

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