollment must be obtained during the first year of the new cycle. Using the data obtained, enrollment-based claiming percentages representing a proportion of the school's population eligible for free, reduced price and paid benefits shall be developed and applied to total daily meal counts of reimbursable meals at the point of service. For schools electing to participate in Provision 2, these percentages shall be used for claiming reimbursement for each year of the new cycle and any extensions; or

(iv) *Establish a Provision 3 base year.* Schools may convert to Provision 3 using the procedures contained in paragraphs (e)(2)(ii) or (e)(2)(iii) of this section.

(d) *Provision 3.* A school food authority of a school which serves all

enrolled children in that school reimbursable meals at no charge during any period for up to 4 consecutive school years may elect to receive Federal cash reimbursement and commodity assistance at the same level as the total Federal cash and commodity assistance received by the school during the last year that eligibility determinations for free and reduced price meals were made and meals were counted by type—free, reduced price and paid—at the point of service. Such cash reimbursement and commodity assistance shall be adjusted for each of the 4 consecutive school years pursuant to paragraph (d)(4) of this section. For purposes of this paragraph (d), the term *base year* means the last year for which eligibility determinations were made and meal counts by type were taken or the year in which a school conducted a streamlined base year as authorized under paragraph (e)(2)(iii) of this section. Reimbursable meals may be offered to all students at no charge or students eligible for reduced price and paid meal benefits may be charged for meals during the Provision 3 base year. The Provision 3 base year immediately precedes, and is not included in, the 4-year cycle. This alternative shall be known as Provision 3, and the following requirements shall apply:

(1) *Free meals.* Participating schools shall serve reimbursable meals, as determined by a point of service observation, to all participating children at no charge during non-base years of operation.

(2) *Cost differential.* The school food authority of a participating school shall pay, with funds from non-Federal sources, the difference between the cost of serving meals at no charge to all participating children and Federal reimbursement.

(3) *Meal counts.* Participating schools shall take daily meal counts of reimbursable meals served to participating children at the point of service during the non-base years. Such meal counts shall be retained at the local level in accordance with paragraph (g) of this section. State agencies may require the submission of the meal counts on the school food authority's Claim for Reimbursement or through other means. In addition, school food authorities must establish a system of oversight using the daily meal counts to ensure that participation has not declined significantly from the base year. If participation declines significantly, the school food authority shall provide the school with technical assistance, adjust the level of financial assistance received through the State agency or return the school to standard

application and meal counting procedures, as appropriate. In residential child care institutions (RCCIs), the State agency may approve implementation of Provision 3 without the requirement to obtain daily meal counts of reimbursable meals at the point of service if:

(i) the State agency determines that enrollment, participation and meal counts do not vary; and

(ii) there is an approved mechanism in place to ensure that students will receive reimbursable meals.

(4) *Annual adjustments.* The State agency or school food authority shall make annual adjustments for enrollment and inflation to the total Federal cash and commodity assistance received by a Provision 3 school in the base year. The adjustments shall be made for increases and decreases in enrollment of children with access to the program(s). The annual adjustment for enrollment shall be based on the school's base year enrollment as of October 31 compared to the school's current year enrollment as of October 31. Another date within the base year may be used if it is approved by the State agency, and provides a more accurate reflection of the school's enrollment or accommodates the reporting system in effect in that State. If another date is used for the base year, the current year date must correspond to the base year date of comparison. State agencies may, at their discretion, make additional adjustments to a participating school's enrollment more frequently than once per school year. If more frequent enrollment is calculated, it must be applied for both upward and downward adjustments. The annual adjustment for inflation shall be effected through the application of the current year rates of reimbursement. To the extent that the number of operating days in the current school year differs from the number of operating days in the base year, and the difference affects the number of meals, a prorata adjustment shall also be made to the base year level of assistance, as adjusted by enrollment and inflation. Upward and downward adjustments to the number of operating days shall be made. Such adjustment shall be effected by either:

(i) Multiplying the average daily meal count by type (free, reduced price and paid) by the difference in the number of operating days between the base year and the current year and subtract that number of meals from the Claim for Reimbursement. In developing the average daily meal count by type for the current school year, schools shall use the base year data adjusted by enrollment; or,

(ii) Multiplying the dollar amount otherwise payable (i.e., the base year level of assistance, as adjusted by enrollment and inflation) by the ratio of the number of operating days in the current year to the number of operating days in the base year.

(5) *Reporting requirements.* The State agency shall submit to the Department on the monthly FNS-10, Report of School Programs Operations, the number of meals, by type, as an adjustment to base year meal counts; or, the number of meals, by type, constructed to reflect the adjusted levels of cash assistance. State agencies may employ either method to effect payment of reimbursement for Provision 3 schools.

(e) *Extension of Provision 3.* The State agency may allow a school to continue under Provision 3 for subsequent 4-year cycles without taking new free and reduced price applications and meal counts by type. State agencies may grant an extension of Provision 3 if the school food authority can establish through available and approved socioeconomic data that the income level of the school's population, as adjusted for inflation, has remained stable, declined, or has had only negligible improvement since the most recent base year.

(1) *Extension criteria.* School food authorities must submit to the State agency available and approved socioeconomic data to establish whether the income level of the school's population, as adjusted for inflation, remained constant with the income level of the most recent base year.

(i) *Available and approved sources of socioeconomic data.* Pre-approved sources of socioeconomic data which may be used by school food authorities to establish the income level of the school's population are: local data collected by the city or county zoning and economic planning office; unemployment data; local Food Stamp certification data including direct certification; Food Distribution Program on Indian Reservations data; statistical sampling of the school's population using the application process; and, Temporary Assistance for Needy Families data (provided that the eligibility standards were the same or more restrictive in the base year as the current year with allowance for inflation). In order to grant an extension using pre-approved socioeconomic data sources, State agencies must review and evaluate the socioeconomic data submitted by the school food authority to ensure that it is reflective of the school's population, provides equivalent data for both the base year and the last year of the current cycle,

and demonstrates that the income level of the school's population, as adjusted for inflation, has remained stable, declined or had only negligible improvement. If the school food authority wants to establish the income level of the school's population using alternate sources of data, the use of such data must be approved by FNS. Data from alternate sources must be reflective of the school's population, be equivalent data for both the base year and the last year of the current cycle, and effectively measure whether the income level of the school's population, as adjusted for inflation, has remained stable, declined or had only negligible improvement.

(ii) *Negligible improvement.* The change in the income level of the school population shall be considered negligible if there is a 5.0% or less improvement, after adjusting for inflation, over the base year in the level of the socioeconomic indicator which is used to establish the income level of the school's population.

(2) *Extension not approved.* Schools for which the available and approved socioeconomic data does not reflect the school's population, is not equivalent data for the base year and the last year of the current cycle, or shows over 5.0% improvement after adjusting for inflation, shall not be approved for an extension. Such schools shall:

(i) *Return to standard meal counting and claiming.* Return to standard meal counting and claiming procedures;

(ii) *Establish a new base year.* Establish a new Provision 3 base year by taking new free and reduced price applications, making new free and reduced price eligibility determinations, and taking point of service counts of free, reduced price and paid meals for the first year of the new cycle. Schools electing to establish a Provision 3 base year shall follow procedures contained in paragraph (d) of this section;

(iii) *Establish a streamlined base year.* In accordance with guidance established by FNS, establish a new Provision 3 base year by providing free meals to all participating children and determining program eligibility on the basis of household size and income for a statistically valid portion of the school's enrollment as of October 31, or other date approved by the State agency. The statistically valid measurement of the schools enrollment shall be obtained during the base year of the new cycle. Using the data obtained, enrollment based claiming percentages, representing a proportion of the school's population eligible for free, reduced price and paid benefits, shall be developed and applied to total daily counts of reimbursable meals at the

point of service during the base year. For schools electing to participate in Provision 3, the streamlined base year level of assistance shall be adjusted for enrollment, inflation and, if applicable, operating days for each subsequent year of the new cycle and any extensions; or

(iv) *Establish a Provision 2 base year.* Schools may convert to Provision 2 using the procedures contained in paragraphs (c)(2)(ii) or (c)(2)(iii) of this section.

(f) *Policy statement requirement.* A school food authority of a Provision 1, 2, or 3 school shall amend its Free and Reduced Price Policy Statement, specified in § 245.10, to include a list of all schools participating in Provision 1, 2, or 3, and for each school, the initial year of implementing the provision, the years the cycle is expected to remain in effect, the year the provision must be reconsidered, and the available and approved socioeconomic data that will be used in the reconsideration. The school food authority shall also certify that the school(s) meet the criteria for participating in the special assistance provisions, as specified in paragraphs (a), (b), (c), (d) or (e) of this section, as appropriate.

(g) *Recordkeeping.* School food authorities of schools implementing Provision 2 and Provision 3 shall retain records related to the implementation of the provision. Failure to maintain sufficient records shall result in the State agency requiring the school to return to standard meal counting and claiming procedures and/or fiscal action.

(1) *Base year records.* A school food authority shall ensure that records as specified in § 210.15(b) and § 220.7(e) of this chapter which support subsequent year earnings are retained for the base year for schools under Provision 2 and Provision 3. In addition, records of enrollment data for the base year shall be retained for schools under Provision 3. Such base year records shall be retained during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement which employed the base year data. School food authorities that conduct a streamlined base year shall retain all records related to the statistical methodology and the determination of claiming percentages. Such records shall be retained during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement which employed the streamlined base year data. In either case, if audit findings have not been resolved, base year records shall be

retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

(2) *Non-base year records.* A school food authority shall ensure that non-base year records pertaining to total daily meal count information, edit checks and on-site review documentation are retained for schools under Provision 2 and Provision 3. In addition, a school food authority shall ensure that non-base year records pertaining to annual enrollment data and the number of operating days, which are used to adjust the level of assistance, are retained for schools under Provision 3. Such records shall be retained for three years after submission of the final Claim for Reimbursement for the fiscal year. School food authorities that are granted an extension of a provision shall retain records of the available and approved socioeconomic data which is used to determine the income level of the school's population for the base year and year(s) in which extension(s) are made. In addition, State agencies must also retain records of the available and approved socioeconomic data which is used to determine the income level of the school's population for the base year and year(s) in which extensions are made. Such records shall be retained at both the school food authority level and at the State agency during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement which employed base year data. If audit findings have not been resolved, records shall be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

(h) *Availability of documentation.* Upon request, the school food authority shall make documentation including enrollment data, participation data, available and approved socioeconomic data that was used to grant the extension, if applicable, or other data available at any reasonable time for monitoring and audit purposes. In addition, upon request from FNS, school food authorities under Provision 2 or Provision 3, or State agencies shall submit to FNS all data and documentation used in granting extensions including documentation as specified in paragraphs (g) and (h) of this section.

(i) *Return to standard meal counting and claiming.* A school food authority may return a school to standard notification, certification and counting procedures at any time if standard procedures better suit the school's program needs. The school food

authority will then notify the State agency.

(j) *Puerto Rico and Virgin Islands.* Puerto Rico and the Virgin Islands, where a statistical survey procedure is permitted in lieu of eligibility determinations for each child, may either maintain their standard procedures in accordance with § 245.4 or may opt for Provision 2 or Provision 3 provided the eligibility requirements as set forth in paragraphs (a), (b), (c), (d) and (e) as applicable, of this section are met.

(k) *Statistical income measurements.* Statistical income measurements that are used under this part shall meet the following standards:

(1) The sample frame shall be limited to enrolled students who have access to the school meals program,

(2) A sample of enrolled students shall be randomly selected from the sample frame,

(3) The response rate to the survey shall be at least 80 percent,

(4) The number of households that complete the survey shall be sufficiently large so that it can be asserted with 95 percent confidence that the true percentage of students who are enrolled in the school, have access to the school meals program, and are eligible for free meals is within plus or minus 2.5 percentage points of the point estimate determined from the sample, and,

(5) To minimize statistical bias, data from all households that complete the survey must be used when calculating the enrollment based claiming percentages for § 245.9(c)(2)(iii) and § 245.9(e)(2)(iii) of this section.

4. In § 245.11, a new paragraph (h) is added to read as follows:

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

\* \* \* \* \*

(h) The State agency shall take action to ensure the proper implementation of Provisions 1, 2, and 3. Such action shall include:

(1) *Notification.* Notifying school food authorities of schools implementing Provision 2 and/or 3 that they must return to standard application and meal counting procedures or apply for an extension under Provision 2 or 3. Such notification must be in writing, and be sent no later than February 15 of the fourth year of a school's current cycle;

(2) *Return to standard procedures.* Returning the school to standard application and meal counting procedures if the State agency determines that records were not maintained; and,

(3) *Technical assistance.* Securing technical assistance, adjustments to the

level of financial assistance for the current school year, and returning the school to standard application and meal counting procedures, as appropriate, if a State agency determines at any time that:

(i) The school or school food authority has not correctly implemented Provision 1, Provision 2 or Provision 3;

(ii) Meal quality has declined because of the implementation of the provision;

(iii) Participation in the program has declined over time;

(iv) Eligibility determinations were incorrectly made; or

(v) Meal counts were incorrectly taken or incorrectly applied.

(4) *State agency recordkeeping.* State agencies shall retain the following information annually for the month of October and, upon request, submit to FNS:

(i) The number of schools using Provision 2 and Provision 3 for NSLP;

(ii) The number of schools using Provision 2 and Provision 3 for SBP only;

(iii) The number of extensions granted to schools using Provision 2 or Provision 3 during the previous school year;

(iv) The number of extensions granted during the previous year on the basis of Food Stamp/FDPIR data;

(v) The number of extensions granted during the previous year on the basis of Temporary Assistance for Needy Families (TANF) data;

(vi) The number of extensions granted during the previous year on the basis of local data collected by a city or county zoning and/or economic planning office;

(vii) The number of extensions granted during the previous year on the basis of applications collected from enrolled students;

(viii) The number of extensions granted during the previous year on the basis of statistically valid surveys of enrolled students; and

(ix) the number of extensions granted during the previous year on the basis of alternate data as approved by the State agency's respective FNS Regional Office.

Dated: January 28, 2000.

**Shirley R. Watkins,**

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

[FR Doc. 00-2550 Filed 2-4-00; 8:45 am]

**BILLING CODE 3410-30-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Airspace Docket No. 00-ANM-01]

**Proposed Revision of Class E Airspace, Englewood, CO**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This proposal would amend the Englewood, CO, Class E airspace to accommodate the revision of a Standard Instrument Approach Procedure (SIAP) at the Centennial Airport, Englewood, CO.

**DATES:** Comments must be received on or before March 23, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM-520, Federal Aviation Administration, Docket No. 00-ANM-01, 1601 Lind Avenue SW, Renton, Washington 98055-4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Dennis Ripley, ANM-520.6, Federal Aviation Administration, Docket No. 00-ANM-01, 1601 Lind Avenue SW, Renton, Washington 98055-4056; telephone number: (425) 227-2527.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed stamped postcard on which the