

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)(1)(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.