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 Parts 245 and 272

RIN 0584–AE10

National School Lunch Program: Direct Certification Continuous Improvement Plans Required by the Healthy, Hunger-Free Kids Act of 2010

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the National School Lunch Program (NSLP) regulations to incorporate provisions of the Healthy, Hunger-Free Kids Act of 2010 designed to encourage States to improve direct certification efforts with the Supplemental Nutrition Assistance Program (SNAP). The provisions would require State agencies to meet certain direct certification performance benchmarks and to develop and implement continuous improvement plans if they fail to do so. This rule also proposes to amend NSLP and SNAP regulations to provide for the collection of data elements needed to compute each State's direct certification performance rate to compare with the new benchmarks.

DATES: Comments on rule provisions must be received on or before April 2, 2012 to be assured of consideration.

Comments on the information collection requirements associated with this rule must be received by April 2, 2012.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit comments on this proposed rule. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Vivian Lees, Chief, State Systems Support Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 639, Alexandria, Virginia 22302–1594.
- *Hand Delivery or Courier:* Deliver comments to 3101 Park Center Drive, Room 639, Alexandria, Virginia 22302–1594, during normal business hours of 8:30 a.m.–5 p.m.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. The Food and Nutrition Service will make the comments publicly available on the Internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Address any questions to Vivian Lees or Patricia B. von Reyn, State Systems Support Branch, at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

A. Legislative History Leading Up to This Rulemaking

Section 104 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265) amended section 9(b) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1758(b)) to require all local educational agencies (LEAs) that participate in the NSLP and/or School Breakfast Program to establish, by school year (SY) 2008–2009, a system to directly certify as eligible for free school meals children who are members of households receiving assistance under SNAP.

Section 4301 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) (42 U.S.C. 1758a) requires the Secretary of Agriculture, beginning in 2008, to assess the effectiveness of State and local efforts to directly certify such children for free school meals and to provide annual reports to Congress.

Section 101(b) of Public Law 111–296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), amended section 9(b)(4) of the NSLA (42 U.S.C. 1758(b)(4)) to establish and define required percentage benchmarks for directly certifying children who are members of households receiving assistance under SNAP. Section 101(b) further amended the NSLA to require that, beginning with SY 2011–2012, each State that does not meet the benchmark for a particular school year must develop, submit, and implement a continuous improvement plan (CIP) aimed at fully meeting the benchmarks and improving direct certification for the following school year. It also requires that the Secretary provide technical assistance to States agencies in developing and implementing CIPs.

These provisions of Section 101(b) of the HHFKA, which were effective October 1, 2010, were implemented through USDA Food and Nutrition Service (FNS) Memorandum SP 32–2011—*Child Reauthorization 2010: Direct Certification Benchmarks and Continuous Improvement Plans,* dated April 28, 2011, available at *http://www.fns.usda.gov/cnd/governance/Policy-Memos/2011/SP32-2011.pdf.* This rule proposes to incorporate these provisions into NSLP regulations.

B. New Requirements for Direct Certification Performance Benchmarks and Continuous Improvement Plans

Section 9(b)(4) of the NSLA, as amended by the HHFKA, sets specific State performance benchmarks for directly certifying for free school meals those children who are members of households receiving assistance under SNAP. States must directly certify for free school meals the following percentages of school-aged children from SNAP households:

- 80% for SY 2011–2012;
- 90% for SY 2012–2013; and
- 95% for SY 2013–2014 and for each school year thereafter.

Additionally, for each school year beginning with SY 2011–2012, the NSLA requires that FNS identify any State that directly certifies less than the required percentage of the total number of school-aged children in the State who are members of households receiving assistance under SNAP. This rule proposes that FNS would identify these States by calculating direct certification rates for each State and comparing them with the required benchmark. (See the next section, ''Data elements needed to compute States' direct certification rates for comparison to the benchmarks.'')

This proposed rule provides that after FNS notifies a State agency that its State did not meet the direct certification performance benchmark, the State agency would have 60 days to submit its

CIP to FNS for approval. The NSLA requires that CIPs include, at a minimum:

1. Specific measures that the State will use to identify more children who are eligible for direct certification, including improvements or modifications to technology, information systems, or databases;
2. A timeline for the State to implement these measures; and
3. Goals for the State to improve direct certification results for the following school year.

This proposal would add the word ''multiyear'' to the second component above, so that the CIP would include a multiyear timeline for the State to implement these measures. This is in acknowledgement of the possibility that by the time a State agency's CIP is submitted to FNS and approved, the new school year may already be underway.

In addition, we are proposing to add a fourth component to the minimum requirements for a CIP:

4. Information about the State's progress toward implementing other direct certification requirements.

This fourth component to the minimum requirements for a CIP would help ensure that States are in compliance with other direct certification requirements, such as the new provisions required by the Interim Rule, *Direct Certification and Certification of Homeless, Migrant and Runaway Children for Free School Meals* (76 FR 22785, April 25, 2011) at *http://www.fns.usda.gov/cnd/governance/regulations/2011-04-25.pdf.* State agencies would need, for example, to include information regarding their State's success at conducting direct certification efforts at least three times per year as well as their progress at phasing out the ''Letter Method'' as a form of direct certification with SNAP. For more guidance on the phase-out of the ''Letter Method,'' refer to FNS Memorandum SP 13–2011, *Child Nutrition Reauthorization 2010: Letter Method for Direct Certification,* dated January 14, 2011, and FNS Memorandum SP 32–2011, *Child Nutrition Reauthorization 2010: Direct Certification Benchmarks and Continuous Improvement Plans,* dated April 28, 2011, both available at *http://www.fns.usda.gov/cnd/governance/policy.htm.*

This rule proposes to amend 7 CFR Part 245 by redesignating §§ 245.12 and 245.13 as §§ 245.13 and 245.14, respectively, and adding a new § 245.12 to set the required direct certification performance benchmarks, to require CIPs of any State that fails to meet a given benchmark, and to define the minimum required components of a CIP.

C. Data Elements Needed To Compute States' Direct Certification Rates for Comparison to the Benchmarks

Each year since 2008, FNS has computed direct certification rates for each State to include in the annual report to Congress required by section 4301 of the Food, Conservation, and Energy Act of 2008. (See the *Direct Certification in the National School Lunch Program: State Implementation Progress* (Report to Congress) for 2008, 2009, 2010, and 2011 at *http://www.fns.usda.gov/ora/menu/Published/CNP/cnp.htm.*) To formulate these direct certification rates, we have used a variety of data sources and a complex system of estimations and adjustments to approximate each of three component statistics required by section 4301:

1. The number of school-aged children who were directly certified as eligible for free school meals based on SNAP as of October;
2. The number of school-aged children who were members of a household receiving SNAP assistance at any time in July, August, or September; and
3. The number of school-aged children attending special provision schools (in a non-base year) who were members of a household receiving SNAP assistance at any time in July, August, or September.

We are proposing with this rulemaking to collect single data elements which would replace, wherever possible, the complex estimates we have had to make for each of these component statistics. Using these new data elements would allow for a timelier and a more straightforward, accurate, and transparent methodology for calculating States' direct certification rates. In addition, State agencies would have early access to these data elements and would be able to track their own performance as the data becomes available, using the same methodology that FNS uses—something currently not possible. This also would allow State agencies to better evaluate whether certain refinements to their direct certification systems or improvements outlined in their CIPs are effectual. It could even preclude the need for a CIP if data errors were to be identified and then corrected by SAs as LEAs report in.

The new data elements needed to better meet the requirements of this mandate and to better serve the needs of State agencies as they endeavor to meet and maintain these new direct certification benchmarks are proposed as follows:

Data Element #1—SNAP Children Directly Certified for Free School Meals

Data Element #1 is the count of the number of children who are members of households receiving assistance under SNAP and who were directly certified for free school meals as of the last operating day in October. This is to be a count of SNAP direct certifications only. Direct certification with other programs, such as with the Temporary Assistance to Needy Families (TANF) program, the Food Distribution Program on Indian Reservations (FDPIR), or with any of the other categorically eligible programs, would not be included. Additionally, only direct certifications are to be included, not certifications by application using a SNAP case number or through the ''Letter Method.'' The form FNS–742, *Verification Summary Report,* (OMB #0584–0026) has for years collected the broader count (one that includes TANF, FDPIR, ''Letter Method,'' etc.), but this data element, which is needed to selectively identify SNAP direct certifications, would be separately collected on the FNS–742 that is currently undergoing revision.

Data Element #2—Universe of School-Aged Children in SNAP Households

Data Element #2 is the unduplicated count of children ages 5 to 17 years old who are members of households receiving assistance under SNAP at any time during the months of July, August, or September. The best source for this count is the SNAP State agency, which maintains an existing collection of program participation data that is used for the direct certification matching with SNAP. This dataset includes birthdates, making it possible to query for the target age-range of 5 to 17 year olds. This count from the SNAP State agency would be far more accurate than what could be estimated from other sources. For this reason, the proposed rule would require the SNAP State agency to provide Data Element #2 both to FNS and to the State agency administering the NSLP, by December 1st each year, on the proposed new form, the FNS–834, *State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report,* which is being submitted to OMB for approval. This Data Element #2 would represent the universe of school-aged children who could be directly certified with SNAP to receive free school meals.

We recognize that even though this data element is a strong one, it is not exact. The count coming from SNAP for

this data element may include children who are not actually attending school in the State come September or who are attending a school that does not participate in the NSLP. As a result, the direct certification rate may be negatively impacted. Conversely, there may be students attending school in the State who are not represented in the count coming from SNAP, particularly when a State has, for instance, a mandatory pre-K program or a large special education program with children up to age 22. We have chosen to ask SNAP for the number of children 5 to 17 years old because that age range can be used across the board for all States, it is the usual age range for children in schools across the United States, and it is the age range that we have used in the past for the Reports to Congress to represent ''school-aged.'' When States run their matches on a wider age-range than that which represents the ages of students typically participating in the NSLP and are able to match these younger than 5-year-olds or older than 17-year-olds, the direct certification rate may be inflated. As structured, however, this data element would be more accurate than what FNS has been able to use in the past. See the ''Special Circumstances'' section below that invites public comments.

Data Element #3—SNAP Children in Special Provision Schools Operating in a Non-Base Year

Data Element #3 is a count of the number of children from households receiving assistance under SNAP that attend schools operating in a non-base year under the special assistance provisions of Section 11(a)(1) of the NSLA (42 U.S.C. 1759a(a)(1)) and 7 CFR 245.9. These are typically referred to as Provision 2 and Provision 3 schools, but will also include such schools as the Community Eligibility option schools that were added to Section 9(b) of the NSLA, 42 U.S.C. 1758(b), by Section 103 of the HHFKA and which will be addressed in future rulemaking. These special provision schools do not collect applications or directly certify children for free school meals every year; instead, they typically serve all children free meals, but are reimbursed based on the number of children who were determined to be eligible for free or reduced-price meals through application and/or direct certification in some prior year, called the base year.

When a special provision school is operating in a base year, application processing and/or direct certification would occur as it does in other schools, and the counts of children directly certified with SNAP would be reported by the LEA through the normal verification report (the FNS–742) described for Data Element #1 above.

When a special provision school is operating in a non-base year, however, the direct certification counts from the school, as reported by the LEA for the FNS–742, would be zero—no child from that school, whether from a household receiving SNAP benefits or not, would be directly certified that year because children already receive free meals through the special provision. Since the direct certification rate for a State is determined by the number of school-aged SNAP children directly certified as compared to the universe of school-aged SNAP children, States would show a lower direct certification rate whenever their special provision schools were in a non-base year unless some adjustment were made. For the Report to Congress, we have adjusted for this by estimating the number of SNAP children in special provision schools and offsetting the universe of school-aged SNAP children by this estimate. One of the difficulties with this methodology is that if the number of SNAP-children has increased significantly in a particular State since a special provision school's most recent base year, then the estimate for the offset might be too low and the State's direct certification rate may drop.

To get a better measure for this adjustment, we propose to require that States run a match between SNAP records and student enrollment records from special provision schools each non-base year and count—for these schools only—the number of children for whom a match is found and who theoretically could have been directly certified from that match had it occurred in a base year. Note that this is not a requirement to directly certify during the non-base year—LEAs still would not directly certify children since the children already get free meals through the special provision. A match in and of itself does not constitute a direct certification, and this matching process—which more often than not could be done at the State level—would be employed for the express purpose of getting a more-accurate count with which to make adjustments to the direct certification rate for the State. Under the proposed rule, all such SNAP matches in special provision schools operating in a non-base year would be included in the count for this data element. The resulting adjustment would more closely track the fluctuations in the number of SNAP children actually in these schools, would yield a more-accurate direct certification rate, and would give a better preview of the competency of the direct certification system before its use when the school is again in a base year.

We propose to require that these matching efforts for special provision schools operating in a non-base year occur in or close to October, but no later than the last operating day in October. This Data Element #3 would be reported by the State agency administering the NSLP on the proposed new form, the FNS–834, *State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report,* by December 1st each school year.

Special Circumstances

We would be interested in learning about any special circumstances that would affect a State's direct certification rate in a quantifiable way not captured by the formula below or the three data elements above. We would also be interested in any suggested methodology to quantify the effect, supportable by published Federal or State data sources.

Formula—for Calculating Direct Certification Rates With SNAP

We propose to calculate States' direct certification rates with SNAP (the percent of children in households receiving assistance under SNAP that are directly certified for free school meals) using Data Elements #1–#3 as described above:

$$\text{Percent of SNAP children directly certified for free school meals} = \frac{\text{SNAP children directly certified for free school meals} + \text{SNAP children in special provision schools operating in a non-base year}}{\text{School-aged children in SNAP households during the months of July, August, and September}} = \frac{\#1 + \#3}{\#2}$$

These new data elements for calculating direct certification effectiveness would be reported both by the SNAP State agency and by the State agency that administers the NSLP, as described in the next two sections. It is critical that these data elements be available starting with SY 2012–2013 so that FNS and State agencies have the tools to monitor performance under this mandate.

The proposed new § 245.12(c) would require the reporting of the new data elements for computing direct certification rates to assess State progress in meeting the mandated direct certification performance benchmarks.

This rule also proposes to amend SNAP's regulations at 7 CFR 272.8 to add the requirement for the SNAP State agency to provide Data Element #2 to FNS and to the State agency administering the NSLP.

D. Collection of Data Element #1, and the Effect of This Rule on Form FNS–742, Verification Summary Report

As described above, this rule proposes to collect Data Element #1 on the FNS–742, *Verification Summary Report,* which is under revision at this time. The proposed rule would change the date this report is due so that Data Element #1 can be available as soon as possible for FNS and State agencies to use in calculating direct certification rates with SNAP.

Currently, § 245.6a(b) requires LEAs to complete verification efforts by November 15th each year (unless approved for an extension until December 15th by the State agency for reasons outlined in § 245.6a(b)(2)). In addition, State agencies currently must collect this annual verification data from each LEA no later than March 1st, and must submit it to FNS no later than April 15th of each year. Earlier availability of this data would enable FNS and State agencies earlier calculation of direct certification rates. The current FNS–742, however, requires State agencies to report the aggregate number of students who were terminated as a result of verification but who were reinstated for free or reduced price meal benefits as of February 15th each year based on regulatory provisions at § 245.11(i). Those provisions reference a contingency on ''new funding'' that has not been appropriated since the rule's codification. As such, we propose to remove the requirement to report those students who were reinstated and to adjust the deadlines for the FNS–742, as follows:

1. LEAs would continue to be required to complete verification efforts by November 15th (or, if approved for an extension by the State agency for reasons outlined in § 245.6a(b)(2), by December 15th).

2. State agencies would be required to collect the annual verification data from each LEA by February 1st (instead of March 1st).

3. State agencies would be required to submit the FNS–742 to FNS by March 15th (instead of April 15th).

The earlier submission of the FNS–742, as proposed in this rule, would allow State agencies and FNS timelier access to data elements important for the direct certification rate calculation and for the annual report to Congress. Additionally, it would allow State agencies to take ameliorative actions early on, before notification of a need for a CIP, providing more time for developing CIPs.

This proposed rule would remove the February 15th data element requirement by amending § 245.11(i) to remove the language, ''Contingent upon new funding to support this purpose, FNS will also require each State agency to report the aggregate number of students who were terminated as a result of verification but who were reinstated as of February 15th.'' It would also amend § 245.6a(h) and § 245.11(i) to change the dates for State agency collection of verification data from LEAs and for State agency reporting to FNS on the FNS–742, effective beginning with SY 2012–2013.

E. Collection of Other New Data Elements.

For collecting Data Elements #2 and #3, FNS is proposing a new data reporting instrument which is being cleared along with this proposed rule. This instrument, the proposed FNS–834, *State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report,* is an interagency form that would be used by both the SNAP State agencies and the State agencies administering the NSLP.

This new data collection instrument, whose information collection burden is being cleared with this proposed rule, is described in the Paperwork Reduction Act section of this preamble. It is provided as Appendix A to this proposed rule for informational purposes only.

F. States Affected by This Rule

All States, except those that have statewide universal free lunch, are affected by this rule. At this time, the States affected by this rule are the 50 States, District of Columbia, and Guam.

Procedural Matters

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has been designated non-significant under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980, (5 U.S.C. 601–612). Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or 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 Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

This proposed rule affects the NSLP and SNAP.

The NSLP is listed in the Catalog of Federal Domestic Assistance Programs

under No. 10.555. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. Since the NSLP is State-administered, Federally-funded program, FNS headquarters staff and FNS Regional Office staff have formal and informal discussions with State and local officials on an ongoing basis regarding program requirements and operation. This structure allows FNS to receive regular input which contributes to the development of meaningful and feasible Program requirements.

SNAP is listed in the Catalog of Federal Domestic Assistance under 10.551. For the reasons set forth in the final rule at 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), SNAP is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under Section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule, when published as a final rule, is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

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

This rule requires State agencies to develop and implement CIPs if they do not meet certain percentage performance benchmarks for directly certifying for free school meals children in households receiving SNAP benefits. LEAs have for years been required to directly certify for free school meals those children in households receiving assistance under SNAP, and FNS has been required to assess State and local efforts to directly certify these children. This rule codifies the benchmarks and CIP requirements set by the HHFKA. After a careful review of the rule's intent and provisions, FNS has determined that this rule is technical in nature and affects State agencies only. This rule will not affect children in the NSLP, except to continue to encourage States to increase efforts to have more eligible children directly certified for free meals.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

USDA is unaware of any current Tribal laws that could be in conflict with the requirements of this proposed rule. However, we have made special efforts to reach out to Tribal communities. In the spring of 2011, FNS offered opportunities for consultation with Tribal officials or their designees to discuss the impact of the Healthy, Hunger-Free Kids Act of 2010 on tribes or Indian Tribal governments. The consultation sessions were coordinated by FNS and held on the following dates and locations:

1. HHFKA Webinar & Conference Call—April 12, 2011
2. Mountain Plains—HHFKA Consultation, Rapid City, SD—March 23, 2011
3. HHFKA Webinar & Conference Call—June 22, 2011
4. Tribal Self-Governance Annual Conference in Palm Springs, CA—May 2, 2011
5. National Congress of American Indians Mid-Year Conference, Milwaukee, WI—June 14, 2011

There were no comments about this regulation during any of the aforementioned Tribal Consultation sessions.

Reports from these consultations are part of the USDA annual reporting on Tribal consultation and collaboration. FNS will respond in a timely and meaningful manner to Tribal government requests for consultation concerning this rule. Currently, FNS provides regularly scheduled quarterly consultation sessions through the end of FY2012 as a venue for collaborative conversations with Tribal officials or their designees.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320), requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. This is a new collection.

One of the new provisions in this rule—the requirement for the development and submission of continuous improvement plans by any State that fails to meet certain mandated direct certification performance benchmarks—annually increases State agency reporting burden by 54 hours and the recordkeeping burden by 9 hours, for a total of 63 additional burden hours. FNS intends to merge these 63 hours into the Determining Eligibility for Free and Reduced Price Meals, OMB Control #0584–0026, expiration date March 31, 2013. The current collection burden inventory for the Determining Eligibility for Free and Reduced Price Meals (7 CFR 245) is 960,367.

Another provision, requiring the collection of data elements on a new, interagency form (FNS–834, *State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report,* being cleared with this proposed rule), involves changes in both NSLP and SNAP regulations and would increase burden hours on State agencies by an additional 53 hours annually. These 53 burden hours would remain with the newly established OMB Control Number until such time as the FNS–834 is incorporated into the Food Programs Reporting System (FPRS) and the system is approved by OMB.

These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval.

Comments on the information collection in this proposed rule must be received by April 2, 2012. Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC

20503. Please also send a copy of your comments to Lynn Rodgers-Kuperman, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection requirements, please contact Lynn Rodgers-Kuperman at the address indicated above. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this request for comments will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: National School Lunch Program: Direct Certification Continuous Improvement Plans Required by the Healthy, Hunger-Free Kids Act of 2010.

OMB Number: 0584–NEW.

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: (A) Continuous Improvement Plans—The new requirements of Section 101(b) of the HHFKA necessitate the submission of a continuous improvement plan (CIP) by any State that fails to meet the new percentage performance benchmarks (80% for SY 2011–12; 85% for SY 2012–13; and 95% for SY 2013–14 and for each school year thereafter) for directly certifying for free school meals children who are members of households receiving assistance under SNAP. CIPs are required to include: Specific measures that the State will use to identify more children who are eligible for direct certification, including improvements or modifications to technology, information systems, or databases; a multiyear timeline for the State to implement these measures; goals for the State to improve direct certification results for the following school year; and information about the State's progress toward implementing other direct certification requirements.

(B) Collecting New Data Elements—In addition, FNS must calculate the direct certification rates for States and compare them to the benchmarks to determine which States will need to submit CIPs. To calculate these direct certification rates, FNS proposes to annually collect specific direct certification data elements from SNAP State agencies and NSLP State agencies on a new interagency form, the proposed FNS–834, *State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report* being cleared with this proposed rule.

(C) State agencies must report data to show progress toward improving direct certification with SNAP. Such improvement will ultimately lead to fewer households having to complete an application form to receive free school meals. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow.

Estimated Annual Reporting and Recordkeeping Burden for 0584–NEW, Direct Certification Requirements, 7 CFR 245

Respondents for this Proposed Rule: State Agencies.

Estimated Number of Respondents for this Proposed Rule: 18.

Estimated Number of Responses per Respondent for this Proposed Rule: 2.

Estimated Total Annual Responses: 36.

Average Hours Per Response: 1.75.

Estimated Total Annual Burden on Respondents for this Proposed Rule: 63.

ESTIMATED ANNUAL REPORTING BURDEN FOR 0584–NEW, DIRECT CERTIFICATION REQUIREMENTS, 7 CFR 245

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
Reporting (State Agencies)						
State agencies that fail to meet the direct certification benchmark must develop and submit a *Continuous Improvement Plan* within 60 days of notification.	7 CFR 245.12(e) and (g)	18	1	18	3	54
Total Reporting for Proposed Rule.	.....	18	1	18	3	54
Total Existing Reporting Burden for Part 245.	.....	.....	.....	.....	.....	954,317
Total Reporting Burden for Part 245 with Proposed Rule.	.....	.....	.....	.....	.....	954,371
Recordkeeping (State Agencies)						
State agencies that fail to meet the direct certification benchmark must maintain a *Continuous Improvement Plan*.	7 CFR 245.12(e) and (g)	18	1	18	0.5	9

ESTIMATED ANNUAL REPORTING BURDEN FOR 0584–NEW, DIRECT CERTIFICATION REQUIREMENTS, 7 CFR 245—Continued

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
Total Recordkeeping for Proposed Rule.		18	1	18	0.5	9
Total Existing Recordkeeping Burden for Part 245.						6,050
Total Recordkeeping Burden for Part 245 with Proposed Rule.						6,059

SUMMARY OF REPORTING AND RECORDKEEPING BURDEN (OMB #0584–NEW) 7 CFR 245

TOTAL NO. RESPONDENTS	18
AVERAGE NO. RESPONSES PER RESPONDENT	2
TOTAL ANNUAL RESPONSES	36
AVERAGE HOURS PER RESPONSE	1.75
TOTAL BURDEN HOURS FOR PART 245 WITH PROPOSED RULE	960,430
CURRENT OMB INVENTORY FOR PART 245	960,367
DIFFERENCE (NEW BURDEN REQUESTED WITH PROPOSED RULE)	63

* These 63 hours will be merged with OMB #0584–0026.

Estimated Annual Burden for 0584–NEW, Direct Certification Requirements, 7 CFR 245 and 272

Respondents for this Proposed Rule: State Agencies.

Estimated Number of Respondents for this Proposed Rule: 106.

Estimated Number of Responses per Respondent for this Proposed Rule: 1.

Estimated Total Annual Responses: 106.

Average Hours per Response: .5.

Estimated Total Annual Burden on Respondents for this Proposed Rule: 53.

ESTIMATED ANNUAL BURDEN FOR 0584–NEW, DIRECT CERTIFICATION REQUIREMENTS 7 CFR 245 AND 272

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
Reporting (State Agencies)						
NSLP State agencies must annually report data to FNS for calculating direct certification rates.	7 CFR 245.12(c)	54	1	54	0.5	27
SNAP State agencies must annually report data to FNS for calculating direct certification rates.	7 CFR 272.8(a)(5)	52	1	52	0.5	26
Total Reporting for Proposed Rule.		106	1	106	0.5	53
Total Existing Reporting Burden.						0
Total Reporting Burden for Parts 245 and 272 with Proposed Rule.						53

SUMMARY OF BURDEN (OMB #0584–NEW) 7 CFR 245 AND 272

TOTAL NO. RESPONDENTS	106
AVERAGE NO. RESPONSES PER RESPONDENT	1
TOTAL ANNUAL RESPONSES	106
AVERAGE HOURS PER RESPONSE	.5
TOTAL BURDEN HOURS FOR PART 245 and 272 WITH PROPOSED RULE *	53
CURRENT OMB INVENTORY FOR PART 245 and 272	0

SUMMARY OF BURDEN (OMB #0584–NEW) 7 CFR 245 AND 272—Continued

DIFFERENCE (NEW BURDEN REQUESTED WITH PROPOSED RULE)	53

* Represents increase of 53 hours from existing reporting burden; no additional recordkeeping burden. These 53 hours will remain with the newly established OMB Control Number.

E-Government Act Compliance

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

Appendix A to This Proposed Rule

Appendix A attached to this proposed rule is a sample completed form FNS–834, *State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report,* currently pending OMB approval and published for informational purposes only.

List of Subjects

7 CFR Part 245

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

7 CFR Part 272

Alaska, Civil rights, Claims, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements, Unemployment compensation, wages.

Accordingly, 7 CFR Parts 245 and 272 are proposed to be amended as follows:

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

1. The authority citation for 7 CFR Part 245 continues to read as follows:

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

2. Section 245.6a is amended in paragraph (h) by removing the word ''March'' and adding in its place the word ''February''.

3. Paragraph 245.11(i) is revised to read as follows:

§ 245.11 Action by State agencies and FNSROs.

* * * * *

(i) No later than February 1, 2013, and by February 1st each year thereafter, each State agency must collect annual verification data from each local educational agency as described in § 245.6a(h) and in accordance with guidelines provided by FNS. Each State agency must analyze these data, determine if there are potential problems, and formulate corrective actions and technical assistance activities that will support the objective of certifying only those children eligible for free or reduced price meals. No later than March 15, 2013, and by March 15th each year thereafter, each State agency must report to FNS, in a consolidated electronic file by local educational agency, the verification information that has been reported to it as required under § 245.6a(h), as well as any ameliorative actions the State agency has taken or intends to take in local educational agencies with high levels of applications changed due to verification. State agencies are encouraged to collect and report any or all verification data elements before the required dates.

* * * * *

4. Redesignate §§ 245.12 and 245.13 as §§ 245.13 and 245.14, respectively.

5. Section 245.12 is added to read as follows:

§ 245.12 State agencies and direct certification requirements.

(a) *Direct certification requirements.* State agencies are required to meet the direct certification performance benchmarks set forth in paragraph (b) of this section for directly certifying children who are members of households receiving assistance under SNAP. A State agency that fails to meet the benchmark must develop and submit to FNS a continuous improvement plan (CIP) to fully meet the requirements of this paragraph and to improve direct certification for the following school year in accordance with the provisions in paragraphs (e), (f), and (g) of this section.

(b) *Direct certification performance benchmarks.* State agencies must meet performance benchmarks for directly certifying for free school meals children who are members of households receiving assistance under SNAP. The performance benchmarks are as follows:

(1) 80% for the school year beginning July 1, 2011;

(2) 90% for the school year beginning July 1, 2012; and

(3) 95% for the school year beginning July 1, 2013, and for each school year thereafter.

(c) *Data elements required for direct certification rate calculation.* Each State agency must provide FNS with specific data elements each year, as follows:

(1) *Data Element #1*—The number of children who are members of households receiving assistance under SNAP that are directly certified for free school meals as of the last operating day in October, collected and reported in the same manner and timeframes as specified in § 245.11(i).

(2) *Data Element #2*—The unduplicated count of children ages 5 to 17 years old who are members of households receiving assistance under SNAP at any time during the months of July, August, or September. This data element must be provided by the SNAP State agency, per 7 CFR 272.8(a)(5), and reported to FNS and to the State agency administering the NSLP in the State by December 1st each year, in accordance with guidelines provided by FNS.

(3) *Data Element #3*—The count of the number of children who are members of households receiving assistance under SNAP who attend a school operating under the provisions of 7 CFR 245.9 in a year other than the base year. The proxy for this data element must be established each school year through the State's data matching efforts between SNAP records and student enrollment records for these special provision schools operating in a non-base year. Such matching efforts must occur in or close to October each year, but no later than the last operating day in October. State agencies must report this data element to FNS by December 1st each year, in accordance with guidelines provided by FNS.

(d) *State notification.* For each school year, FNS will notify State agencies that fail to meet the direct certification performance benchmark.

(e) *Continuous improvement plan required.* A State agency having a direct certification rate with SNAP that is less than the direct certification performance benchmarks set forth in paragraph (b) of this section must submit to FNS for approval, within 60 days of notification, a CIP in accordance with paragraph (f) of this section.

(f) *Continuous improvement plan required components.* CIPs must include, at a minimum:

(1) The specific measures that the State will use to identify more children who are eligible for direct certification,

including improvements or modifications to technology, information systems, or databases;

(2) A multiyear timeline for the State to implement these measures;

(3) Goals for the State to improve direct certification results for the following school year; and

(4) Information about the State's progress toward implementing other direct certification requirements, as provided in FNS guidance.

(g) *Continuous improvement plan implementation.* A State must implement its CIP according to the timeframes in the approved plan.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

5. The authority citation for 7 CFR Part 272 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

6. Section 272.8 is amended by adding a new paragraph (a)(5) to read as follows:

§ 272.8 State income and eligibility verification system.

* * * * *

(a) * * *

(5) State agencies must provide information to FNS and to the State agencies administering the National School Lunch Program for the purpose of direct certification of children for school meals as described in § 245.12(c)(2) of this chapter. In addition, State agencies must execute a data exchange and privacy agreement in accordance with § 272.8(a)(4) and § 272.1(c).

* * * * *

Note: Appendix A, a sample of a completed copy of the proposed form FNS–834, *State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report,* will not be published in the *Code of Federal Regulations.* It is published here for informational purposes only.

Dated: January 17, 2012.

Audrey Rowe,

Administrator, Food and Nutrition Service.

BILLING CODE 3410–30–P

Appendix A: Sample of Completed FNS–834, State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report. For Informational Purposes Only

OMB APPROVED NO. 0584-0000
Expiration Date: XX/XX/XXXX

U.S. DEPARTMENT OF AGRICULTURE

FOOD AND NUTRITION SERVICE

STATE AGENCY (NSLP/SNAP) DIRECT CERTIFICATION RATE DATA ELEMENT REPORT

This annual interagency report collects data elements from the State agencies that administer the Supplemental Nutrition Assistance Program (SNAP) and from the State agencies that administer the National School Lunch Program (NSLP).

A separate, completed FNS-834 report must be submitted to the Food and Nutrition Service (FNS) no later than December 1st each school year by:

- the SNAP State agency, providing Data Element #2 below; and
- each State agency that administers the NSLP, providing Data Element #3 below.

These data elements are needed to compute the Direct Certification Rate with SNAP that is required by the Food, Conservation, and Energy Act of 2008 (Public Law 110-246) and by the Richard B. Russell National School Lunch Act, as amended by the Healthy, Hunger-Free Kids Act of 2010 (Public Law 111-296) and promulgated by the regulations published on [insert date], the *National School Lunch Program: Direct Certification Continuous Improvement Plans required by the Healthy, Hunger-Free Kids Act of 2010*, which added a new section 7 CFR 245.12 to NSLP regulations and amended SNAP regulations at 7 CFR 272.5 to allow for this collection.

For an understanding of the formula to calculate NSLP direct certification rate with SNAP, and to see how these data elements come into play, please refer to the reverse side of this form.

State	YS (2-letter abbr.)
School Year	20 1 2 - 20 1 3

State Agency Name and Address:	Your State, Child Nutrition Programs, Department of Education, Post Office Box 1234, YS, 98765
Contact Information: (Name, Title, Email, Phone)	John C. Doe, State Director john.doe@ys.gov 888-555-5555

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number. The valid OMB number for this collection is 0584-XXXX . The time required to complete this information collection is 30 minutes per response, including the time to review instructions, to search existing data resources, to gather the data needed, and to complete and review the information collection.

SNAP State agency completes this section

Data Element #2 – The number of school-aged children in SNAP households during the months of July, August, and September.

Please enter, in the box provided below, the unduplicated count of the number of children ages 5 to 17 years at any time during the months of July, August, or September of this school year who were members of households receiving assistance under SNAP at any time during the months of July, August, or September of this school year. See reverse side for specific instructions.

Data Element #2 [ ]

NSLP State agency completes this section

Data Element # 3 – The number of SNAP Children in Special Provision Schools Operating in a Non-Base Year.

Please enter, in the box provided below, the number of children from households receiving SNAP benefits that attend schools operating under the provisions of 7 CFR 245.9, if such schools were reporting in a year other than the base year. See reverse side for specific instructions.

Data Element #3 3,102

FORM FNS-834 (11-11) Previous Editions Obsolete SBU Electronic Form Version Designed in Adobe 9.1 Version

STATE AGENCY (NSLP/SNAP) DIRECT CERTIFICATION RATE DATA ELEMENT REPORT (continued)

PURPOSE - This report collects data elements necessary to compute direct certification rates for comparison with certain benchmarks required by 7 CFR 245.12(b). The benchmark for school year (SY) 2012-13 is 90%, and the benchmark for SY 2013-14 and every school year thereafter is 95%.

To promote transparency and to strengthen the direct certification process so that States can monitor their own performance using the same measures and methodology that FNS will use, this report identifies each of the data elements and its role in the formula to calculate a State's NSLP Direct Certification Rate with SNAP, even if, like Data Element #1, it is not collected on this form.

Direct Certification Rate Formula:

$$\text{Percent of SNAP children directly certified for free school meals} = \frac{\text{SNAP children directly certified for free school meals} + \text{SNAP children in special provision schools operating in a non-base year}}{\text{School-aged children in SNAP households during the months of July, August, and September}} = \frac{\#1 + \#3}{\#2}$$

Data Element	Instructions and additional information
# 1	**SNAP CHILDREN DIRECTLY CERTIFIED FOR FREE SCHOOL MEALS:** This is the number of children directly certified with SNAP for free school meals as of the last operating day in October. **THIS DATA ELEMENT #1 DOES NOT COME IN ON THIS FORM; it comes in instead on the FNS-742, line 3(a). It is due to the NSLP State agency no later than February 1st and to FNS no later than March 15th each school year.**
# 2	**SCHOOL-AGED CHILDREN IN SNAP HOUSEHOLDS:** For our direct certification rate formula, we define "school-aged" as 5 to 17 years old. A query on the database must yield any child in a household receiving assistance under SNAP during the months of July, August, or September and whose birthdate is between July 1st (of the SY-minus-18) and September 30th (of the SY-minus-5). For example, for SY 2012-2013, that would be children born between July 1, 1994 (2012 minus 18) and September 30, 2007 (2012 minus 5); and for SY 2013-14, that would be children born between July 1, 1995 (2013 minus 18) and September 30, 2008 (2013 minus 5). So long as the child's birthday falls within the birthdate age-range listed for the given school year, include the child in the count. Be careful, however, that you do not count the same child more than once. We are looking for the unduplicated count, so even if the child is in a SNAP household for each of the three months, s/he is counted only once. We need only the counts, not the list of names of such children. **THIS DATA ELEMENT #2 IS REPORTED ON THE FRONT OF THIS FORM BY THE SNAP STATE AGENCY in the space provided. It is due to FNS as soon as possible, but no later than December 1st of each school year.** In addition to submitting a completed report to FNS, you, as the SNAP State agency, must also send a copy of this completed report to the State agency that administers the NSLP in your State so that they will know the data element you are reporting to FNS. Reporting this data element as soon as it is available will allow these NSLP State agencies to better monitor their own performance.
# 3	**SNAP CHILDREN IN SPECIAL PROVISION SCHOOLS OPERATING IN A NON-BASE YEAR -** To get this count, run a match between SNAP records and school enrollment records from schools operating under the provisions of 7 CFR 245.9 (special provision schools) in a year other than the base year. Although you will not actually directly certify children attending these schools in a non-base year, this process will provide a measure for the count of the number of children who could have been directly certified with SNAP had it been a base year when direct certification with SNAP is conducted. Such special provision school matching efforts should occur in or close to October, but must occur no later than the last operating day in October. **THIS DATA ELEMENT #3 IS REPORTED ON THE FRONT OF THIS FORM BY THE NSLP STATE AGENCY in the space provided. It is due by December 1st of each school year.** [Note: In a base year, actual SNAP direct certifications will be reported on the FNS-742, line 3(a) and included in Data Element #1. If your State does not have any special provision schools operating in a non-base year for this school year, enter "0" in the box on the front of this form.]
Please note that although this is an interagency form, it is not a shared form. FNS expects separate forms to come in from each State agency. The SNAP State agency is to fill out the front of this form, completing Data Element #2 and leaving Data Element #3 blank. The State agency that administers the NSLP in the State is to complete the front of a separate form, completing Data Element #3 and leaving Data Element #2 blank. (If more than one State agency administers the NSLP in the State, they each are to submit separate forms.)	

[FR Doc. 2012–1835 Filed 1–30–12; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2011–BT–NOA–0067]

RIN 1904–AC52

Energy Conservation Program: Test Procedure and Energy Conservation Standard for Set-Top Boxes and Network Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: This document announces an extension of the time period for submitting comments on the request for information pertaining to the development of test procedures and energy conservation standards for set-top boxes and network equipment. The comment period is extended to March 15, 2012.

DATES: The comment period for the request for information relating to set-top boxes and network equipment