

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.