

Proposed Rules

Federal Register

Vol. 67, No. 154

Friday, August 9, 2002

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 Part 245

RIN:0584—AD20

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

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the reporting and recordkeeping requirements under the National School Lunch Program (NSLP), School Breakfast Program (SBP), and Special Milk Program (SMP) relating to the verification of free and reduced price meal applications. Schools would report verification activities and results to State agencies, who would consolidate and report it to the Food and Nutrition Service (FNS) and take action as they deem appropriate. Over the years, administering State agencies have conducted comprehensive on-site evaluations of school food authorities participating in the NSLP.

The findings indicate that school food authorities generally have been determining free and reduced price eligibility in accordance with the regulatory requirements. However, in spite of their efforts, data indicate that the number of children certified as eligible to receive free meals exceeds the number of children who should be eligible to receive those meals, given other poverty indicators. This rule would require school food authorities to report verification activity and results to their respective State agencies and require State agencies to analyze and act on these data and to report school food authority level data to the FNS. Recordkeeping requirements would 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: To be assured of consideration, comments must be postmarked on or before October 8, 2002.

ADDRESSES: Address all comments concerning this proposed rule to Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. You also may submit comments electronically at cdnproposal@fns.usda.gov. All written submissions received will be available for public inspection in Room 640 at the address listed above, during regular business hours (8:30 am to 5:00 pm) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie at the above address or by telephone at 703-305-2590.

SUPPLEMENTARY INFORMATION:

Background

I. The Application Process

Under the NSLP, each school year school food authorities distribute applications for free and reduced price meal benefits to households of enrolled children. Households who want to receive free and reduced price meal benefits for their children complete the information required on the application and return the application to the school food authority.

School food authorities must approve or deny applications based on the information presented on the application. If an application contains the required information and the information establishes the child's eligibility for free or reduced price meal benefits, the school food authority must approve the application. However, if the determining official believes or suspects the information is questionable, the determining official has an obligation to ask the household to submit additional information and revise the determination based on their findings.

Since 1991, school food authorities have also had the option to certify children for free meal benefits without the use of applications if these children are members of food stamp, Temporary Assistance for Needy Families (TANF), or Food Distribution Program on Indian Reservations (FDPIR) households. This procedure is known as "direct certification." A school food authority

may communicate with a State or local agency to obtain documentation that establishes which of its enrolled students are members of food stamp/TANF/FDPIR households, and may certify the identified children for free meal benefits on the basis of this documentation.

Note that the free and reduced price eligibility criteria for the SBP are the same as for the NSLP. In fact, the same application is used when a school participates in both the NSLP and SBP. The free eligibility criteria and determination process used in the SMP parallels that of the NSLP and the SBP.

II. The Verification Process

School food authorities must verify the eligibility information on a sample of the free and reduced price meal applications approved in any given school year as specified in 7 CFR 245.6a. The eligibility of students that were directly certified for free meal benefits and applications for free milk under the SMP is not subject to the verification requirements. Generally, school food authorities verify a randomly selected sample (minimum of 3%) of the applications that have been approved for free and reduced price meal benefits.

Alternatively, a school food authority may verify a focused sample of 1% of the total number of all approved applications in the school food authority, selected from those with income within \$100 of the monthly income eligibility guidelines (\$1200 annually), as well as selecting 1/2% of the total number of applications approved based on categorical eligibility through participation in the Food Stamp Program, TANF or FDPIR.

III. Current Verification Recordkeeping Requirements

As mentioned above, each school food authority must select and verify a sample of applications approved for free and reduced price benefits each school year, unless the State agency assumes responsibility for verification or the school food authority is otherwise exempt from the verification requirement. School food authorities may do either random or focused sampling, or they may choose to verify all of the applications received. While school food authorities are not currently required to report information related to the verification process to the State

agency or to the FNS, school food authorities are required to maintain a description of their verification efforts. The description must include: (1) A summary of the verification efforts including the selection process (*i.e.* random, focused, or all); (2) the total number of applications on file on October 31; and (3) the percentage or number of applications that are or will be verified by December 15. In addition, verified applications must be readily retrievable by school. For each application verified, the school food authority must keep records of the source of information used to verify the application such as the food stamp office, wage stubs, or collateral contacts. Existing verification recordkeeping requirements are found at 7 CFR 245.6a(c).

IV. Need To Report the Verification Information

Over the years, the administering State agencies have conducted comprehensive on-site evaluations of school food authorities participating in the NSLP. The findings indicate that school food authorities generally have been determining free and reduced price eligibility in accordance with the regulatory requirements and completing verification. In spite of their efforts, the number of children approved for free meal benefits appears to exceed the number of children who are eligible to receive those meals.

Several data sources, including the eligibility verifications performed by school districts, indicate that a significant and increasing number of ineligible children are being certified for free and reduced price meal benefits. Recent comparisons of NSLP data with data from the U.S. Bureau of the Census, Current Population Survey (CPS) indicate that the number of children determined eligible for free meal benefits in the NSLP exceeds the number of children that the CPS indicates are potentially eligible. In 1999, the percentage of children determined eligible for free school meals was estimated to be 127 percent of the CPS estimate of school-aged children at or below 130 percent of the poverty guidelines, the income level required for free participation by section 9(b) of the Richard B. Russell National School Lunch Act, 42 USC 1758(b).

This data comparison is further supported by audit survey work by the U.S. Department of Agriculture's (USDA) Office of Inspector General (OIG). The OIG determined that in one State nearly 20% of the approved free or reduced price meal applications selected for verification resulted in a

loss of those benefits because the households did not respond or the households' responses disclosed that the original classifications were in error (Food and Nutrition Service National School Lunch Program Verification of Applications in Illinois: Audit Report No. 27010-0011-Ch).

The Department is concerned that if large numbers of ineligible children are receiving benefits to which they are not entitled, Federal meal reimbursement payments are improperly paid. Certification error also has a significant impact on the targeting of Federal and State education-related benefits. The amount of school lunch program funds allocated nationwide on the basis of the free and reduced price certifications was just under \$5 billion for school year 2001-2002; more than triple this amount in education-related benefits was allocated using the data.

FNS has taken several actions to address the issues associated with certification. On January 21, 2000, FNS published a notice in the **Federal Register** (65 FR 3409) soliciting pilot projects to test alternate application, approval and verification procedures for free and reduced price eligibility determinations. Twenty-one school food authorities and one State are currently operating pilot projects. These pilot sites are conducting alternative certification or verification processes for 3 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 conducting an in-depth analysis of the administrative data presented by pilot school food authorities. 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 process and on alternatives to that process. This rule is intended to complement pilot activities by collecting information on verification activity nationwide and will enable FNS to evaluate the pilot results in the context of State and nationwide data.

Secondly, FNS is taking steps to increase the emphasis by FNS regional offices and State agencies on certification and verification procedures at the local level. Reporting of verification results is integral to this effort. FNS, State agencies, and school food authorities need to have a clear understanding of the magnitude and characteristics of the certification problem in order to provide effective oversight and target corrective action. FNS intends that this data collection

will result in improvement of our understanding of the operations of the eligibility determination and verification process in the targeting of monitoring and technical assistance efforts and resources on areas or households with the likelihood of problems.

V. What Are the Provisions of This Proposal?

FNS is proposing to amend 7 CFR 245.6a(c) to require school food authorities to report verification activity and results to their respective State agency in support of State agency and FNS oversight activities. Specifically, proposed § 245.6a(c) would require that, by March 1 of each year, school food authorities must report verification information to the State agency on a form designated by FNS. The information to be reported will address, but not be limited to, the characteristics of the verification sample and the results of verification activity. Examples of information to be collected would include: 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; the number of non-respondents; and the number of students reinstated for free or reduced price meal benefits, as of February 15 of each year.

In addition, proposed § 245.6a(c) would require school food authorities to retain copies of the information reported and all supporting documents. The proposed rule also restates the existing requirements that verified applications must be readily retrievable by school and that school food authorities must retain all documents submitted by the household to confirm 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. The existing requirement that relevant correspondences between the households selected for verification and the school food authority/school must be retained is also restated.

FNS is also proposing to add § 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 will provide a data collection instrument in electronic format. In addition, 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. The availability of this information at the State level will permit State agencies to target more rigorous oversight activities on school food authorities whose verification activities result in a high termination rate.

The proposal would require the State agency to report to FNS, not later than April 15 of each year, each school food authority's verification information, submitted in accordance with § 245.6a(c), 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. FNS intends to provide for the electronic submission of these data.

Additionally, this proposed rule would include in 7 CFR part 245 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 is proposing at this time to add the definition at 7 CFR 245.2(b-2) for the sake of clarity and completeness.

VI. Procedural Matters

Executive Order 12866

This proposed rule has been determined to be non-significant and is not subject to review by the Office of Management and Budget under Executive Order 12866.

Public Law 104-4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes a requirement 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 prepares a written statement, including a cost-benefit analysis. This is done for proposed and final rules that have "Federal mandates" which may result in expenditures of \$100 million or more in any one year by State, local, or tribal governments, in the aggregate, or by the private sector. When this statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives. It

must then adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates of \$100 million or more in any one year (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Eric M. Bost, Under Secretary for Food, Nutrition and Consumer Service, 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 those programs. 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.

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).

Executive Order 12988

This proposed 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 of the final rule. 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 proposed

rule are the hearings that FNS must provide for decisions relating to eligibility for free and reduced price meals and free milk (7 CFR 245.7 for the NSLP, SBP, and SMP in schools).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, this notice invites the general public and other public agencies to comment on the proposed information collection.

Written comments must be received on or before October 8, 2002.

Comments concerning the information collection aspects of this proposed rule should be sent to Lauren Whittenberg, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC. 20503. A copy of these comments may also be sent to Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble. Commenters are asked to separate their information collection requirements comments from their comments on the remainder of this proposed rule.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulation.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: 7 CFR part 245 Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

OMB Number: 0584-0026.

Expiration Date: August 31, 2004.

Type of Request: Revision of currently approved collection of data related to the free and reduced price meal application in the NSLP, SBP and SMP.

Abstract: Under this proposal, school food authorities would report verification data to the State agency and State agencies would evaluate and submit this information to FNS.

ESTIMATED ANNUAL REPORTING BURDEN

| | Section | Annual number of respondents | Annual frequency | Average burden per response hours | Annual burden hours |
|--|-----------|------------------------------|------------------|-----------------------------------|---------------------|
| School food authorities report verification information to State agency | | | | | |
| Existing | | 0 | 0 | 0 | 0 |
| Proposed | 245.6a(c) | 16,342 | 1 | 1 | 16,342 |
| Total Reporting Burden: | | | | | |
| Total Existing | 0 | | | | |
| Total Proposed | 16,342 | | | | |
| Change | +16,342 | | | | |
| State agencies report district level data to FNS | | | | | |
| Existing | | 0 | 0 | 0 | |
| Proposed | 245.11(i) | 54 | 1 | 8 | 432 |
| Total Reporting Burden: | | | | | |
| Total Existing | 0 | | | | |
| Total Proposed | 432 | | | | |
| Change | +432 | | | | |

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 | | | | |

List of Subjects in 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.

Accordingly, 7 CFR part 245 is proposed to be amended as follows:

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

1. The authority citation for part 245 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.

* * * * *

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

§ 245.6a Verification requirements.

* * * * *

(c) *Verification reporting and recordkeeping requirements.* Each year by March 1, each school food authority must report to the State agency information related to its verification activity on a form designated by FNS. School food authorities shall retain copies of the information reported under this section and all supporting documents. All verified applications must be readily retrievable by school 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 correspondences between the households selected for verification and the school food authority/school must be retained.

* * * * *

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 of each year, 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 of each year, each State agency must report to FNS the verification information which 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.

Dated: August 5, 2002.

Roberto S. Salazar,

Administrator, Food and Nutrition Service.
[FR Doc. 02-20163 Filed 8-8-02; 8:45 am]

BILLING CODE 3410-30-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-76]

Robert H. Leyse; Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Commission is publishing for comment a petition for rulemaking filed by Robert H. Leyse on May 1, 2002. The NRC assigned the petition Docket No. PRM-50-76 on May 8, 2002. The petition requests amendment to NRC's regulations

concerning evaluation models for Emergency Core Cooling Systems (ECCS) and associated guidance documents. The petitioner believes the amendments are necessary to correct technical deficiencies that do not consider the complex thermal hydraulic conditions during a Loss-of-Coolant-Accident (LOCA), including the potential for very high fluid temperatures.

DATES: Submit comments by October 23, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-00001, Attention: Rulemaking and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

For a copy of the petition, write to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001.

You may also provide comments via the NRC's interactive Rulemaking website at <http://ruleforum.llnl.gov>. This site allows you to upload comments as files in any format, if your web browser supports the function. For information about the interactive Rulemaking website, contact Ms Carol Gallagher, (301) 415-5905 ([email:cag@nrc.gov](mailto:cag@nrc.gov)).

Documents related to this petition, including comments received, may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site (the Electronic Reading Room), <http://www.nrc.gov>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4029, 301-415-4737 or by e-mail to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT:

Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 or e-mail: MTL@nrc.gov.

SUPPLEMENTARY INFORMATION: Mr. Leyse's petition covers three distinct

issues: (1) Amendment of Appendix K to Part 50 of the Commission's regulations, (2) amendment of an NRC guidance document entitled Regulatory Guide 1.157, Best-Estimate Calculations of Emergency Core Cooling System (ECCS) Performance, and (3) the need for further analysis of Part 50 backup data.

Issue (1)—Amendment of Appendix K to Part 50

The petitioner details at length technical deficiencies in Appendix K to Part 50, in Section I.A.5. The petitioner claims that Section I.A.5 does not accurately describe the extent of zirconium-water reactions that may occur during a loss-of-coolant accident (LOCA). The petitioner specifically describes how the Baker-Just equation used (Baker, L., Just, L.C., "Studies of Metal Water Reactions at High Temperatures, III. Experimental and Theoretical Studies of the Zirconium-Water Reaction," an Argonne National Labs document (ANL-6548) page 7, May 1962) does not include any allowance for the complex thermal-hydraulic conditions during a LOCA, including the potential for very high bulk fluid temperatures within the cooling channels of the zirconium-clad fuel elements.

The petitioner cites the abstract of ANL-6548, and disputes the use of the conclusions drawn using test apparatus that do not accurately reflect the conditions present during a LOCA, specifically:

- The bulk water temperature was no greater than 315 C (599F),
- The volume of water within the test apparatus was substantially greater than the volume of zirconium specimens, creating a vastly greater capacity to cool the heated zirconium particles of the Baker and Just experiment than would exist under LOCA conditions, and
- Zirconium specimens were exposed to water only, while LOCA conditions include steam and non-equilibrium water-steam mixtures that reached higher bulk fluid temperatures. The petitioner further questions the appropriateness of the dimensions of the apparatus used in the investigations, detailing volume ratio of water to zirconium for several specimens.

The petitioner concludes that a footnote to the Baker and Just analysis stating "This discussion is of a preliminary nature: work in this area is continuing," obviates the application prescribed in Appendix K to Part 50 in Section I.A.5. of the Baker-Just equation