

end of each annual review period. The Department does have discretion in resolving the liabilities established under the new system. The Secretary may: Waive all or a portion of the liability; require the State agency to reinvest up to 50 percent of the liability in activities to improve program administration, which new investment money shall not be matched by Federal funds; designate up to 50 percent of the liability as at-risk for repayment if a liability is established based on the State agency's payment error rate for the subsequent fiscal year; or assert any combination of these options. Once the Secretary issues the original resolution proposal, only the amounts designated as waived or reinvestment are subject to negotiation between the State agency and the Department.

*Effects on Food Stamp Recipients.* This action is not anticipated to have any impact on benefit levels or food stamp program participation, as it does not change the program's eligibility requirements or benefit calculation.

*Effects on Federal Program Costs.* Since this action is not anticipated to have any impact on benefit levels or food stamp participation, we do not anticipate any impact on food stamp benefit costs. There is also no anticipated financial impact in administration costs from the changes in how liabilities are calculated, assessed, or collected.

*Effects on Administering State Agencies:* This rule affects State agencies by revising the QC sanction system. Under this rule, fewer States will be identified as having any potential liability, and any such liabilities will be significantly lower than under the existing sanction system. State agencies will also have additional time to complete the quality control review process.

*Effect on Retailers.* This action is not anticipated to have any impact on food stamp retailers.

#### **Justification for Interim Rulemaking**

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). The provisions contained in this rule are mandated by sections 4118 and 4119 of the Food Stamp Reauthorization Act of 2002. The Department has no discretion in implementing the specific provisions contained in this rule. These provisions are effective for the Fiscal Year 2003 review period beginning October 1, 2002. The provisions included in this rule are mandated by legislation, and the Department has no discretion in the methodology establishing the national performance

measure, or in determining when State agencies develop corrective action plans resulting from payment error rates.

Thus, the Department has determined in accordance with 5 U.S.C. 553(b) that a notice of proposed rulemaking and an opportunity for prior public comments is unnecessary. Discretionary regulatory changes that result from sections 4118 and 4119 will be addressed subsequently in one or more proposed rulemakings.

#### **Background**

On May 13, 2002, the President signed Public Law 107-171, the Farm Security and Rural Investment Act of 2002. Title IV of Public Law 107-171, the Food Stamp Reauthorization Act of 2002, significantly revised the liability and enhanced funding provisions of the Quality Control (QC) system. In this interim rule, we are addressing the provisions in section 4118 of the Food Stamp Reauthorization Act of 2002 concerning establishment, adjustment, and collection of potential liabilities and the requirement to develop a corrective action plan when a State's payment error rate exceeds six percent. In this interim rule, we are also addressing the provision in Section 4119 that revises time frames for completing the review and arbitration process and announcing individual State agency error rates at the end of each annual review period. All remaining provisions not addressed in this rule will be addressed in one or more subsequent proposed rulemakings.

#### *Establishing Liabilities for Excessive Payment Error Rates*

Section 4118 of the Food Stamp Reauthorization Act of 2002 amended Section 16(c) of the Food Stamp Act of 1977, as amended, significantly revising the system for determining liabilities for payment error rates. Under the Food Stamp Act, as amended, prior to enactment of the Food Stamp Reauthorization Act of 2002, liability was determined each fiscal year. As defined in 7 CFR 275.23(e) of the program regulations, the payment error tolerance level was the national performance measure for the fiscal year. The national performance measure is defined as the sum of the products of each State agency's payment error rate times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. A State agency that exceeded this tolerance level was subject to a liability claim equivalent to the total value of the allotments issued

in the fiscal year by the State agency, multiplied by a factor that is the lesser of: (1) The ratio of the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year, to the national performance measure for the fiscal year, or (2) one. This figure was then multiplied by the amount by which the payment error rate of the State agency for the fiscal year exceeded the national performance measure for the fiscal year.

Section 4118 of the Food Stamp Reauthorization Act of 2002 establishes a new multi-year liability system. The national performance measure continues to be defined as the sum of the products of each State agency's payment error rate times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. However, the method for determining any potential liability has changed. Under this system, Fiscal Year 2003 serves as the initial base year. For Fiscal Year 2004 and subsequent years, liability for payment shall be established whenever there is a 95 percent statistical probability that, for the second or subsequent consecutive fiscal year, a State agency's payment error rate exceeds 105 percent of the national performance measure. For example, if there were a 95 percent statistical probability that a State agency's payment error rate for Fiscal Year 2003 exceeded 105 percent of the Fiscal Year 2003 national performance measure, and again in Fiscal Year 2004, if there was a 95 percent statistical probability that the State's payment error rate exceeded 105 percent of the Fiscal Year 2004 national performance measure, a liability for Fiscal Year 2004 would be established. The amount of the liability shall be equal to the product of: The value of all allotments issued by the State agency in the (second or subsequent consecutive) fiscal year; multiplied by the difference between the State agency's payment error rate and 6 percent; multiplied by 10 percent.

In order to implement this change, we are revising 7 CFR 275.23(e). First, we are deleting subsections (e)(2), (e)(3), and (e)(4) because they address liability determinations for prior fiscal years that have already been resolved. Second, we are redesignating paragraph (e)(5) as paragraph (e)(2) and amending that subsection by deleting the words "and beyond" and replacing them with the words "through Fiscal Year 2002." Finally, a new paragraph (e)(3) is being