

students that are terminated as a result of verification activities. Data regarding the number of students that reapply and are re-certified for free or reduced price meals would be beneficial in analyzing the over-certification issue. Commenters expressed concern that this data element would be labor intensive since it is not currently being collected. The Department is mindful of the commenters' concerns about this burden and recognizes that this requirement would result in additional administrative burden at a time when school food authorities are faced with serious fiscal and staff constraints. In order to balance the need for this data with the additional economic burden on school food authorities, the Department is modifying the implementation date for this data element, as well as attempting to secure additional funds to enable school food authorities to enhance their data collection and reporting systems. Therefore, reporting and collecting this data will be required for the School Year 2005–2006 contingent upon new funding to support this purpose. However, the implementation date for other data collection and reporting remains as proposed. The Department encourages school food authorities and State agencies to collect and report any or all verification data elements to their respective State agency before the required dates regardless of the availability of additional budgetary assistance.

#### Discussion of Comments on Public Law 104–4: Unfunded Mandates Reform Act of 1995

One of the requirements for agencies when promulgating regulations is an assessment required by Public Law 104–4 the Unfunded Mandates Reform Act of 1995, of the impact of the proposed changes on State, local and tribal governments and the private sector. The threshold for this assessment is \$100 million in any one year. One commenter took issue with FNS' assessment that the proposed rule contained no Federal mandates of \$100 million. The commenter stated that there is no estimate of the overall time required to complete the entire verification, reporting, review and analysis at the State agency as "Each State agency must analyze these data, determine if there are potential problems, and formulate corrective action \* \* \*". The commenter indicated that the assumption was inaccurate and the procedures will create a significant burden on State agencies administering these programs.

Upon further review, FNS continues to believe that this rule contains no 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. However, as discussed earlier, FNS has modified the burden hours from the proposed rule on the data collection and reporting requirements in order to address burden concerns. It is important to note that the determination of burden hours is based only on the compilation of data and the completion of the report. The analysis of the reported data and the corrective action and technical assistance activities are not part of the data collection and reporting burden as State agencies are obligated to ensure that school food authorities administer the program in accordance with program regulations. Therefore, program oversight, corrective action, and technical assistance resulting from the data reported are part of the overall administrative responsibility of State agencies.

#### Discussion of Comments on the Need for Guidance

Over 20 commenters discussed the need for additional guidance on the procedures for the State agency's responsibilities outlined in the proposal. Many stated that the proposal language was vague and that definitions of "corrective action", "rigorous oversight activity", and "ameliorative actions" are needed. Commenters also indicated that there is a need to be more specific as to what the State agency is expected to do when reviewing questionable reports.

The Department envisions that State agencies will note trends and notify school food authorities of these trends as well as provide training and technical assistance to school food authorities as needed. Also, in response to these concerns, FNS is developing guidance materials supporting the State agency's role in this effort, including an outline of possible review techniques and suggested technical assistance, which will be provided prior to the implementation date of this rule.

#### Discussion of Comments on Deadlines

Some commenters discussed the deadlines for school food authorities to submit accumulated data to the State agency and for States agencies to submit consolidated data to FNS. Most suggested that the deadlines are too short and should be extended in order for the data to be collected, compiled and analyzed. A particular concern to commenters was the short turn around for collecting and reporting the

information on students that are reinstated after termination due to verification.

We recognize the commenters' concerns regarding the reporting deadlines and to alleviate some of the burden, we have modified, as discussed earlier in this preamble, the implementation date of the data element regarding reinstated students. Because the remaining data elements that were discussed in the proposed rule are based on data that is already collected, the Department is not changing the reporting deadlines of March 1st for each school food authority to submit data to their respective State agency, as well as the April 15th date for State agencies to submit the aggregated data to FNS.

Three commenters requested a delay in the implementation of the rule. FNS does not feel that a delay in implementation for collection and reporting of existing data is warranted due to the urgency in finding a solution to the issue of over-certification. However, it is important to note that the first report on the majority of data elements will not be due from the school food authorities to the State agencies until March 1, 2005 and the first reports from the State agencies to FNS are not due until April 15, 2005.

Over 20 commenters requested an extension to the comment period for the proposed rule. Again, due to the urgency of the over-certification issue, FNS believes that the 60-day comment period for the proposed rule was sufficient.

#### Discussion of Comments on Concerns That the Rule Will Have Adverse Results

Some commenters expressed concern that the proposed rule may have adverse effects on eligible children. Specific comments on this issue are: (1) Verification has been shown to discourage participation by needy children, and (2) some efforts by State agencies to assure that only eligible children are certified may inadvertently impede program participation by some needy children. While FNS recognizes and shares the concerns about discouraging participation of eligible children, FNS does not believe that this rule will have any adverse results. The rule does not change existing certification and verification requirements, and should not change the way that school food authorities interact with families applying for benefits. The rule merely requires analysis and reporting of information, by school food authorities and State