

of the concerns with this requirement are that it penalizes the school food authority for a high termination rate and creates an incentive to reduce the number of terminations. Commenters were also concerned that this focus could reduce the ability of State agencies to provide technical assistance in other significant areas like improved nutrition and menu planning. Commenters went on to say that there should be more emphasis on the number of children determined eligible who are not participating in the NSLP and SBP and that a high level of application information changed due to verification requests is not necessarily a negative reflection upon the school food authorities. Corrective action should not be required solely on the number of applications changed due to verification efforts.

Again, we emphasize that the regulation is designed to have State agencies collect and analyze information on the results of school food authorities verification activities in order to improve oversight, corrective action, and technical support with the objective of certifying only those children who are eligible for free and reduced price meals. A high rate of terminations resulting from verification activities is one indicator that there could be an underlying problem with the school food authorities certification actions. It may show, for example, areas where the school food authority needs technical assistance on certain application procedures. However, it is important that school food authorities and State agencies continue to do as much as possible to ensure that eligible children are not inadvertently hindered from receiving their appropriate level of benefits due to the procedures of the school food authority or State agency. The corrective action and technical assistance required by this rulemaking is not directed toward the verification termination rate per se, but rather toward other issues, such as ensuring that school food authorities are utilizing direct certification to its fullest, providing appropriate translations if there is a large foreign population, and/or providing appropriate follow-up to households when there is no response to a verification request.

How Will the State Agency Transmit the Data to FNS?

The proposed regulation indicated that State agencies would collect the data on verification activities already completed by school food authorities in accordance with existing regulation at 7 CFR 245.6a(c). State agencies would then consolidate that information in a

format designated by FNS. FNS is designing the format to minimize the burden on State agencies while still providing FNS with the data needed to formulate any additional measures to improve the certification and verification processes. We will be working with our cooperators prior to issuing the final format in order to obtain their input regarding the best manner to summarize the information from the school food authority level.

What Other Changes Are Being Made to the Rule?

In order to help reduce the burden on State agencies, and to allow FNS to obtain the data in a timely and accurate form, State agencies must submit a consolidated electronic file to FNS that transmits the required verification information for all the school food authorities under its administration. The proposed rule required school food authorities to report certain verification information to the State agency on a form designated by FNS. FNS will also develop a prototype form, which specifies the data elements that must be collected from each school food authority and reported to FNS. FNS will not provide a mandatory form for school food authorities to report to their State agencies. State agencies may adopt this prototype form, or may develop their own paper or electronic reporting forms to collect this data from school food authorities, as long as all required data elements are collected from each school food authority. FNS will issue guidance for State agencies on the requirements and procedures for collecting school food authority data and transmitting it to FNS.

What Technical Amendment Is Included in This Rule?

On January 11, 2001, the Department issued an interim regulation (66 FR 2195) to implement a provision of the Agricultural Risk Protection Act of 2000, Public Law 106-224. An amendment to 7 CFR 245.2 in that regulation redesignated paragraph (a-3) "Documentation" as paragraph (a-4) and added a new paragraph (a-3) "Disclosure" in its place. The Department inadvertently neglected to amend sections 245.5 and 245.6 to remove the obsolete citation and add the new citation in its place. This rule corrects that error.

Executive Order 12866

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

Regulatory Impact Analysis

A regulatory impact analysis of the rule identified that these provisions will place a small additional burden on school food authorities and State agency staff and budgets. However, the new effort required will be an extension of existing reporting, record keeping, analysis, and ameliorative action, therefore the budget cost of this rule will be minimal. The analysis also indicated that reporting activities for both school food authorities and State agencies would improve understanding of certification problems. As a result of data extraction activities, school food authorities may more closely understand and utilize the data from the completed verification activities. School food authorities will be more equipped to respond to problems that they identify themselves through the reporting activity. In addition, State agencies will be more equipped to provide technical assistance to the school food authorities. The analysis indicated that the data would help FNS to evaluate the efficacy of the existing application and verification processes and alternatives to those processes. Additional nationally representative data on the efficacy of these processes are necessary to guide FNS policy concerning over-certification.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to that review, Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. By requiring the reporting of verification information, this rule would result in critical information being gathered and enable State agencies and FNS to take measures that would increase the level of accountability of the NSLP. FNS does not anticipate any adverse fiscal impact resulting from implementation of this rulemaking. Although there may be some burdens associated with this rule, the burdens would not be significant and would be outweighed by the benefits to programs reporting the information to the State agency and FNS.

Public Law 104-4

Unfunded Mandate Reform Act of 1995 (UMRA) Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private