free use of computers for access to the online editions.

Federalism

This proposed rule has no federalism implications under Executive Order 13132. It would not impose compliance costs on State or local government or preempt State law.

List of Subjects in 1 CFR Part 11

Code of Federal Regulations, **Federal Register**, Government publications, Weekly Compilation of Presidential Documents.

For the reasons discussed in the preamble, the Administrative Committee of the **Federal Register** proposes to amend part 11 of chapter 1 of title 1 of the Code of Federal Regulations as set forth below:

PART 11—SUBSCRIPTIONS

1. The authority citation for part 11 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

2. In § 11.2, revise paragraph (a) to read as follows:

§ 11.2 Federal Register.

(a) The subscription price for the paper edition of the daily **Federal Register** is $749 per year. A combined subscription to the daily **Federal Register**, the monthly **Federal Register** Index, and the monthly LSA (List of CFR Sections Affected) is $808 per year for the paper edition, or $165 per year for the microfiche edition. Six-month subscriptions for the paper and microfiche editions are also available at one-half the annual rate. Those prices exclude postage. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage.

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3. In § 11.3, revise paragraph (a) to read as follows:

§ 11.3 Code of Federal Regulations.

(a) The subscription price for a complete set of the Code of Federal Regulations is $1,019 per year for the bound, paper edition, or $247 per year for the microfiche edition. Those prices exclude postage. The prevailing postal rates will be applied to orders according to the delivery method requested. The Government Printing Office sells individual volumes of the paper edition of the Code of Federal Regulations at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee. The price of a single volume of the microfiche edition is $4 per copy, including postage.

* * * * *

4. In § 11.6, revise paragraph (a) to read as follows:

§ 11.6 Weekly Compilation of Presidential Documents.

(a) The subscription price for the paper edition of the Weekly Compilation of Presidential Documents is $113 per year, excluding postage. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of an individual copy is $5, including postage.

* * * * *

5. Revise § 11.7 to read as follows:

§ 11.7 Federal Register Index.

The annual subscription price for the monthly **Federal Register** Index, purchased separately, in paper form, is $29. The price excludes postage. The prevailing postal rates will be applied to orders according to the delivery method requested.

6. Revise § 11.8 to read as follows:

§ 11.8 LSA (List of CFR Sections Affected).

The annual subscription price for the monthly LSA (List of CFR Sections Affected), purchased separately, in paper form, is $30. The price excludes postage. The prevailing postal rates will be applied to orders according to the delivery method requested.

By order of the Committee.
Dated: December 12, 2003.

Raymond A. Mosley,

Secretary, Administrative Committee of the Federal Register.

[FR Doc. 03–31145 Filed 12–16–03; 8:45 am]

BILLING CODE 1505–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 275

RIN 0584–AD29

Food Stamp Program: High Performance Bonuses

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This rulemaking proposes to amend Food Stamp Program (FSP) regulations to implement provisions of section 4120 of the Farm Security and Rural Investment Act of 2002 (FSRIA). This section authorizes the Food and Nutrition Service (FNS) to award bonuses to States that demonstrate high or improved performance in administering the FSP. This rule proposes performance measures for these bonuses for fiscal year (FY) 2005 and beyond. It also proposes the data that will be used to measure the identified performance. The performance bonuses are meant to act as an incentive for State agencies to improve or maintain high performance in administering the FSP.

DATES: Comments must be received on or before February 17, 2004.

ADDRESSES: You may mail comments to the Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, Attention: Program Design Branch. You may FAX comments to us at 703–305–2486, Attention: Program Design Branch. You may also hand-deliver comments to us on the 8th floor at the above address.

FOR FURTHER INFORMATION CONTACT: Moira Johnston, Senior Program Analyst, Program Design Branch, Program Development Division, Food Stamp Program, FNS, 3101 Park Center Drive, Room 812, Alexandria, Virginia, (703) 305–2515, or via the Internet at *Moira.Johnston@fns.usda.gov*.

SUPPLEMENTARY INFORMATION:

Additional information on Comment Filing/Electronic Access

Electronic Access and Filing Address

You may view and download an electronic version of this proposed rule at *http://www.fns.usda.gov/fsp/*. You may also comment via the Internet at the same address. Please include ''Attention: RIN 0584–AD29'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your message, contact us directly at 703–305–2515.

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any change you recommend. Where possible, you should reference the specific section or paragraph of the proposed rule you are addressing. We

may not consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period or comments delivered to an address other than those listed above.

We will make all comments, including names, street addresses, and other contact information of respondents, available for public inspection on the 8th floor, 3101 Park Center Drive, Alexandria, Virginia 22302 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday, excluding Federal holidays. Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, or other contact information from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Executive Order 12866

This proposed rule was determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3105, subpart V and related notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of this rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). 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. The changes will affect State and local welfare agencies that administer the FSP, to the extent that they must implement the provisions described in this action.

Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, 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 UMRA, the Department 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 UMRA generally requires the Department 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) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

Regulatory Impact Analysis

Need for Action

This NPRM is needed to implement the provisions of Section 4120 of the FSRIA that authorized FNS to establish performance measures relating to actions taken to correct errors, reduce rates of error, improve the eligibility determinations and other indicators of effective administration; measure States' performance against these performance measures; and award performance bonus payments totaling $48 million for each fiscal year to State agencies that show high or improved performance relating to the performance measures.

Benefits

State agencies will benefit from the provisions of this rule because they have the potential to be awarded bonuses for high or improved performance in administering the FSP.

Recipients will benefit from the provisions of this rule because, as the State agencies seek to improve their performance in determining eligibility, issuing benefits, and attracting and retaining participants, their actions will positively affect applicants and participants.

Costs

The cost of implementing these provisions is $48 million each fiscal year, or $240 million over 5 years.

Executive Order 13132

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 regulation describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State Officials

Prior to drafting the rule, we received input from State and local agencies. Since the FSP is a State administered, Federally funded program, our national headquarters staff and regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding FSP implementation and policy issues. This arrangement allows State and local agencies to provide feedback that forms the basis for any discretionary decisions made in this and other FSP rules. In addition, we solicited ideas at various State, regional, national, and professional conferences. Finally, we consulted with State government representatives and our partners in the anti-hunger arena through meetings with such entities as the National Conference of State Legislators (NCSL), the National Governors Association (NGA), the American Public Human Services Association (APHSA), the Food Research and Action Center (FRAC) and the Center on Budget and Policy Priorities (CBPP).

Nature of Concerns and the Need To Issue This Rule

State agencies expressed their preferences that performance measures for the high performance bonuses

should be based on: (1) Activities that FNS and State agencies value most; (2) outcomes that State agencies could influence; (3) available data, even if imperfect, so as not to impose additional collection and reporting requirements on State agencies.

Extent to Which We Met Those Concerns

FNS took the State agencies' preferences into consideration when drafting this NPRM. In addition, FNS will consider comments on the NPRM prior to publishing the final rulemaking. This NPRM is required by law to implement the high performance bonuses for FY 2005 and beyond.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of food stamp households and individual participants, FNS has determined that there is no adverse effect on any of the protected classes. The rulemaking is directed at State agencies and not applicants or recipients. If there were a trickle down effect on applicants or recipients, it would more than likely be positive and affect all applicants and recipients as this rulemaking includes incentives for State agencies to improve the eligibility determination and certification systems.

FNS has no discretion in implementing any of these changes, which were effective upon enactment of the FSRIA on May 13, 2002. We do have discretion regarding the performance measures used to award bonuses. However, as discussed above, these performance measures are directed at State agencies. To the extent States act on these incentives, customer service and payment accuracy may improve. Therefore, FNS anticipates no adverse impact on any of the individuals eligible for food stamps and no disproportionate impact on any protected class.

In general, all data available to FNS indicate that protected individuals have the same opportunity to participate in the Food Stamp Program as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the FSP from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. Regulations at 7 CFR 272.6 specifically state that ''State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act of 1977 (the Act), the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15.'' Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

Paperwork Reduction Act

There are no revisions to information collections identified in this rule. This proposed rule contains information collections that have been previously approved by OMB. The burden for the Quality Control Negative Case Action Review Schedule (FNS–245) is approved under OMB #0584–0034. The Quality Control Review Schedule (FNS–380–1) is approved under OMB #0584–0299. The Integrated Quality Control Review Worksheet (FNS–380) is approved under OMB #0584–0074. The State Coupon Issuance and Participation Estimates (FNS–388) is approved under OMB #0584–0081.

FNS is committed to compliance with the GPEA, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Background

Section 16(a) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2025(a), establishes the base administrative cost-sharing rate between the Federal Government and States at 50 percent. That is, pursuant to Section 16(a), the Department will typically reimburse half a State's costs incurred in administering the FSP. The Act prior to FSRIA and FSP regulations at 7 CFR 277.4(b)(l)(ii) provide that a State agency would receive enhanced funding if it has a payment error rate less than or equal to 5.9 percent and a negative case error rate less than the national weighted mean negative case error rate for the previous year. State agencies and advocate groups have expressed concerns that this incentive is too narrowly focused on payment accuracy and should be modified to also reward States for efficient management of the FSP in other areas.

On May 13, 2002, the enactment of FSRIA (Pub. L. 107–171) re-designed the quality control (QC) system, doing away with enhanced funding and replacing it with bonuses for States with high or improved performance administering the FSP, while significantly reducing liabilities assessed against States with poor accuracy outcomes.

This NPRM proposes to implement only those provisions related to the high performance bonuses. Elimination of enhanced funding and changes in the liability system will be dealt with in a separate rulemaking.

What Are the Legislation's Basic Provisions for Performance Bonuses?

Section 4120 of the FSRIA amended section 16 of the Act to authorize FNS to establish performance measures relating to actions taken to correct errors, reduce rates of error, improve eligibility determinations, and other indicators of effective administration; measure States' performance against these performance measures; and award performance bonus payments totaling $48 million for each fiscal year to State agencies that show high or improved performance relating to the performance measures. Section 16(d)(3) prohibits a State from being eligible for a performance bonus payment any fiscal year for which it has a liability amount established. Section 16(d)(4) provides that the amount of the bonus payment and whether or not to award such bonus payment is not subject to administrative or judicial review. Pursuant to section 16(d)(2)(B)(ii) of the amended Act, FNS is to award the bonus payments in the fiscal year following the fiscal year of performance.

How Is the Legislation To Be Implemented To Measure and Reward Performance for FY 2003 and 2004?

For FY 2003 and FY 2004, section 16(d)(1)(A) of the Act authorized FNS to establish performance measures through guidance. FNS issued guidance implementing the performance measures for FY 2003 on September 30, 2002. The performance measures for FY 2004 had not been established at the time FNS drafted this proposed rule.

How Is the Legislation To Be Implemented To Measure and Reward Performance for FY 2005 and Beyond?

For FY 2005 and beyond, section 16(d)(2) of the Act provides that FNS must establish the performance measures through regulation. This rule proposes the performance measures for FY 2005 and beyond.

Does the Legislation Require FNS To Consult With Organizations?

Under Section 16(d)(2)(A)(iii) FNS is required to solicit ideas from State agencies and organizations that represent States' interests prior to issuing the proposed rule. In June 2002, FNS held two meetings, one in Alexandria, Virginia, and one in Dallas, Texas, with representatives from all the State agencies to discuss the FSRIA and to solicit their ideas for implementation. FNS took the opportunity at that time to solicit ideas from State agency representatives specifically on the performance measures. On July 2, 2002, FNS met with representatives from State agencies, APHSA, NCSL and NGA, and on July 11, 2002, FNS officials met with representatives from CBPP and FRAC specifically to solicit ideas on possible performance measures for the high performance bonuses. FNS officials also solicited ideas from State agencies through on-going discussions and through the September 30, 2002 guidance.

Were Methods for Structuring Bonuses Discussed at These Meetings?

During these discussions, the participants also put forth ideas on how to structure the bonuses. For example, some of the issues explored included but were not limited to:

- How many States should FNS reward? Should FNS reward more States with less money or fewer States with more money?
- How many measures should FNS propose? Should FNS propose several individual measures? Or, should it propose a few measures that are made up of several elements that are then indexed or weighted?
- Should FNS measure improvements or absolutes? Or, both?
- What percentage of the $48 million should go towards payment accuracy versus other measures?
- How does FNS apportion the money? By size of State? By caseload or dollars issued?
- Should FNS allow States to choose whether or not to compete for the bonuses? Or, should it be mandatory?

What Were Some of the Possible Performance Measures Discussed During These Meetings?

During the meetings, the participants discussed many ideas on possible performance measures. The performance measures discussed included but were not limited to: per case State administrative costs, recipient claims establishment, payment accuracy, general customer service, application processing timeliness, increasing family self-sufficiency, participation levels, participation rates, nutrition education, fair hearings, and creativity/innovations.

What Were Some of the Criteria Participants in These Meetings Used To Evaluate the Possible Performance Measures?

In examining the possible measures, participants used several criteria to determine which ones to pursue and which ones to set aside. Participants felt very strongly that the measures should be ones that the States could influence. For example, the number of individuals participating in the FSP relates more to the size of the State and condition of the economy than to State agency actions. However, the percentage of eligible citizens actually participating in the Program can be influenced by State agency practices such as outreach, accessibility of offices, the length of the application form, and the speed of application processing. In addition, two key considerations were the value of the performance reflected by the measure, and the availability of objective data for a given measure. In some areas, FNS has considerable data but participants did not believe that these data measured core areas of FSP performance. For example, FNS has data on recipient claims. Participants expressed concern, however, about rewarding States with high error rates and that have a much larger pool of claims to establish and collect. In addition, participants emphasized that State agencies were already financially rewarded in that they retain a certain percentage of all the claims they collect.

FNS has data on the amount of States' administrative costs. Participants expressed concern, however, about rewarding States with low administrative costs that may have less effective programs. In other instances, an activity may advance a key part of the FSP mission but data is not available or not sufficient to gauge success. For example, nutrition education promotes the basic purpose of the FSP, which is to improve the nutrient intake of low-income persons. While food intake data is relevant to measure nutrient intake, it is not sufficient because it is not collected annually and the sample sizes are not sufficient to develop statistically adequate estimates of nutritional intake at the State level. The measures that FNS decided to propose following the conclusion of the meetings, while not perfect, met the basic criteria mentioned above.

Were There Overall Themes That Emerged During the Discussions?

During the discussions mentioned above, as well as subsequent in-house discussions, the following overall themes emerged concerning the performance measures:

- Performance measures should be based on: (1) Activities that FNS and State agencies value most; (2) outcomes that State agencies could influence; (3) available data, even if imperfect, so as not to impose additional collection and reporting requirements on State agencies.
- The bonuses should be structured as simply as possible; several individual performance measures are preferable over composite measures that would include several categories that would be ''weighted.''
- FNS should award more States with smaller bonuses, since recognition may be as important as money.
- FNS should make awards proportional to State's caseloads to give all States sufficient incentive to compete for these bonuses.
- FNS should emphasize rewarding excellence, but also award improvement. This will give all States an opportunity to receive an award and motivate more States to try.
- Awards should reflect a balancing of the goals of program integrity and program access. Integrity continues to be one of FNS' highest priorities.
- FNS should measure all States in all areas, as opposed to having them choose which bonuses to compete for, because the data are available, are public information, and will motivate States to improve.

What Performance Measures and Bonus Structure Has FNS Decided To Propose for FY 2005 and Beyond?

While there are many measures, many ways to divide the money, and many ways to structure the bonuses, FNS believes the following proposed scheme reflects the values of the FSP, strikes a good balance between payment accuracy and access, and recognizes both improvements and excellence.

How Many Proposed Categories Are There?

There are 7 proposed categories that would provide bonuses for up to 30 States.

What Are the Proposed Categories?

The 7 categories include the lowest and most improved combined payment error rates, the lowest and most improved negative error rates, the highest and most improved participant access rates, and the best application processing timeliness rate. Following is a detailed discussion of each proposed measure and the proposed data that would be used for each measure.

As mentioned above, FNS and representatives of partnering agencies and organizations considered many categories. One of these categories was for innovation. Generally, FNS believes that a determination of ''most innovative'' would require a subjective determination, unlike the other measures discussed and eventually proposed in this rulemaking that are based on objective and quantifiable data. Therefore, FNS decided at the time of this proposed rulemaking to reserve such a category for the annual non-monetary awards that FNS gives out at the American Association of Food Stamp Directors Conference. FNS is interested in the idea of rewarding innovation, and would like to solicit comments on whether or not to include as a high performance bonus a category for innovation. Specifically, what criteria could be used to rank innovative projects?

Payment Accuracy

FNS proposes to divide $24 million (50 percent of the total amount) among the 7 States with the lowest and the 3 States with the most improved combined payment error rate (the error rate). FNS believes allocating 50 percent of the total amount towards payment accuracy sends a strong signal that payment accuracy is still one of the Agency's highest priorities. In addition, it is an established index that measures outcomes that are influenced by many aspects of FSP management, such as policies, training and customer service. In general terms, the error rate consists of the rate of over issuances and under issuances to participating households. More specifically, the regulations at 7 CFR part 275 define the error rate, prescribe how this data is collected and manipulated, and describe how the error rate is determined. These data are the most readily available data of all the proposed performance measures. They are selected from random sampling of approximately 54,000 cases that are reviewed by the States and validated by FNS. Determination of error rates is a long established practice, one that the State agencies and others are familiar with. Therefore, for the sake of brevity, this proposed rule will not detail the QC data collection process.

How Will the Most Improved Error Rate Be Determined—by Percent Decrease (Relative) or by Percentage Point Decrease (Absolute)?

FNS proposes that the most improved error rate be determined by measuring the percentage points decreased (absolute improvement). For example, if State A has an error rate of 10 percent in FY 2003 and an error rate of 6 percent in 2004, its improvement is 4 percentage points, or a 40 percent improvement. If State B has an error rate of 6 percent in 2003 and an error rate of 3 percent in FY 2004, its improvement is 3 percentage points, or a 50 percent improvement. FNS proposes to rank State A higher than State B because its absolute improvement (4 percentage points) is greater.

FNS believes absolute improvement has more of an impact on the national FSP than relative improvement. For example, if States A and B both issued $100 million in benefits, State A would have reduced its payment error by $4 million while State B would have reduced its payment error by only $3 million.

Negative Error Rate

FNS proposes to divide $6 million among the 4 States with the lowest and the 2 States with the most improved negative error rate. The negative error rate measures the correctness of the State agency's action to deny an application, or suspend or terminate the benefits of a participating household. It also measures whether a State correctly determined a household's eligibility in terms of the State's compliance with Federal procedural requirements. For example, a case may be reported as an invalid denial because the State denied the application prior to the 30th day, even though the household is not eligible. The negative error rate is the best measure FNS has of how many people walk in the door and do not get the services and benefits as provided by statute. As with the error rate, the determination of the negative error rate is spelled out in 7 CFR part 275. Again, it is long standing practice and, therefore, this proposed rule will not detail how FNS determines the negative error rate.

How Will the Most Improved Negative Error Rate Be Determined—by Percent Decrease (Relative) or by Percentage Point Decrease (Absolute)?

FNS proposes to determine the most improved negative error rate by measuring the percentage points improved. For example, if two States have the same caseload: State A starts with a 6 percent negative error rate and State B starts with a 3 percent negative error rate. State A reduces its error rate to 4.5 percent, a reduction of 1.5 percentage points (absolute) and a 25 percent (relative) reduction. State B reduces its error rate to 2 percent, a reduction of 1 percentage point (absolute) and a 33 percent (relative) reduction.

Our proposal is to acknowledge State A because it has had a larger effect on its State caseload than State B (1.5 percentage points versus 1 percentage point).

If both States start with the same caseload, it is clear that State A has affected more cases in its improvement. When the caseloads are different, State A still has had a bigger impact in proportion to its caseload than has State B.

FNS would like to solicit comments on whether States must attain a certain threshold to be rewarded for improvement. For example, if a State improves its negative error rate from 20 percent to 15 percent should it be rewarded, even though its negative error rate is still very high?

Participant Access Rate

FNS proposes to divide $12 million among the 4 States with the highest and the 4 States with the most improved participant access rate. This measure is central to the purpose of the FSP in that it reflects the degree to which those in need of nutritional assistance are accessing the benefits to which they are eligible. FNS and others discussed measuring States' performance based on the participation rate that FNS publishes every year. The participation rate measures the rate at which eligible individuals are participating in the FSP. In determining this measure, FNS makes adjustments for things that would make a household or individual otherwise ineligible for the FSP such as resources, alien status, household composition and whether or not an individual has reached the time limits for able-bodied adults without dependents. It also makes adjustments for things that would make a household otherwise eligible for the FSP such as annual income versus monthly income. For example, a household could have an annual income

above 130 percent of the poverty line, and at first glance would be ineligible for the FSP. But, because the sole breadwinner was laid off halfway through the year, the household was ''poor'' for many months within that year, and thus income eligible for the FSP for those months. The participation rate is based in part on data from the Census Bureau's March Supplement to the Current Population Survey. FNS then makes the adjustments discussed above. As this process takes time, the participation rate is not available until a year after the bonuses are to be awarded.

FNS is proposing that States be measured against a participant access rate (PAR). The PAR differs from the participation rate, in that it measures the ratio of participants in the FSP to the number of persons in poverty in the State. In calculating the PAR, FNS does not make adjustments for things that would make individuals otherwise ineligible for the FSP such as resources or alien status, or otherwise eligible, such as monthly income versus annual income. Therefore, it is available within the timeframe needed in order to award the bonuses within the statutory time frame.

What Data Will FNS Use To Calculate the Participant Access Rate?

FNS proposes to use a variety of data sources to calculate the participant access rate. FNS proposes that the denominator be composed of data from the Census Bureau's March Supplement to the Current Population Survey. FNS would use the annual State counts of persons below 125 percent of poverty from the Census Bureau shortly after it is released, usually in late September. These counts are based on income received in the previous calendar year. For the numerator, or the number of food stamp participants, FNS proposes to use administrative counts of participants by State over the same calendar year for the Census Bureau's persons below 125 percent of poverty, averaging 12 months of data.

The threshold of 125 percent of poverty differs from what FNS used for fiscal years 2003 and 2004 (100 percent of poverty). However, our analysis shows that using 125 percent of poverty better correlates to our official Food Stamp Program participation rates. We are examining whether 130 percent of poverty is an even better match. However, at this time, this data is not readily available from the Census Bureau and would require time to obtain. If we are guaranteed to receive this data from the Census Bureau within a reasonable timeframe and the data better correlates to our official statistics, in the final rule making we will use numbers of people below 130 percent rather than 100 percent of poverty.

FNS is also considering using data from the American Community Survey (ACS) instead of the Current Population Survey because ACS has a larger sample and is released earlier than the official poverty statistics. Currently, the only ACS data available is for 2002. We will examine how well the ACS poverty counts correlate to the official Food Stamp Program participation rate, when the 2002 rates are available this coming summer. If the ACS data provides a better proxy for the official program participation rate, in final rule making we will use the ACS rather than the CPS.

Would FNS Make Adjustments for Special State Specific Situations That Might Affect the Number of People Receiving Food Stamps?

FNS proposes to make adjustments for two special situations. First, because persons receiving Supplemental Security Income (SSI) are ineligible for food stamps in California, FNS proposes to reduce the number of persons below 125 percent of poverty in California by the percentage of such persons who received SSI in the previous year. Second, because some individuals residing on reservations may choose to receive food assistance from either the FSP or the Food Distribution Program on Indian Reservations (FDPIR) but not both simultaneously, FNS proposes to add to the number of food stamp participants the number of FDPIR participants using administrative data averaged over a calendar year.

FNS proposes to not make adjustments for State option programs that offer State benefits through the FSP to immigrants because they are not Federal food assistance programs.

Application Processing Timeliness

FNS proposes to divide $6 million among the 6 States with the highest percentage of timely processed applications. FNS believes application-processing timeliness is an important aspect of customer service, not only because it measures whether households get the food stamps as provided by statute in a timely fashion, but also because it is a well established standard that is mandated by section 11(e)(3) of the Act (7 U.S.C. 2025(e)(3)). Many State agencies and advocates agree. However, FNS also recognizes that reliable data for measuring application-processing timeliness are not readily available and/or reliable. Currently, FNS collects some of this information on the Program Activity Statement (Form FNS–366) such as data on certification, fair hearings and fraud control. However, in many instances these data are reported inconsistently or inaccurately. For example, States have different reporting systems (manual or automatic) or eligibility workers may understate the number of late decisions for fear of being reprimanded. In addition, FNS does not validate the data that the State agencies report. A review of the data from the current Form FNS–366B indicates a wide range of performance. Rewarding States that report stellar performance may reflect reporting differences rather than exceptional timeliness. Finally, if we were to use the Form FNS–366B to collect this data, we would have to mandate consistent systems and reporting processes that would result in an additional burden on States. In light of these concerns, FNS is proposing to use other data for this measure.

What Data Does FNS Propose Using To Measure Application-Processing Timeliness?

FNS proposes collecting data on application-processing timeliness through the QC system. FNS has initiated collection of data as part of the QC reviews beginning with FY 2003 cases for use in determining the measure and evaluating its use in measuring these data (FNS–380). Instructions for collecting this information, which can be found in the *FNS Handbook 310: The Food Stamp Program Quality Control Review Handbook,* have already been shared with the Regional offices and State agencies. FNS is seeking particular comment on this data collection instrument and its ability to collect the sought after information.

What Application-Processing Standard Does FNS Propose To Use To Measure Timeliness?

FNS proposes to use the application-processing standard of 30 days (or 7 days for expedited service). An applicant must be given the ''opportunity to participate'' (as defined in 7 CFR 274.2) within thirty days (or 7 days for expedited service). New applications that are processed outside this standard would be considered untimely for this measure, with one exception as discussed below.

Will FNS Count Client Caused Delays as Untimely?

Yes. Any application processed outside of the 30-day processing standard will be considered untimely for this measure including client caused

delays, with one exception. FNS is proposing not to include in the measure applications that are properly pended because the applicant failed to provide requested verification. Properly pended means the State agency has taken the actions described in 7 CFR 273.2(h)(1)(i)(C) and it has pended the application in accordance with 273.2(h)(2)(i).

FNS recognizes that the regulations at 7 CFR 273.2(h)(2)(i) provide procedures for State agencies that, for one reason or another, are unable to meet the 30-day standard. For example, if the delay is the fault of the State agency, the State agency may not deny the application, but must hold it pending while taking immediate corrective action. If the delay is the fault of the applicant (for example, the household failed to complete the application), the State agency may either deny the application or hold it pending for 30 days from the date of the initial request for verification. Some may argue that FNS should measure States' compliance with these regulations rather than States' performance under a 30-day standard mandated in section 11(e)(3) of the Act. Why then does this rulemaking propose to measure State agencies' performance against the statutory 30-day limit as opposed to compliance with the regulations? First, FNS believes that the incidence of client caused delays does not vary that much by State, and therefore, with this methodology States are on an even playing field. Second, FNS would not want to reward a State that is relatively weak in meeting the 30-day standard but good at getting benefits out within 60 days. Furthermore, FNS believes it would be difficult, based upon certification records, to consistently distinguish between delays that are client versus agency caused, except in the situation described above. However, given the considerable discussion around this measure, FNS is soliciting comments on whether to exclude all client-caused delays from this measure and, if so, how to work that into the existing reporting and QC framework.

Will Both Approvals and Denials Be Included in the Determination of Timeliness?

FNS proposes that only approvals be included in the determination of timeliness since this measure is focused on meeting the 30-day standard for providing eligible households the opportunity to participate.

Will Every Case Identified for QC Review in the Performance Year Be Evaluated for Timeliness?

FNS proposes that QC reviewers evaluate for timeliness only new applications in the State QC active sample that were filed on or after the beginning of the fiscal year because they were filed within the performance measurement year for which the bonuses are awarded.

FNS realizes that this approach reduces the sample size. For example, if a QC reviewer pulls a case for review in November, chances are it was originally certified in the previous fiscal year. Therefore, that case will not be included in the sample for the application-processing-timeliness measure. It may be several months into the fiscal year before the QC reviewers sample cases that are certified within the performance measurement year. FNS will monitor the sample size and, depending upon the confidence it has in the data and comments it receives on the approach, reevaluate this method of measuring timeliness. However, we believe this sample size will give us enough data to make a determination of State rankings.

Will This Information Be Validated?

Federal reviewers will examine the data during the Federal re-review process and possibly at the end of the review period.

General Questions

Can a State Agency Win More Than One Bonus in the Same General Category, i.e., the Best and the Most Improved Payment Error Rate?

FNS proposes that a State cannot be awarded two bonuses in the same category, *i.e.*, the best and most improved participant access rate. FNS proposes that if a State were among the most improved in a category, it would not be counted among the best. This allows the ''next best'' State to receive an award as being among the best States. A State may be awarded bonuses for different general categories, such as most improved negative error rate and highest participant access rate.

How Will FNS Ascertain the Winners of Each Category When There Is a Tie?

Where there is a tie to the fourth decimal point, FNS proposes to add the additional State(s) into the category. For example, if 7 awards should be made for the lowest error rate, but there are 3 States that are tied for the 7th spot, 9 States would receive the award.

Can a State Agency That Has a Liability Amount Established Receive a Bonus?

No. Section 4120 of the SFIRA provided in section 16(d)(3) of the Act that a State may not be eligible for a performance bonus payment in any fiscal year for which it has a liability amount. To have a liability amount established, a State's combined payment error rate must exceed 105 percent of the national performance measure for payment errors for two consecutive fiscal years. Therefore, since FY 2003 was the first year for which a State could have poor performance as discussed above, it would not have a liability amount established unless it has poor performance in FY 2004 as well. However, note that no State will have a liability established in accordance with section 16(d)(3) of the Act in FY 2003 and, therefore, all States are eligible for a high performance bonus for that year.

How Will the Money Be Apportioned?

FNS proposes that the money be divided among States in proportion to the size of their caseloads (average number of households per month for the fiscal year for which performance is measured). For example, if 6 states are to split $6 million and State A accounts for 40 percent of all food stamp participants in these 6 states, State A will receive 40 percent of $6 million, or $2.4 million. FNS believes that this is the most equitable way to apportion the money. This method recognizes that more effort is needed to influence a large State's performance versus a small State's performance. At the same time, though, it provides a per-case award so that each case is in effect weighted equally.

When Will the Bonuses for FY 2005 and Subsequent Fiscal Years' Performance Be Awarded?

The bonuses for performance in FY 2005 will be awarded in FY 2006, as required by section 16(d)(2)(B)(ii) of the Act. For each subsequent fiscal year, FNS will award bonuses in the fiscal year following the performance measurement year.

Is FNS's Decision To Award a Performance Bonus Payment Subject to Administrative or Judicial Review?

No. Section 16(d)(4) of the Act specifically states that the determination by the Secretary whether, and in what amount, to award a performance bonus payment under this subsection shall not be subject to administrative or judicial review.

Where Does FNS Propose Revising the Regulations To Include the High Performance Bonuses?

FNS proposes to codify these provisions in a new section at 7 CFR 275.24.

List of Subjects in 7 CFR Part 275

Administration, Management evaluation reviews, Quality control reviews, Data analysis and evaluation, Corrective action, Responsibilities for reporting on program performance, Program performance.

Accordingly, 7 CFR part 275 is proposed to be amended as follows:

PART 275—PERFORMANCE REPORTING SYSTEM

1. The authority citation for Part 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

2. A new § 275.24 is added to read as follows.

§ 275.24 High performance bonuses.

(a) General rule. (1) FNS will award bonuses totaling $48 million for each fiscal year to State agencies that show high or improved performance in accordance with the performance measures under paragraph (b) of this section.

(2) FNS will award the bonuses no later than September 30th of the fiscal year following the performance measurement year.

(3) A State agency is not eligible for a bonus payment in any fiscal year for which it has a liability amount established.

(4) The determination whether, and in what amount, to award a performance bonus payment is not subject to administrative or judicial review.

(5) FNS will divide the award money among the States in each category (*see* paragraph (b) of this section) in proportion to the size of their caseloads (the average number of households per month for the fiscal year for which performance is measured).

(6) A State cannot be awarded two bonuses in the same category; the relevant categories are payment accuracy (which is outlined in paragraph (b)(1) of this section), negative error rate (which is outlined in paragraph (b)(2) of this section), or participant access rate (which is outlined in paragraph (b)(3) of this section). If a State is determined to be the best and the most improved in a category, it would be awarded a bonus only for being the most improved. This allows the ''next best'' State to receive an award as being among the best States.

(7) Where there is a tie to the fourth decimal point for the categories outlined in paragraphs (b)(1) through (b)(4) of this section, FNS will add the additional State(s) into the category and the money will be divided among all the States in accordance with paragraph (a)(5) of this section.

(b) *Performance measures.* FNS will measure performance by and base awards on the following categories of performance measures:

(1) *Payment accuracy.* FNS will divide $24 million among the 10 States with the lowest and the most improved combined payment error rates as specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) *Excellence in payment accuracy.* FNS will provide bonuses to the 7 States with the lowest combined payment error rates based on the validated quality control payment error rates for the performance measurement year as determined in accordance with this part.

(ii) *Most improved in payment accuracy.* FNS will provide bonuses to the 3 States with the largest percentage point decrease in their combined payment error rates based on the comparison of the validated quality control payment error rates for the performance measurement year and the previous fiscal year as determined in accordance with this part.

(2) *Negative error rate.* FNS will divide $6 million among the 6 States with the lowest and the most improved negative error rates as specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(i) *Lowest negative error rate.* FNS will provide bonuses to the 4 States with the lowest negative error rate based on the validated quality control negative error rate for the performance year as determined in accordance with this part.

(ii) *Most improved negative error rate.* FNS will provide bonuses to the 2 States with the largest percentage point decrease in their negative error rates based on the comparison of the performance measurement year's validated quality control negative error rates with those of the previous fiscal year as determined in accordance with this part.

(3) *Participant access rate (PAR).* FNS will divide $12 million among the 8 States with the highest and the most improved level of participation as specified in paragraphs (b)(3)(i) through (b)(3)(iii).

(i) *High Participant Access Rate.* FNS will provide bonuses to the 4 States with the highest PAR as determined in accordance with paragraph (b)(3)(iii) of this section.

(ii) *Most improved participant access rate.* FNS will provide bonuses to the 4 States with the most improved PAR as determined in accordance with paragraph (b)(3)(iii) of this section.

(iii) *Data.* For the number of participants (numerator), FNS will use the administrative counts of participants by State for the calendar year, increased by the administrative counts of participants in the Food Distribution Program on Indian Reservations (FDPIR) as reported by the States that operated FDPIR. For the number of people below 125 percent of poverty (denominator), FNS will use the Census Bureau's count of people below 125 percent of poverty for the same calendar year, reducing California's count by the number of people below 125 percent of poverty in California who received Supplemental Security Income in the previous year.

(4) *Application processing timeliness.* FNS will divide $6 million among the 6 States with the highest percentage of timely processed applications.

(i) *Data.* FNS will use quality control data for application processing timeliness.

(ii) *Timely processed applications.* A timely processed application is one that provides an eligible applicant the ''opportunity to participate'' as defined in 7 CFR 274.2, within thirty days for normal processing or 7 days for expedited processing. New applications that are processed outside of this standard are untimely for this measure, except for applications that are properly pended in accordance with § 273.2(h)(2) of this chapter because verification is incomplete and the State agency has taken all the actions described in § 273.2(h)(1)(i)(C) of this chapter. Such applications will not be included in this measure.

(iii) *Evaluation of applications.* Only applications that were filed on or after the beginning of the performance measurement (fiscal) year will be evaluated under this measure.

Dated: December 9, 2003.

Eric M. Bost,

Under Secretary, Food, Nutrition and Consumer Services.

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