

agencies, related to existing certification and verification requirements.

Discussion of Comments on Data Presented by FNS and Need for Rulemaking

Two commenters suggested that the preamble overstated the strength of available data and that the preamble should have included a more careful discussion of the limitations of verification data. These comments specifically stated that FNS should not, especially in the context of a call for better analysis, present misleading data and questionable analysis without any discussion of its meaning and soundness of the methodology employed. The commenters also felt that the actions described in the preamble were an example of the type of cursory use of data that could lead State agencies to take harmful or ineffective steps in response to the verification data. Further, they recommended that the preamble to the proposed rule should have clearly addressed the limitations of verification data and, thus, the conclusions that may be drawn from analyses of these data. In response to these concerns, it is the intent of this rule to simply provide information in order to provide a broader understanding of the over-certification problem. This rule is intended to provide information about the verification problem by collecting data nationally. At this point in time, FNS does not have enough information to discuss any conclusions that may result from collection and analysis of this data.

A few commenters discussed the background information provided in the preamble to the proposal. In particular, they noted that the preamble stated that when State agencies conducted comprehensive on-site evaluations of school food authorities the resulting findings indicate that school food authorities have been determining free and reduced price eligibility correctly. Commenters agree with this conclusion and stated that this indicates that the problem does not lie with administrative procedures and measures taken by school food authorities and State agencies, but likely with household reporting. Other commenters said that requiring school food authorities and State agencies to annually collect, review and report a massive amount of data to confirm what is already known, is counter-productive—a waste of scarce and valuable resources.

In response to these commenters, we reiterate that the purpose of this rule is to better understand these issues in

order to determine our course of action to correct problems with certification as well as the verification process. The purpose of this rule is to gather and assess the results of verification as a means to compare the initial certification decisions and the disposition of verified applications when households are asked to provide information confirming their current eligibility.

Some commenters discussed the statement made in the preamble that there is a 27% over certification of students eligible for free meals based on a comparison of NSLP data and Current Population Survey (CPS) data. These commenters mentioned that CPS data might not be the best source of data to compare with NSLP data.

The CPS, a joint project between the Bureau of Labor Statistics and the Bureau of the Census, is a well established, technically sound survey that is used for, among other things, official U.S. unemployment and poverty estimates. In conjunction with FNS program data, the CPS is one of the best sources of information to use in understanding the problem of certification inaccuracy. One of the strengths of CPS is that it includes the non-institutionalized population of the United States and is designed to include undocumented persons and migrants in the sample. We know that these groups are hard to capture with surveys. However, the CPS does not rely solely on the sample's ability to fully record these groups—the CPS data are adjusted to reflect the Census' best estimate of the size of the undocumented population. FNS believes that the use of CPS data is a critical tool available in understanding the magnitude of the over-certification problem.

The Agency will continue to make use of CPS and other data sources in assessing certification accuracy.

Specific Comments

Sections 245.6a(c) and 245.11(i)

Two commenters wanted to replace “State agency” with “FNS” as the recipient of school food authorities’ report verification information. However, since State agencies are responsible for ensuring school food authority compliance with program requirements, including accurate and timely reporting, it is more appropriate to require that school food authorities report data to the State agencies, not to FNS. State agencies (1) need to receive data to focus their efforts; (2) are in the best position to ensure accurate reporting; and (3) are responsible for all aspects of program operations within

their States. The final rule will continue to require that school food authorities report verification information to their respective State agencies.

Section 245.11(i)

Another comment questioned why “high termination rates” should trigger more rigorous oversight activities on the part of the State agency. This comment went on to state that this part of the proposal seems to be completely at odds with the statement in the preamble that “School food authorities generally have been determining free and reduced price eligibility in accordance with the regulatory requirements * * *”.

If the State agency sees that the school food authority has submitted data that has a high termination rate, then the State agency will need to work with that school food authority to see if it has taken appropriate actions to ensure accuracy of the application process. State agencies are expected to develop technical assistance activities in conjunction with school food authorities to assure that they are utilizing direct certification to its fullest, providing appropriate translations (if needed), and/or providing appropriate follow-up to households that do not respond to verification requests, if needed. School food authorities should use the data collected to determine what improvements are needed in their certification and verification procedures (i.e. single versus multi-child applications, additional assistance for parents, use of other/additional verification procedures). School food authorities also should notify State agencies of what technical assistance is needed and in what form (training, materials, etc.) in order to improve the verification process. FNS will provide training, technical assistance, additional translations and the like, for school food authorities and State agencies to assist them in analyzing how their procedures could be improved and in developing/supplying technical assistance and training. This provision is adopted as proposed in this final regulation, as FNS will be providing guidance and resources to assist school food authorities and State agencies in addressing the issue of high termination rates.

Numerous commenters discussed concerns with the proposed regulatory requirement in § 245.11(i) that “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.” Some