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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

RIN 0584—AD20

Determining Eligibility for Free and Reduced Price Meals in Schools—Verification Reporting and Recordkeeping Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the reporting and recordkeeping requirements under the National School Lunch Program (NSLP) and School Breakfast Program (SBP) relating to the verification of applications for free and reduced price meal benefits under the NSLP and the SBP. In spite of the efforts of school food authorities and State agencies to ensure the accuracy of free and reduced price applications, data indicate that the number of children certified as eligible to receive free meals exceeds the number of children who are eligible to receive those meals, given other poverty indicators. This rule requires school food authorities to report verification activity and results to their respective State agencies and requires State agencies to analyze and act on these data and to report school food authority level data to the Food and Nutrition Service (FNS) beginning with the school year which starts on July 1, 2004. School food authorities and State agencies are encouraged to begin to collect and report verification data prior to the required implementation date. Recordkeeping requirements will be revised consistent with the reporting requirements. Submission of these data on a school food authority basis will enable State agencies and FNS to improve and target oversight activities.

DATES: *Effective date:* This rule is effective October 14, 2003. However, the reporting requirements contained in 7 CFR 245.11 will not be in effect until approved by OMB under the Paperwork Reduction Act. FNS will publish a notice upon approval of those requirements to establish the effective date.

Implementation dates: Beginning in School Year 2004–2005, each school food authority and State agency must collect and report data elements designated by FNS to their State agency and FNS, respectively.

Contingent upon new funding to support this purpose, beginning in School Year 2005–2006, FNS will also require each school food authority and State agency to collect and report to their State agency and FNS, respectively, additional data concerning the reinstatement of students who have been terminated as a result of verification.

FOR FURTHER INFORMATION CONTACT: 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 by telephone at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

What Was Proposed?

On August 9, 2002, FNS published a proposed rule in the **Federal Register** (67 FR 51779) proposing to amend 7 CFR § 245.6a(c) to require school food authorities to report verification activity and results to their respective State agencies in support of State agency and FNS oversight activities. Specifically, the document proposed amending § 245.6a(c) to require school food authorities to report certain verification information to the State agency by March 1 annually. The information would be reported on a form designated by FNS. The information requested on the form would address, but not be limited to, the characteristics of the verification sample and the results of verification activity. The preamble to the proposal provided the following examples of information to be collected: the number of children approved for free and reduced price meal benefits based on direct certification, income applications, and categorically eligible applications; the method of verification sample selection; the number of applications selected for verification; the number of students on selected applications; the number of students approved for free meal benefits and reduced price meal benefits whose eligibility for benefits were reduced or terminated as the result of verification activities; of those terminated, the number of non-respondents; and the number of students reinstated for free or reduced price meal benefits, as of February 15th of each year.

In addition, the document proposed that § 245.6a(c) would require school food authorities to retain copies of the information reported to the State agency and all supporting documents. The proposed rule also restated the existing requirements that verified applications and information submitted by households must be readily retrievable by schools and that school food authorities must retain all documents submitted by households to confirm eligibility, reproductions of those documents, or annotations made by the determining official that indicate which documents were submitted by households and the dates of submission. The existing requirement that relevant correspondence between the households selected for verification and the school or school food authority must be retained was also restated.

FNS also proposed to add a new § 245.11(i) to require each State agency to collect the annual verification data from each school food authority in accordance with guidance provided by FNS. To facilitate the reporting of these data, FNS would provide a data collection instrument in electronic format. In addition, the proposed rule required that each State agency analyze these data, determine if there are potential problems, and formulate corrective actions and technical assistance activities to support the objective of certifying only those children eligible for free or reduced price meals. The availability and review of this information at the State level is designed to assist State agencies in targeting more rigorous oversight and technical assistance activities on school food authorities when their verification activities result in a high termination rate. A high termination rate may be due to a number of applications either being changed from free or reduced price

status to paid status because of documentation provided by households or because of households' failure to respond to the verification request.

The proposed rule would also require that the State agency report to FNS, not later than April 15th of each year, the results of each school food authority's verification activities, submitted in accordance with § 245.6a(c), and any ameliorative actions the State agency has taken or intends to take in those school food authorities with high numbers of applications changed due to verification activities. FNS intends to provide for the electronic submission of these data.

Additionally, the proposed rule included in 7 CFR Part 245 a definition of the term ''FNS'' which means ''the Food and Nutrition Service of the Department of Agriculture''. This definition was inadvertently not included in this Part in earlier editions and FNS proposed to add the definition at 7 CFR 245.2(b–2) for the sake of clarity and completeness.

Has FNS Taken Other Actions To Address Over-Certification?

FNS has taken several actions to address the issues associated with over-certification. On January 21, 2000, FNS published a notice in the **Federal Register** (65 FR 3409) soliciting States and school food authorities to participate in pilot projects to test alternate application, approval and verification procedures for free and reduced price eligibility determinations. Twenty-one school food authorities operated pilot projects. These pilot sites conducted alternative certification or verification processes for three consecutive school years, beginning in School Year 2000–2001. Preliminary data has shown the alternative methods have, to varying degrees, deterred and detected misreporting of eligibility information. FNS is currently conducting an in-depth analysis of the administrative data presented, to date, from the pilot sites. While the information derived from the pilots is not nationally representative, pilot activities have provided FNS with insight on the efficacy of the existing application and verification processes and on alternatives to those processes. This final rule is intended to complement pilot activities by collecting information on verification activity nationwide.

Discussion of Comments and Their Resolution

How Many Comments Were Received?

During the 60 day comment period, 99 comment letters were received: 81 from State and local agencies administering the school programs; 12 from advocacy groups; 5 from the general public, and 1 from the food industry. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C 3507), the public was invited to send comments on the proposed information collection to the Office of Management and Budget (OMB). OMB received 12 comments on the information collection aspects of the proposed rule.

What Did Commenters Say About the Proposed Rule?

Discussion of General Comments

In general, the commenters were supportive of ensuring that free and reduced price meal benefits only go to eligible children and gave a number of suggestions outside the scope of the proposed rule to address this problem. Some examples of suggested ideas are: hold households accountable for the information submitted on their application; eliminate publication of income eligibility guidelines; have other programs/agencies take more responsibility in regards to free and reduced price benefit determinations; consider/research reasons why households are not responding to verification requests (*e.g.*, moved, limited English proficiency, undocumented immigrants, migrants, lack of understanding of the concept of verification); use the additional costs that the proposal would incur to provide universal free school meals to all children; and specify that the verification notification needs to be provided in a language that the families of participating children can understand. Additional studies of the issue of over-certification were also suggested.

A few commenters expressed concern that the proposed rule did not address the inadequacies of the verification process (such as non-respondents and language barriers). Several commenters recommended that FNS delay any changes to the verification requirements until completion of the pilot projects and the analysis of the results. As previously stated, the purpose of this regulation is to establish a method to obtain data about verification results as another step in the overall goal of improved program integrity. The requirements for the reporting of verification activities contained in this rule will complement the pilot activities. The data collection is a tool for FNS to better analyze current verification procedures and results. The information, when reviewed and analyzed, may lead to other proposals in the future to further refine the entire certification and verification process. The ideas that were suggested will also be kept in mind for future rulemaking.

Discussion of Comments on the Proposed Burden Under the Paperwork Reduction Act

Over fifty commenters discussed the burden that the proposed requirements would place on school food authorities and State agencies. The general consensus is that the proposed reporting and recordkeeping requirements are too burdensome and the estimated annual reporting and recordkeeping burden hours under the Paperwork Reduction Act of 1995 are too low. We have reviewed the burden hours and have adjusted the estimate to account for the fact that there will be differences in the amount of time required to complete the report based on the size of the school food authority. Small school food authorities, which constitute the majority of participating school food authorities, may only have a small number of verified applications to summarize, while larger school food authorities will have numerous verified applications to summarize. However, larger districts may also have automated information systems that will provide some or all of the information to complete the report, thereby reducing their overall burden hours. We have taken these different circumstances into consideration and have adjusted the burden hours as follows: School food authorities average burden hours have been increased from 16,342 to 32,684, an average of 2 hours per school food authority. State agency average burden hours are increased per response from 8 to 24 hours. This results in an increase of annual burden hours from 432 to 1,296 for State agencies. We submitted the revised burden to OMB for approval.

A few commenters questioned the need for requiring additional data collection by school food authorities beyond the current requirements. Specifically, commenters stated that most school food authorities do not currently track data regarding the number of students whose benefits were terminated and who were then reinstated (due to submission of required documentation or a change in household circumstances) for free or reduced price meals by February 15. The Department is concerned about the

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

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

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

sector. Under Section 202 of the UMRA, FNS generally must prepare 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 FNS 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 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. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The National School Lunch Program and School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under No. 10.555 and 10.556. These programs are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice at 48 FR 29115, June 24, 1983).

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 13132. The Food and Nutrition Service (FNS) has considered the impact of this rule on State and local governments and has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It 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 impede its full implementation. This rule is not intended to have retroactive effect unless that is specified in the Effective Date section of the preamble. Before any judicial challenge to the provisions of this rule or the application of its provisions, all administrative procedures that apply must be followed. The only administrative appeal procedures relevant to this rule are the hearings that schools must provide for decisions relating to eligibility for free and reduced price meals (7 CFR 245.7 for the NSLP and SBP, in schools).

Civil Rights Impact Analysis

Under USDA Regulation 4300–4, Civil Rights Impact Analysis, FNS has reviewed this final rule to identify and address any major civil rights impacts the final rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this final rule will not in any way limit or reduce participants ability to participate in the Child Nutrition Programs on the basis of an individual's or group's race, color, national origin, sex, age, or disability. FNS found no factors that would negatively and disproportionately affect any group of individuals.

Paperwork Reduction Act of 1995

The information collection burden for the general reporting requirements in place prior to this rule are approved under OMB Number 0584–0026. This rule contains burdens that were included in the burden estimate in the proposed rule, Determining Eligibility for Free and Reduced Price Meals in Schools—Verification Reporting and Recordkeeping Requirements, published on August 9, 2002 at 67 FR 51779. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the information reporting and recordkeeping requirements included in the proposed rule outlined the changes in the information collection burden. OMB accepted public comments on FNS' estimated reporting and recordkeeping burden. Commenters indicated that the proposed reporting and recordkeeping requirements are too burdensome and the proposed estimated annual reporting and recordkeeping burden hours under the Paperwork Reduction Act of 1995 are too low. We have reviewed the burden hours and have adjusted the estimate to account for the fact that there will be a significant disparity in the amount of time required to report the data elements based on the size of the school food authority. We have taken these different circumstances into consideration and have adjusted the burden hours as follows: School food authorities average burden hours have been increased from 16,342 to 32,684, an average of 2 hours per school food authority. State agency average burden hours are increased per response from 8 to 24. This results in an increase of the total annual burden hours from 432 to 1296 for State agencies. FNS is requesting approval of the data collection instruments from OMB in the near future. Implementation of the data collection elements of the rule is contingent upon OMB approval under the Paperwork Reduction Act.

ESTIMATED ANNUAL REPORTING BURDEN

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
School food authorities report verification information to State agency					
Existing		0	0	0	0
Proposed	245.6a(c)	16,342	1	2 hours	32,684
Total Reporting Burden:					
Total Existing	0				
Total Proposed	24,513				
Change	+24,513				

ESTIMATED ANNUAL REPORTING BURDEN—Continued

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
State agencies report district level data to FNS					
Existing	.....	0	0	0	0
Proposed	245.11(i)	54	1	24 hours	1,296
Total Reporting Burden:					
Total Existing	0				
Total Proposed	1,296				
Change	+1,296				

ESTIMATED ANNUAL RECORDKEEPING BURDEN

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
School food authorities maintain summary of verification efforts					
Existing	245.6a(c)	16,342	1	.75	12,256
Proposed	245.6a(c)	16,342	1	.85	13,891
Total Recordkeeping Burden:					
Total Existing	12,256				
Total Proposed	13,891				
Change	+1,635				
State agencies retain district level data					
Existing	.....	0	0	0	0
Proposed	245.11(i)	54	1	1	54
Total Recordkeeping Burden:					
Total Existing	0				
Total Proposed	54				
Change	+54				

Government Paperwork Elimination Act (GPEA)

In compliance with GPEA, 44 U.S.C. 3504, the Food and Nutrition Service is committed to implementing electronic reporting and recordkeeping processes whenever it is feasible to help minimize information collection burdens on the public. The required data elements will be specified by FNS. State agencies may develop 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.

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 amended as follows:

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

■ 1. The authority citation continues to read as follows:

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

■ 2. In § 245.2:

■ a. Redesignate paragraph (c) as paragraph (b–3);

■ b. Redesignate paragraph (b-2) as paragraph (c); and

■ c. Add a new paragraph (b-2) to read as follows:

§ 245.2 Definitions.

* * * * *

(b-2) *FNS* means the Food and Nutrition Service, United States Department of Agriculture.

* * * * *

§ 245.5 [Amended]

■ 3. In § 245.5:

■ a. Remove the citation ''§ 245.2(a-3)'' in paragraph (a)(1)(iii) and add the citation ''§ 245.2(a-4)(1)(i)'' in its place; and

■ b. Remove the citation ''§ 245.2(a-3)'' in paragraph (a)(1)(iv) and add the citation ''§ 245.2(a-4)(1)(ii)'' in its place.

§ 245.6 [Amended]

■ 4. In § 245.6:

■ a. Remove the citation ''§ 245.2(a-3)(2)'' in paragraph (b) and add the citation ''§ 245.2(a-4)(2)'' in its place; and

■ b. Remove the citations ''§ 245.2(a-3)(1)(i),'' ''§ 245.2(a-3)(1)(ii),'' and ''§ 245.2(a-3)(2)'' in paragraph (c) introductory text and add the citations ''§ 245.2(a-4)(1)(i),'' ''§ 245.2(a-4)(1)(ii),'' and ''§ 245.2(a-4)(2),'' respectively, in their places.

■ 5. In § 245.6a, revise paragraph (c) to read as follows:

§ 245.6a Verification requirements.

* * * * *

(c) *Verification reporting and recordkeeping requirements.* No later than March 1, 2005 and by March 1st each year thereafter, each school food authority must report information related to its annual verification activity to the State agency in accordance with guidelines provided by FNS. These required data elements will be specified by FNS. Contingent upon new funding

to support this purpose, FNS will also require each school food authority to collect and report the number of students who were terminated as a result of verification but who were reinstated as of February 15th. The first report containing this data element would be required in the school year beginning July 1, 2005 and each school year thereafter. State agencies may develop 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. School food authorities shall retain copies of the information reported under this section and all supporting documents for a minimum of 3 years. All verified applications must be readily retrievable on an individual school basis and include all documents submitted by the household for the purpose of confirming eligibility, reproductions of those documents, or annotations made by the determining official which indicate which documents were submitted by the household and the date of submission. All relevant correspondence between the households selected for verification and the school or school food authority must be retained. School food authorities are encouraged to collect and report any or all verification data elements before the required dates.

* * * * *

■ 4. In § 245.11, add a new paragraph (i) to read as follows:

§ 245.11 Action by State agencies and FNSROs.

* * * * *

(i) No later than March 1, 2005 and by March 1st each year thereafter, each State agency must collect annual verification data from each school food authority as described in § 245.6a(c) 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 April 15, 2005 and by April 15 each year thereafter, each State agency must report to FNS the verification information in a consolidated electronic file that has been reported to it as required under § 245.6a(c), by school food authority, and any ameliorative actions the State agency has taken or intends to take in school food authorities with high levels of applications changed due to verification. 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. The first report containing this data element would be required in the school year beginning July 1, 2005 and each school year thereafter. State agencies are encouraged to collect and report any or all verification data elements before the required dates.

Dated: September 5, 2003.

Eric M. Bost,

Under Secretary, Food, Nutrition and Consumer Service.

[FR Doc. 03–23190 Filed 9–10–03; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 996

[Docket No. FV03–996–2C]

Change in Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States; Corrections

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Corrections to interim final rule.

SUMMARY: The Agricultural Marketing Service published an interim final rule in the **Federal Register** on August 7, 2003 (68 FR 46919), which changed the minimum quality and handling standards for domestic and imported peanuts marketed in the United States. A table specifying minimum quality standards in that rule contained several errors. This document corrects those errors.

EFFECTIVE DATE: September 11, 2003.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, Room 2A38, 4700 River Road, Riverdale, Maryland 20737; telephone: (301) 734–5243, Fax: (301) 734–5275.

SUPPLEMENTARY INFORMATION:

Background

AMS published an interim final rule that changed peanut quality and handling standards for domestic and imported peanuts marketed in the United States. The interim final rule was issued under section 1308 of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171; 7 U.S.C. 7958).

Need for Correction

As published, the Minimum Quality Standards table (table) following paragraph (a) in § 996.31 contained several errors. The heading ''Unshelled peanuts and damaged kernels and defects'' should have read ''Unshelled peanuts and damaged kernels and minor defects''. Under that heading for No. 2 Virginia peanuts, the number 2.50 should have been 3.00. Also, in the type and grade category column of the table, the percentage of split kernels (not less than 90 percent splits) was not included for Spanish and Valencia peanuts. This notation should have been included to be consistent with the Runner and Virginia peanut variety listings for lots of ''splits''. This correction document makes these changes.

Correction to Publication

■ Accordingly, the publication on August 7, 2003 (68 FR 46919), which is the subject of FR Doc. 03–20158, is corrected as follows:

■ 1. On page 46924, following paragraph (a) in § 996.31 the ''Minimum Quality Standards'' table is corrected to read as follows:

§ 996.31 Outgoing Quality Requirements

(a) * * *