Rules and Regulations

Federal Register

Vol. 81, No. 11

Tuesday, January 19, 2016

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272 and 275

[FNS–2011–0035]

RIN 0584–AD86

Supplemental Nutrition Assistance Program: Review of Major Changes in Program Design and Management Evaluation Systems

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes provisions of the proposed rule entitled Review of Major Changes in Program Design and Management Evaluation Systems, which was published May 3, 2011. This final rule amends the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program) regulations to implement section 4116 of the Food, Conservation and Energy Act of 2008 (FCEA). Section 4116 of the FCEA, Review of Major Changes in Program Design, requires the United States Department of Agriculture (the Department) to identify standards for major changes in operations of State agencies' administration of SNAP. The provision also requires State agencies to notify the Department if they implement a major change in operations and to collect and report data that can be used to identify and correct problems relating to integrity and access, particularly for certain vulnerable households.

This final rule establishes criteria for changes that would be considered ''major changes'' in program operations and identifies the data State agencies must report in order to identify problems relating to integrity and access. It also sets forth when and how State agencies must report on the implementation of a major change. This rule also amends Management Evaluation (ME) Review regulations by modifying the requirements for State reviews. The rule revises the definitions of large, medium and small project areas. Finally, it removes sections of the regulations pertaining to coupons and coupon storage since they are obsolete.

DATES: *Effective Date:* January 19, 2016.

Implementation date: This rule shall be implemented as follows: § 272.15 shall be implemented on March 21, 2016. Implementation of any major change that begins after that day must be reported to FNS. The changes in definitions in Part 271 that impact the requirements for State ME reviews in Part 275, shall be implemented October 1, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Rose Conroy, Chief, Program Design Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2515; *Maryrose.Conroy@fns.usda.gov.* Questions regarding this rulemaking should be sent in writing to 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305–2803, or via email to *Maryrose.Conroy@fns.usda.gov.*

SUPPLEMENTARY INFORMATION: This action is needed to implement section 4116 of the FCEA. Section 4116, Review of Major Changes in Program Design, amends section 11 of the Food and Nutrition Act of 2008 (the Act) (7 U.S.C. 2020). Section 4116 requires the Department to develop standards for identifying major changes in the operations of State agencies that administer SNAP; State agencies to notify the Department upon implementing a major change in operations; and State agencies to collect any information required by the Department to identify and correct any adverse effects on program integrity or access, particularly access by vulnerable households. The provision identifies four major changes in operations for which standards for identifying changes must be developed: (1) Large or substantially-increased numbers of low-income households that do not live in reasonable proximity to a SNAP office; (2) substantial increases in reliance on automated systems for the performance of responsibilities previously performed by merit system personnel; (3) changes that potentially increase the households' difficulty in reporting information to the State; and (4) changes that may disproportionately increase the burdens on specific vulnerable households. In addition, the provision gives the Department the discretion to identify other major changes that a State agency would be required to report, as well as to identify the types of data the State agencies would have to collect to identify and correct adverse effects on integrity and access. Finally, the Department is modifying requirements for State reviews to allow more efficient use of staff and resources.

I. Additional Information on Electronic Access

Electronic Access

You may view and download an electronic version of this final rule at *http://www.fns.usda.gov/snap/.*

II. Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This final rule has been determined to be not significant under Executive Order 12866 and was not reviewed by the Office of Management and Budget.

Costs

The rule will have a minimal cost in fiscal year (FY) 2016 and over the 5 years FY 2016 through FY 2020. To estimate the cost impact, we multiplied the estimated total burden hours, as outlined in the Paperwork Reduction Act section of the preamble, by the hourly mean wage for functions performed by State agency and local education agency staff. The hourly mean wage is based upon the U.S. Department of Labor, Bureau of Labor Statistics, May 2014 National Occupational and Wage Statistics, Occupational Group (for education-related occupations), which is $25.10. FNS estimates a total of 8,460 burden hours to fulfill the reporting requirements. The annual cost is estimated at $212,364 or approximately $1,061,730 over the 5 years FY 2016 through FY 2020.

Benefits

This rule requires State agencies to report on the impacts of implementing major changes in State agency operations, and to identify and correct problems caused by implementing these changes. This rule will benefit State agencies by requiring them to fully evaluate changes and thereby reduce the potential for these changes to cause hardships for applicants, recipients or compromise the integrity of the program. This rule will benefit applicants, recipients or individuals otherwise eligible for SNAP by requiring State agencies to identify and correct adverse impacts. This rule modifies the requirements for State ME reviews of local office operations. It will benefit State agencies by allowing them more time to conduct higher quality reviews.

Executive Order 12372

SNAP 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 3015, 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.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). It has been certified that this rule will not have a significant economic impact on a substantial number of small entities. State welfare agencies will be the most affected to the extent that they administer the SNAP.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 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 the UMRA, the Food and Nutrition Service (FNS) 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 the UMRA generally requires FNS 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) for State, local and Tribal governments or the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

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 regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of E.O. 13132. FNS has considered this rule's impact on State and local agencies and has determined that it does not have federalism implications under E.O. 13132.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts that the rule might have on minorities, women and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule has no intended impact on any of the protected classes. FNS specifically prohibits State and local government agencies that administer SNAP from engaging in actions that discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of benefits, 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 (SNAP nondiscrimination policy can be found at 7 CFR 272.6). Discrimination in any aspect of program administration is prohibited by these regulations, the Food and Nutrition Act of 2008, 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 accordance with 7 CFR part 15.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FNS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under EO 13175. On February 18, 2015 the agency held a webinar for tribal participation and comments. During the comment period, FNS did not receive any comments on the proposed rule. If a Tribe requests consultation, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320), requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. The Notice of Proposed Rulemaking (NPRM) contained new requirements that are subject to review and approval by OMB. FNS sought public comments on the changes in the information collection burden that would result from adoption of the NPRM provisions.

Comments were invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments on the information collection pursuant to the proposed rule were minimal, but changes to provisions of the final rule have affected the reporting burden estimated from the NPRM.

Title: Review of Major Changes in Program Design.

OMB Number: [0584–NEW].

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), FNS is submitting a copy of this section to OMB for its review. Section 4116, Review of Major Changes in Program Design, amends section 11 of the Act (7 U.S.C. 2020). It requires the Department to develop standards for identifying major changes in the operations of State agencies that administer SNAP. Section 272.15, of this final rule requires State agencies to notify the Department when planning to implement a major change in operations and State agencies to collect any information required by the Department to identify and correct any adverse effects on program integrity or access, including access by vulnerable households. Since decisions to make major changes to program operations rest with each individual State agency, the frequency and timing of the changes can only be estimated. The final rule requires State agencies to provide descriptive information regarding the major change together with an analysis of its projected impacts on program operations. The final rule also includes ''automatic'' reporting requirements for any State reporting a major change and sets out requirements for the State to collect and report additional information. The reports will consist of monthly information, to be provided on a quarterly basis. Reporting would continue for at least a year after the change is completely implemented. It is not uncommon for a State to pilot a change prior to statewide implementation. FNS could require information from the pilot and information regarding the statewide impacts of the change after full implementation.

Respondents: The 53 State agencies that administer SNAP.

Estimated Number of Responses per Respondent: The rule identifies six categories of major changes; changes to the States automated system, changing the responsibilities of merit system personnel, office closings, reductions in State SNAP merit system personnel, changes that may make it more difficult for households to report and an undefined ''other'' category. Such changes in operations are made by States based upon a variety of interrelated factors. There is no evidence that the State's size (population) or regional location predict when or what type of changes States will make.

In examining the first of the above criterion in isolation, it would be reasonable to expect one or two States per year to replace automated systems and another four States to make modifications to their systems that would require a major change report. However, with so many States running older systems and the delays caused by budget difficulties, it is likely this will increase to three per year beginning in FY 2017, as States' budgets improve. It is also likely that we will see more States look into implementing call centers and developing online applications that will be used by a large proportion of SNAP applicants and participants. Since it appears that 45 States will have online applications in place and over 30 States will be using call centers in FY 2016, the number of additional States that might implement these systems in a year is most likely no more than four per year. Therefore we estimate a total of ten States per year would report major changes under this criterion.

With regard to the second criterion, one State exploring such a change every two years would be a reasonable estimate.

The third criterion, office closings, may become more common with the expanded use of call centers and online applications. We estimate three States per year would report major changes under this criterion.

The fourth criterion, staff reductions, tends to fluctuate with States' budgetary situations, caseloads and other changes States make to their program design. We estimate there would be three significant staff reductions per year.

The fifth criterion, changes that may make it more difficult for households to report, would occur in conjunction with or as a result of changes in the States administration of SNAP. This is the most difficult to predict, but as States continue to take advantage of new technology and streamlined processes, changes of this type may become more common. An estimate of five such changes per year would appear to be reasonable.

Since, by definition, the ''other'' category cannot be estimated, one such major change per year is estimated as a place holder.

Criterion	Responses per year
Replacement of automated system	10
Changing the responsibilities of merit system personnel	.5
Office closings	3
Significant reductions in SNAP staff	3
Changes that may make it more difficult for households to report	5
Other	1
Total	22.5

Once a State has triggered one of the six criteria, the State will be required to report the ''automatic'' information as required in § 272.15(b)(2)–(4) and FNS must determine what, if any, additional data the State will be required to collect and report as provided for in § 272.15(b)(5). FNS believes that most often, the automatic reporting requirements and its ongoing data collection tools it employs will be sufficient to provide the needed information on a major change. Additional data will occasionally need to be generated from States' automated eligibility systems or gathered by conducting additional case review surveys.

Estimated Total Annual Burden on Respondents:

Section 272.15(a)(3), requires States provide both descriptive and analytic information regarding the major change. FNS believes States will have completed the majority of the analysis in the normal course of their own planning and decision making. The descriptive information should also be readily available and require minimal data gathering since it is the State's decision to make the major change. We estimate it will take 8 hours to describe the change and 32 hours to repackage and complete the required analysis for a total of 40 hours per response. Thus, with 22.5 States reporting one major change per year, the initial reporting and analysis aspect of the rulemaking would be 22.5 annual responses × 40 hours per State = an estimated 900 burden hours per year (22.5 States × 1 response per respondent = 22.5 annual responses × 40 hours per respondent to respond = 900 annual burden hours).

FNS believes that for about seventy percent of the major changes States report, no additional reporting will be necessary beyond the automatic reporting requirements. Additional data collection will only be required for the remaining 30 percent of the reported major changes. Therefore, for about 15.75 of the major changes expected

each year there would be no additional reporting burden.

All 22.5 of the major changes expected each year will require some automated system reprogramming to generate the required automatic data reporting. At 48 hours per reprogramming effort, this would be 1080 hours per year (22.5 × 48). The reports themselves would be estimated to require 12 hours each.

Respondents	Estimated annual responses	Responses per year	Hours per response	Total hours per year
22.5 States quarterly	4	90	12	1080

The total for the 22.5 States would be 900 + 1,080 hours = 1,980 total hours for reporting (divided by the 22.5 states = 88 hours per State per year).

For the 6.75 States expected to require additional data collection, this requirement would be in addition to the 1,980 hours from above. Such data will generally be collected through a sample of case reviews. While the required sample sizes may vary based on the type of major change and the proportion of the State's SNAP caseload it may affect, 200 cases per quarter would likely be an upper limit on what FNS could ask of a State. At an estimated one hour to review and report on a case, this would require 800 hours per year per State. The 6.75 States times 800 hours yields 5,400 hours (6.75 State respondents × 1 response per respondent = 6.75 annual responses × 800 hours per respondent to respond = 5,400 annual burden hours). When the 1,980 hours are added for the automatic information, the total for these 6.75 States is 7,380 hours (1,093 hours per State per year).

With all 22.5 States reporting quarterly, there would be 90 responses annually. Twenty-seven of the 90 reports would contain additional information from sample data.

Section	Requirement	States responding per year	Responses per respondent	Number of responses	Hours per response	Total burden hours
272.15(a)(3)	Initial analysis of Major Change.	22.5	1	22.5	40	900
272.15(b)(2)–(4)	Reports required without additional data collection.	15.75	4	63	22	1,386
272.15(b)(5)	Reports required with additional data collection.	6.75	4	27	273.25	7,377.75
Totals		22.5	5 (average)	112.5	85.9 (average)	9,663.75

E-Government Act Compliance

FNS is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 12988

This 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 the final rule. Prior to any judicial challenge to the provisions of this rule or to the application of its provisions, all applicable administrative procedures must be exhausted. In SNAP the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and § 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at § 276.7 or Part 283; (3) for retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR part 279.

What acronyms or abbreviations are used in this supplementary discussion of the proposed provisions? In the discussion of the provisions in this rule, the following acronyms or other abbreviations are used to stand in for certain words or phrases:

Phrase	Acronym, Abbreviation, or Symbol
Code of Federal Regulations.	CFR
Federal Register	FR
Federal Fiscal Year	FY
Food and Nutrition Act of 2008.	the Act
Food and Nutrition Service	FNS
Food, Conservation, and Energy Act of 2008.	FCEA
Management Evaluation	ME
Notice of Proposed Rulemaking.	NPRM
Supplemental Nutrition Assistance Program.	SNAP
U.S. Department of Agriculture.	the Department

III. Background

Section 4116 of the FCEA amended section 11 of the Act to require the Department to define ''major changes'' in SNAP operations, State agencies to notify the Department when they implement a major change in SNAP operations, and to collect data for use in identifying and correcting problems with SNAP integrity and access, particularly among vulnerable populations. Many State agencies have changed or are in the process of changing the way they operate SNAP. Some of these changes have been small and have predominately impacted internal State agency operations. However, some of the changes have also included major overhauls of State agency operations that affect how the State interacts with applicants and participants. While the goal of such changes is to improve the efficiency and the effectiveness of the States' operations, some of these changes have

adversely impacted the States' payment accuracy rates, and, critically, have impeded access to SNAP benefits. In recent years, States have faced rising caseloads and cut backs which in part have led many States to make use of new technologies that could help streamline their SNAP operations. Section 4116 of the FCEA anticipates this and provides the Department the authority to better provide States with technical assistance and to monitor implementation of major changes in their operation of SNAP. The proposed rule published May 3, 2011, at 76 FR 24820, provided a 60-day comment period. This final rule defines what changes to States' operations will be considered ''major,'' establishes the requirements for States to notify FNS of such changes and establishes reporting requirements for major changes. States' ME requirements have also been updated to allow States time to conduct more effective reviews. The changes will allow States to streamline operations while maintaining the integrity of SNAP.

Public Comments

The Department received 120 comments on the NPRM from various entities including: 95 individuals (many of whom are union members); 4 unions; 10 advocate organizations; 10 States; and an organization representing States. Following are the issues raised by commenters, paraphrased excerpts from the most illustrative comments, and recommendations they made for changes to this final rule. (Note: The May 3, 2011 NPRM proposed to add the Major Change provisions to a new § 272.12. However, this section now deals with Computer Matching Requirements. The provisions of this final rule are added in a new § 272.15. References in this preamble to provisions of the proposed rule have been converted from § 272.12 to § 272.15 to reduce confusion between the proposed and final rules.) General comments on the NPRM include:

General Comments

• We commend FNS for including application processing timelines at recertification (proposed § 272.15(b)(1)(iii)) as one of the measures it will examine in the event of a major change.

• SNAP is an entitlement program. Therefore, the processes related to SNAP eligibility determinations are inherently governmental functions and must be performed by public employees. The proposed rule also includes changes to the performance reporting system, including elimination of the Federal biennial review of the State ME system. The proposed changes weaken Federal oversight of SNAP, and we recommend that the current requirements be maintained.

• The proposed language creates the impression that States may be able to secure waivers or approval for the use of non-merit system personnel. We urge FNS to re-affirm its conclusions that it strongly disfavors the use of non-merit system personnel and not to change its position. The experience of our office and many other advocates is that all too often non-merit system personnel lack the training, supervision, experience and exposure to agency culture necessary to ensure maximum program access.

• The Preamble states that ''FNS has determined that the use of non-merit system personnel in these functions can have a detrimental impact on the efficient and effective operation of the program,'' but then proceeds to explain that FNS must approve the use of non-merit system personnel. It is contrary to good sense and effective public policy for the Department to authorize this model when the Department itself acknowledges that all available evidence to date documents costly failures.

• Section 4116 of the FCEA gives FNS the authority to identify ''major changes'' and to collect information on those changes, but it does not allow FNS to prevent or impair States' ability to implement administrative changes that otherwise meet legal and regulatory requirements. With this proposed regulation, FNS appears to go beyond its mandate under the law. FNS should take a proactive approach to assist States to quickly implement successful reengineering changes and to use existing SNAP performance data to measure outcomes rather than impose additional burdensome reporting requirements.

• If implemented as written, we believe this regulation could prevent, weaken or at the very least delay many administrative improvements that would otherwise quickly bring a new level of efficiency, integrity and customer service to SNAP.

• By not imposing any on-going data collection obligations under this provision, the proposed rule denies the Department a baseline. If data collection begins only after a problem has arisen, the Department will be ill-equipped to assess the severity of the problem and may be misled into believing that the problem has abated when measures of State performance rise even as the State's performance remains far below what it had been. At the same time, the proposed rule's failure to require all States to gather and submit basic data on application processing, case closures, and the like—and its failure to establish common definitions and formats for the collection and submission of that data to facilitate inter-state comparison—prevents meaningful cross-sectional comparison.

• We request that the Department reconsider the scope of the proposed regulation to more closely mirror the Federal law, and to minimize duplicative and unnecessary reporting requirements when existing performance measures can be used.

• While many of the regulatory changes were proposed to address legitimate issues, we are concerned that some of the proposed changes would negatively impact the ability for States to administer SNAP and the recipients that they serve. Many of the regulatory changes also appear to exceed the language and intent of the FCEA, and appear to run counter to recent Federal efforts to reduce, simplify and streamline regulations.

• The final regulation must be changed to ensure that nationally consistent and straightforward data collection from any state that makes a major change in their service delivery model is publically available.

As these general concerns indicate, commenters were divided with several believing that the proposed rule went too far, even beyond the FCEA provisions, in terms of its requirements and others suggesting that the final rule should impose additional requirements on States. The Department understands and appreciates these differing viewpoints, and seeks to provide proper balance in this final rule by allowing for effective oversight of SNAP operations while recognizing States' resource constraints.

States are charged with the administration of SNAP and have broad discretion in deciding how they operate the program. This rule does not restrict States' discretion at all; it simply requires States to inform FNS of significant changes and provide information on their impact. In FY 2014, SNAP issued over $69 billion in benefits to a monthly average of 46.5 million individuals in need. The Federal share of administrative costs for States to operate SNAP totaled another $4.13 billion in FY 2014. Given the importance of SNAP in helping struggling families and the level of Federal funding, the Department believes this provision of the Act is critical to FNS' meeting its oversight responsibilities.

There have been several situations in recent years where States made major changes to staffing, automated systems or business processes that had unintentional, adverse impacts on the accessibility and integrity of the program. FNS worked with these States to correct the problems, but these efforts were costly to the States in terms of time, additional administrative costs, business process modifications, and, in some cases, payments to the Department for benefits issued in error. If FNS had been aware of these changes earlier and had more detailed data, it is likely that some of the difficulties could have been minimized or even avoided. Implementation of this final rule is intended to provide FNS with the information it needs to fulfill its responsibilities to act as a steward of taxpayer funds, protect access to SNAP benefits for eligible individuals, and to provide States with technical assistance as necessary.

Many of the comments received from individuals, unions and advocacy organizations focused on what appears to be a misunderstanding of the intent of the provision of the proposed rule dealing with use of non-merit system personnel in the administration of SNAP. While this provision is discussed in more detail later in this preamble, it is important to note that the proposed rule included the use of non-merit system personnel as a major change to ensure that the Department is aware of States' plans in this area prior to implementation. There was no intent to identify the use of non-merit system personnel in the administration of SNAP as a State option that the Department would support. On the contrary, the Department opposes and has actively sought to limit use of such staff in the administration of SNAP due to the negative impacts this has had on SNAP households and State agencies. The Department also agrees with the comment that States' reports on the implementation of major changes should be made available to the public.

Discussion of Comments Grouped by Provision and Issue

Provision/Issues—§ 272.15(a)(1): State agencies shall notify FNS when they make major changes in their operation of SNAP. State agencies shall notify FNS when the plans for the change are approved by State leadership, but no less than 120 days prior to beginning implementation of the change.

Public Comments and Recommendations—Ten commenters addressed this provision of the proposed rule and their comments included the following:

- The lengthy timeframes by which FNS intends to manage change is unreasonable. A 120-day advance alert of a change and a 90-day response time for FNS chokes the State's ability to respond quickly and effectively to its customer's needs and changes in the political, financial and technological environments.
- The regulation allows FNS 90 days to respond to reports of major changes. Added to 120 days, this is over 7 months before a State could implement a change. This is unrealistic; FNS response time should be no more than 30 days from the date the report was submitted. The regulation also doesn't state what should happen if the FNS response is not received within 90 days. The regulation should state that implementation could proceed if that occurs.
- Because of the potential for additional significant reporting requirements (which State systems may not have been programmed to provide), and the apparent potential to disapprove of a ''major change'' or require a change in one or more aspects of implementation, States must have sufficient time to include such requirements in their implementation and be aware of FNS objections well before implementation. Otherwise, the proposed process can significantly delay or derail implementation.
- Under standard accounting and budget practices, this 120-day requirement would effectively reduce the State and counties' ability to implement major changes in the second half of the State's fiscal year, and would cause delays beyond the initial 120 days. For example, an online application may support new applications initially, and then later add additional client reporting functions, which are modified due to lessons learned.
- It appears that these proposed regulations greatly exceed what was originally specified in the bill. The regulations speak of notifying FNS 120 days before a major change, while the FCEA merely states that if a State implements a major change they must notify FNS and provide information as required. Having to submit information prior to implementation as opposed to at the point of implementation would be a major workload and barrier. There is a big distinction between notification and approval, and these regulations tread dangerously into having the Federal government require States to seek approval prior to making major changes.
- The level of detail that must be included in the initial report will potentially add 120 days of lead time to initiatives. Although States do conduct much of the analysis in the normal course of any policy change, the specific nature and the depth of the analysis requirements of the proposed regulations is overly burdensome. We recommend that FNS re-evaluate the proposed 120-day timeframe and create an evaluation system that is more flexible.
- The 120-day minimum notice requirement is a timeframe that the majority of States would be unable to meet. Twenty-six States enact new State legislation within 90 days of passage unless otherwise declared in the specific legislation. The proposed rule's assumption that, ''any properly planned major change would be approved by State leadership well in advance of implementation'' is inconsistent with the fast-paced, budget-driven environment that exists in today's economy. The advance notice requirement also presumes that FNS has authority to approve or deny a specific plan of operation beyond the limits of the act. The provision requires that States mitigate adverse impacts, but does not give FNS approval authority over State agency operations.
- The notification requirement is not sufficient. The final regulations should require not only that States notify FNS 120 days prior to implementation but also at least 120 days prior to entering into legal obligations to implement any proposed major changes.
- Both the requirement that States submit an initial report and the 120-day timeframe should be maintained in the final rule.
- Allow States to submit an annual report on major changes that were not previously identified thru an Advance Planning Document (APD) (*e.g.,* reductions in staffing levels or office closures). FNS will still be able to negotiate with States on the additional reporting requirements after they have received the annual report.
- FNS response time should be no more than 30 days from the date the report was submitted. The longer the time to implement, the less chance the change will be implemented.

Final Rule—To clarify, the provisions of this rule do not give FNS authority to approve or deny a reported major change. However, it is important to note that existing provisions of the SNAP regulations require FNS approval or waivers for a variety of operational and policy changes that may constitute or be related to a major change.

Significant changes to States' automated systems require submission of an APD for development and

procurement. For any major change that does not require waiver authority or approval outside of this rule, States need not wait for FNS approval of their major change notification or a response to their major change notification.

In response to comments that States sometimes are not aware of a major change 120 days in advance of implementation, the Department has modified the language in the final rule to account for these situations. However, by definition, major changes are significant and the Department generally believes that to be well planned and thought through, such changes require at least 120 days lead time. Therefore, the final rule maintains the 120-day reporting timeframe, but allows for rare instances when States cannot report with this amount of lead time. In such instances, States will be required to explain the lack of lead time.

Provision/Issues—§ 272.15(a)(2): Major changes shall include the following criteria (comments on individual criteria discussed below):

Public Comments and Recommendations—While almost all commenters offered their thoughts and recommendations on some aspect of the major change criteria in this section (as discussed below), a few comments were more general. General comments on this section include the following:

- The final rules should include a residual category for any other major changes in State administration that the Department or a State agency identifies as having the potential to adversely affect program integrity or access. Even the best program administrators would not likely have anticipated all of the challenges the program faces today had they attempted to compile a list like this one a decade or two ago.
- FNS should categorize major changes as being significant, medium or small, and require different reporting based on the scope of the change that the State is planning to make. FNS would retain discretion to require more reports in unusual circumstances, but this change would make the reporting requirements more predictable for States and for FNS. For significant changes, we recommend that FNS require States to report statewide information that will allow FNS and the State to assess whether the State's process is adequately providing access to eligible households, with enough detail on sub-state areas and sub-populations within the State that problems can be identified and corrected.
- FNS should offer States the option to report certain new measures on an ongoing, statewide basis as an alternative to reporting each separate major change with an initial report and the subsequent negotiated data reports. FNS should retain discretion to require additional reports if the need arises.

Final rule—The Department has included in the final rule the ability for the Department to define additional criterion under which States must report major changes at § 272.15(a)(2)(vi), to cover as yet unknown developments in State SNAP operations. The addition of this ''other'' criteria is based upon advocates' concerns that as time passes States could make innovative changes that are not enumerated in the regulations, and thus would not be required to be reported. The Department has not adopted the suggestion that major changes be categorized by ''size.'' After careful consideration, the Department believes that this approach would unnecessarily complicate the final rule by requiring the development of additional definitions and explanation with minor impacts on its implementation.

The Department has not adopted the recommendation that an option be provided that would allow States to begin reporting certain new measures on an ongoing, statewide basis as an alternative to reporting on each separate major change. Such an option would seem to offer States little incentive since they would incur the additional cost of ongoing data reporting that may not be needed. In addition, if a few States were to adopt this option, it is not clear what FNS would do on an ongoing basis with data reported by a limited number of States. On the other hand, States can always submit additional information to FNS even without a formal option to do so. Additional information might also be required, depending on the nature of the major change.

Provision/Issues—§ 272.15(a)(2)(i): Closure of one or more local offices that perform major functions for 500 or more SNAP households, and there is not another office available to serve the affected households within 25 miles or that can be reached via public transportation.

Public Comments and Recommendations—Twelve commenters addressed this provision of the proposed rule and their comments included the following:

- We agree that office closings are major changes. However, even if there is another office within 25 miles or that can be reached by public transportation, the change is unquestionably major if the nearest office takes more than an hour to get to or costs more than $10 round trip to reach by public transportation. The final regulation should provide a limit on the travel time by public transportation of one-hour one-way.
- The final rule should make clear that households are at risk of hardship if the nearest office is *either* at least twenty-five miles away *or* not accessible via public transit. Of course, offices in some rural areas inevitably will not be on public transit lines because none exist. This rule does not prohibit such situations; it merely calls for monitoring of their impacts. The final rule should make clear that the closure of *any* office that takes applications requires scrutiny; of course, if another nearby office remains available nearby, the closure would not be a major systems change.
- The proposed triggers are unrealistic in many States, including a closure that would require clients to travel more than 25 miles; there are many areas where households already do not live within 25 miles of a local office.
- We recommend that this section be rewritten to require States to report when an office is closed that serves five percent of their caseload.
- The opportunity for face-to-face contact for all clients in a conveniently located physical setting might be desirable, but it is not realistic in today's highly constrained fiscal environment. Services for clients will not necessarily suffer if staff is reduced or offices are closed. Interactions through electronic and automated means allow clients to choose a contact time that is best for them and allows them to do so from their home or other location with computer access (as is the case with numerous community organizations). Accompanied by the appropriate alternative methods and technology, not only can office closures be done without negative effects, but they can be done while improving program access and integrity. The proposed standards of 25 miles and 500 households are ridiculously low, and do not even remotely reflect the realities of the way business currently is being done by the States.
- This definition may inadvertently include certain part-time or temporary eligibility worker locations, such as mobile vans or out-stationed workers and a change in schedule or termination of these placements should not be included as a major change. These types of temporary office locations are developed as a result of caseload or administrative funding decisions that may vary from year to year, and should not be considered a major change.
- The harsh financial realities that States are facing may leave no choice other than to consolidate their offices.

However, given the opportunities that clients will have for telephonic contact with State agencies, we do not believe that such consolidations will result in negative effects, but will likely improve access and integrity. In our opinion, office consolidation should not be considered a major change.

• Rural States have many areas with more than 25 miles between towns. The miles should be increased to 100 or more. Also the number of households served should be increased from 500 to 1000.

• In general, the office closure standard should be retained in the final rule. The regulation's standard of office closures that affect 500 households or more is reasonable and allows States to consolidate very small offices where they can achieve administrative efficiencies, while still protecting households' ability to appear in person to apply and get assistance. The final regulation should be revised to clarify that an office closure would count toward the State meeting the criterion only if there is another office within 25 miles or that can be reached *easily* via public transportation.

• The final regulation should provide that, to qualify as an office that ''performs major functions'', the office must be a place where households can file an application *and receive* assistance *in filling* out the *application from* a State *employee.*

Final Rule—It is important to clarify that the Department does not assume that local office closures are always negative, but they do reduce program access for some households. As some commenters point out, the actions States take to offset such closure may benefit many other households. While keeping office closures as a major change criterion is necessary to provide FNS with information regarding the impact of the closures and what a State is doing to offset the impact of the closure, the Department modified this criterion in the final rule in response to commenter's concerns. The Department has increased the number of SNAP households affected by a local office closure from 500 to 750 households and changed the distance to another office available to serve the affected households from 25 to 35 miles. To balance these changes, the Department has also modified the final rule by setting the threshold that an office closing that represent the lower of 750 households or at least 5 percent of a State's caseload will be considered a major change. Thus, for example, if a State had a caseload of 14,000 and an office with 701 households is being closed, this would require a report because it would be more than 5 percent of the State's caseload.

The reference to public transportation has been eliminated to simplify the criteria and because the cost of public transportation beyond 35 miles is generally prohibitive for SNAP households. The Department has also specified that an ''office performing major function'' is an office where households can file an application for SNAP in person and receive assistance from merit system personnel. Closing a ''temporary'' office or changing the location of a mobile unit would not be considered a major change.

Provision/Issues—§ 272.15(a)(2)(ii): Substantial increased reliance on automated systems for the performance of responsibilities previously performed by State merit personnel (as described in section 11(e)(6)(B) of the Act) or changes in the way that applicants and participants interact with the State's SNAP agency. Establishment of an online application process through the Internet or the use of call centers to accept applications would not be a major change unless one of these methods is expected to account for five percent or more of the State's SNAP application. Reporting a major change as required in this section does not relieve States of meeting the requirements for new system approvals in § 277.18.

Public Comments and Recommendations—Twelve commenters addressed this provision of the proposed rule and their comments included the following:

• State systems are regulated under § 277.18. This section requires States to obtain prior approval from FNS for automated data processing equipment used in the administration of SNAP. Requiring States to complete another detailed document to notify FNS of change is duplicative, inefficient and unnecessary. The information in the APD could be expanded to include the analysis that would have been required with the 120-day advance notice.

• Business rules of eligibility determination and benefit calculation are already built into the systems that workers use. The business rules, design and function of these systems are tested and approved by merit system employees.

• Discussion under this criterion again reveals an assumption that changes such as call centers will almost by definition jeopardize customer service and access. This contradicts the experience of many State systems that have dramatically improved client service and access by the use of call centers.

• The final rule should make all new or expanded online application systems and call center arrangements subject to review as major systems changes.

• Document imaging systems should be included as a major change. In our experience, the introduction of a document imaging system is in fact a major change in office operations which has the potential to greatly enhance or undermine program administration and client access to benefits.

• The proposed rule identifies the ''replacement'' of the State's certification system as an example of a systems change. Recommend that the final rule be changed to include significant changes to automated systems that fall short of ''replacement,'' such as adding major new functions or a web-based tool that feeds into an older system.

• The proposed regulation makes clear that the reporting requirements for major changes under the proposed rule do not remove the separate APD approval requirements under § 277.18. This is an important clarification and should be retained in the final rule.

• Recommend the final regulation provide that online and telephone applications *will* be considered a major change unless a State can demonstrate to FNS' satisfaction that such applications will not account for more than five percent of applications once the new application is fully implemented.

Final Rule—The Department has made several changes to clarify this provision based upon the above comments and recommendations. The Department has clarified that a State must report the replacement of an automated system, adding functionality to an existing automated system and changes that impact the way applicants and participants interact with SNAP unless the State documents that less than five percent of the caseload will be affected by the change. Examples of changes that increased reliance on automation that would likely affect five percent or more of a State's caseload include, linking a portal (a computer Web site that allows greater access and functionality) to the State's SNAP eligibility system, introducing online applications, call centers, and finger imaging. The Department recognizes that technologies are evolving and the major changes that will be reported under this criterion may evolve as States find new practices that will improve efficiency and customer service.

Provision/Issues—§ 272.15(a)(2)(iii): Changes in operations that potentially increase the difficulty of households reporting required information. This

includes implementation of a call center for change reporting, a major modification to any forms that households use to report changes, or the discontinuation of an existing avenue for reporting changes, (*e.g.,* households can no longer call the local office to report a change). Modifying selected change reporting policy options or the implementation of policy waivers would not be major changes.

Public Comments and Recommendations—Nine commenters addressed this provision of the proposed rule and their comments included the following:

- To ensure that changes in reporting practices and technologies do not harm households, it is important that this criterion be retained in the final regulation. There are two places where the proposed regulation needs to be changed in light of the other proposed rule that was published in the **Federal Register** on the same day regarding change reporting rules. First, this proposed regulation at § 272.15(a)(2)(iii) uses the example that States might ''[discontinue] an existing avenue for reporting changes, *e.g.,* households [could] no longer call the local office to report a change.'' This example should be removed or refined. In addition, FNS should remove the clause that suggests that policy waivers could be needed to implement a change reporting policy option.
- The final rule should treat as a major systems change any change in the systems that households must use for reporting changes except a simple switch between the reporting options allowed under section 6(c) of the Act.
- Discussion under this criterion appears to assume that changes such as call centers will almost by definition jeopardize customer service and access. This contradicts the experience of many State systems that have dramatically improved client service and access by the use of call centers.
- This section should be rewritten so that States are required to report only when reducing reporting options or requiring one specific process. Likewise, changing a form does not rise to the level of change intended by the Act.
- Considering a modification to, or even a complete redesign of, a form for reporting to be a ''major'' change represents an unwarranted and unnecessary level of intrusion into the States' administration of the program.
- This seems to presuppose that portals built by States for change reporting will automatically derive a negative impact. Today, customers can contact the agency in a wide variety of ways, *e.g.,* via the telephone at multiple locations, through Web sites and in person at community partners and service locations.

Final Rule—Based upon comments, the Department has revised the final rule to: (1) Add as a major change the adoption of internet portals to report changes in household circumstances; (2) clarify the example from the proposed rule to focus attention on a change that would limit participants' reporting avenues; and (3) clarify that States selecting reporting options allowed under the rules or obtaining a waiver from FNS are separate actions, but that neither would be considered a major change.

Provision/Issues—§ 272.15(a)(2)(iv): Use of non-merit pay staff to perform functions previously performed by merit personnel. While the interview and the eligibility decision functions must be performed by merit personnel (unless FNS approves a waiver request under Section 17 of the Act), other functions including obtaining verification of household circumstances, accepting reports of changes in household circumstances, accepting applications and screening households for expedited service may be performed by non-merit personnel (although FNS must approve a State's use of non-merit pay staff before matching funds will be provided for the performance of these functions). Functions such as data entry and document imaging do not involve interaction with households, and consequently, the use of non-merit pay staff in activities of this type would not constitute a major change.

Public Comments and Recommendations—This proposed provision received attention from 105 commenters (10 advocacy/legal aid groups, the American Public Human Services Association (APHSA), 5 States, 4 unions, and 85 individuals, many, who appeared to be case workers/union members that submitted form letters). Except for APHSA and the States, the commenters overwhelmingly opposed inclusion of this criterion as a major change. The reason most often cited is that including use of non-merit system personnel in the definition of a major change gave the appearance that the Department accepted such a change as an allowable State choice. Many commenters acknowledged that the preamble to the proposed rule expressed the Department's opposition to using non-merit system personnel, outlined the limitations in the Act on the functions such staff may perform, and explained that, without approval, FNS may not match funding for non-merit system personnel working in SNAP operations. However, several commenters felt that any use of non-merit system personnel should be prohibited in the rule. There was also a recommendation that any significant increase in reliance on other agencies, including ''community partners'' and other non-profit or local government entities, should be considered a major systems change. The primary recommendation from commenters is to remove this criterion from the definition of a major change. Some commenters suggested that information on use of non-merit system personnel could be obtained by amending § 272.15(a)(2)(v) on decreases in staffing levels to accomplish the same goal. If that criterion were amended to say that cuts in *merit systems* staff triggered the report, then any State that tried to replace merit systems personnel with private employees would meet the trigger criterion. APHSA and the States that commented on this provision generally objected to the Department's position that use of non-merit system personnel will result in poor program administration. They felt that the Department's position reduces States' ability to be innovative in improving program operations and respond to reduced budgets and increased caseloads. They felt it is inappropriate to prejudge based upon the experience in a couple of States. Specific comments included the following:

- The final rule should explicitly identify all functions that may require discretion or professional judgment as ''eligibility decision functions'' that may not be privatized.
- Further clarification is requested on the issue of the specific functions that non-merit system personnel may perform. Any significant increase in reliance on other agencies, including ''community partners'' and other non-profit or local government entities, should be considered a major systems change.
- While the statute names this criterion as one that FNS can examine, it does not allow the agency to prejudge the impact of using non-merit system personnel.
- The final regulation must be changed to ensure privatization is not codified and legitimized in Federal regulations as an allowable option.
- The preamble to the proposed rule acknowledges that privatization of work currently performed by public employees constitutes a major change and that States would be required to report this change to FNS. The Department acknowledges that non-merit system personnel interacting directly with households has the potential of increasing the burden on

households applying for and participating in SNAP. It is contrary to good sense and effective public policy for the Department to authorize this model when the Department itself acknowledges that all available evidence to date documents costly failures.

• We are very much opposed to the apparent legitimization of the use of non-merit system personnel to perform critical SNAP functions. In our experience, private entities do a poor job of executing traditional State functions. Even well-meaning nonprofit organizations are unable to maintain timeliness, statewide uniformity and accuracy when they take over activities that have traditionally been done by merit system personnel. For-profit entities have even greater incentive to cut corners, regardless of the consequences for households. We urge FNS to strike proposed § 272.15(a)(2)(iv).

• Many States have instituted fundamental delivery system changes hastily, such as closing offices and opening call centers. Privatized call center operations in two States proved to be disastrous for SNAP beneficiaries and applicants.

• There is no reason to codify a practice that the Administration opposes and would not allow in the future.

• The proposed language creates the impression that States may be able to secure waivers or approval for the use of non-merit system personnel. If FNS's position remains that it is not likely to grant a waiver to use non-merit system personnel for interviews and certification, and that it has determined that Federal financial participation (FFP) is not appropriate for use of non-merit system personnel in other client contacts, we recommend that the final regulation specify this policy so as not to encourage States to go down this path.

• We strongly oppose the provisions in the proposed regulation that would allow the privatization of the SNAP certification process and the waiver of the merit system requirements. The Department previously advised States that it did not support privatization of portions of the SNAP certification process. The preamble to the proposed regulation notes these same concerns.

Final Rule—Many comments on this provision of the proposed rule reflected a lack of clarity regarding the Department's intent. It is important to clarify that it was never the Department's intent to condone the use of non-merit system personnel in SNAP. On the contrary, the intent was to require States to report to FNS if they planned to begin using such staff in the administration of the program. The preamble to the proposed rule stated that, ''In addition, FNS has determined that use of non-merit system personnel in these functions can have a detrimental impact on the efficient and effective operation of the program and, as a consequence, must approve States' use of such staff before sharing in the costs of non-merit staff in the performance of the above functions.'' The Department continues to believe that the use of non-merit system personnel can be detrimental to program performance and service to participants and in April 2013, reiterated its concerns and policy regarding outsourcing in a letter to all States' Governors. In response to the significant number of comments, the Department has modified this provision in the final rule. The final rule requires States to report on any reduction or change of the functions or responsibilities currently assigned to SNAP merit system personnel staff. This will include, but not be limited to, relieving or supplementing merit system personnel's duties performed in the SNAP certification process, handling reported changes, responding to inquiries, handling complaints, collecting claims, investigating program violations or conducting SNAP related reviews. With this change in the final rule, a State will be required to notify FNS if it intends to change the role of its merit system personnel in any way that could impact SNAP operations, including the increased reliance on automated systems.

Provision/Issues—§ 272.15(a)(2)(v): Any decrease in staffing levels from one year to the next of more than five percent in the number of State or local staff involved in the certification of SNAP households. This would include decreases resulting from State budget cuts or hiring freezes, but not include loss of staff through resignation, retirement or release when the State is seeking to replace the staff.

Public Comments and Recommendations—Fourteen commenters addressed this provision of the proposed rule and their comments included the following:

• Delete the language requiring States to notify FNS of office closures or reductions in staffing levels as it goes beyond the authority of the statute.

• We strongly support including large decreases in staffing levels as one of the types of State changes that would trigger a State to report to FNS. This criterion should be retained in the final regulation. Also recommend that FNS: Add a staff cut of more than ten percent over three years as another measure of a decrease in staffing levels that would need to be reported; clarify that a decrease in merit system personnel would need to be reported; provide that cuts in State staff would not count ''losses of staff that occur through resignation, retirement or release when the State is seeking to replace the staff''; and strengthen the final rule to clarify that the State must be seeking to replace the staff within the year to not warrant a report.

• We suggest that FNS identify an additional baseline for staffing that would also trigger the application of this regulation. For example, a measure of cases per certification worker might be appropriate, so that States that have relatively few workers for the size of their caseload would be subject to this regulation in the event of staffing reductions, even if the five percent threshold were not met.

• Support the recognition that adequate staffing is critical if States are to provide adequate service. However, the proposed regulations should be modified to recognize that ''staffing levels'' are not a measure of the absolute number of full-time equivalents, but rather a measure of the ratio of staff to the number of cases. If the ratio of staff to SNAP cases decreases either because of staff reductions *or* because of an increase in the caseload, the staffing level has declined even if the number of staff is constant.

• The final rule should make clear that it refers to full-time equivalent (FTE) staff working on SNAP. The final rule should require States to report, on a county or regional basis, the FTE staff administering the program each month.

• This proposal ignores scenarios in which staff reductions could be accompanied by well-known efficiency measures such as adoption of broader categorical eligibility rules, the six-month reporting option, or the implementation of an efficient new method of using electronic tools for verification of income. The proposed rule could also have an unusually severe impact on locally administered offices; if the five percent trigger is applied to them as well, some are so small that they might have to report the elimination of a single employee or even reductions in one employee's hours.

• A prescribed reduction reporting threshold of five percent would be difficult for States to track. This is true especially if States must include loss of staff to budget cuts and temporary hiring freezes. This requirement should be removed from the proposed rule.

• As written, it is unclear how the proposed rule would be applied to those States that are State-supervised but locally-administered. We urge FNS to consider only requiring the States to report aggregate, statewide reductions in State and local staffing, not reductions at each local office.

• Reductions in staffing levels or the imposition of hiring freezes are budget actions that may not be known to or determined by the State or local agencies until after a budget action has occurred, and it may be impossible to notify FNS 120 days in advance. This definition of a five percent decrease in staff is not explicitly identified in the FCEA, and imposition of this requirement goes beyond the intent of the legislation.

• This will be difficult to administer. Staff reductions are controlled by the Governor and the Legislature, not State agencies. Also, five percent is unreasonable. The five percent should be increased to at least ten percent at a minimum. This rule should be changed to state that if staff reductions of greater than ten percent are mandated, FNS should be notified of the change and how the State is handling the change.

• The final rule should require States to report, on a county/regional basis, the FTE staff administering the program by month.

Final Rule

The final rule retains the basic requirement that a decrease of more than five percent in the number of State or local merit system personnel involved in the certification process of SNAP households from one year to the next will be considered a major change. In addition, the Department agreed with commenters that cumulative decreases beyond a single year can have a significant impact. Consequently, the final provision has been modified to also make a decrease of more than eight percent in the number of State or local merit system personnel involved in the certification process of SNAP households over a two year period a major change.

Also in response to commenters' suggestions, the language of this provision has been clarified and strengthened. A reference to decreases across the State was added since this criterion is intended to apply to the total number of merit personnel in States rather than in each individual local office or county within a State. Major changes include decreases resulting from State budget cuts or hiring freezes, but do not include loss of staff through resignation, retirement or release when the State is seeking to replace the staff within a 6-month timeframe. Evidence of the intent to replace staff includes advertising to fill positions and having sufficient funding in the personnel budget for the new hires.

It is important to note that this criterion defines when States are to report to FNS. The notification and accompanying analysis will allow FNS to determine whether there is a need for additional information.

Provision/Issues—§ 272.15(a)(3): When a State initially reports a major change to FNS, as required in § 272.15(a)(1), an analysis of the expected impact of the major change shall accompany the report. The initial report to FNS that the State is making one of the major changes identified in § 272.15(a)(2) shall include a description of the change and an analysis of its anticipated impacts on program performance.

Public Comments and Recommendations—Seven commenters addressed this provision of the proposed rule and their comments included the following:

• FNS is correct to require States in the initial report to describe the features and timing of the planned major change, what it is intended to accomplish, how it will be tested, piloted, and monitored and the expected effects on eligibility workers and recipients. All of these elements should be maintained in the final rule.

• The word *disproportionately* should be deleted from proposed § 272.15(a)(3)(ii)(E). Also, the two ''ands'' in the paragraph should be changed to *''ors''*. Not all of these types of households need to be affected or features of the certification process need to be more difficult. If one is true, then the clause should apply.

• FNS should add one additional item to the list of items in the initial report: A discussion of the budgetary effects of the change. This item should include the estimated cost of any systems change, as well as the expected overall budgetary impact of the change for State and Federal SNAP costs, including benefit costs and administrative costs.

• The five general analysis requirements are well-rounded, pulled from existing data, and should be sufficient to meet the intentions of the Act.

• The final rule should require States to explain any stages in implementation, either as the change is fully implemented in one area or as it rolls out across multiple areas (whether or not it eventually becomes statewide).

• The final rule should require the State to disclose what testing it has undertaken prior to implementing the change.

• Several of the factors listed in proposed § 272.15(a)(3)(ii) are not so much measures as they are aspects of program performance. It should also include: The State's participation rate; share of households leaving the program at the conclusion of their certification periods; and the percentage of applications (divided by expedited initial applications, non-expedited initial applications, and applications for recertification) that are approved, are denied for substantive ineligibility (or eligibility for zero benefits), and are denied for procedural reasons.

• We support proposed § 272.15(a)(3), which details the type of information that States must provide to FNS in connection with a planned major change. However, we suggest the regulation require States to analyze the impact of the change on timely processing of recertifications. The final rule should also require States to have a meaningful process for consulting with stakeholders (including program beneficiaries, advocates, community organizations and anti-hunger groups).

• The regulations should require States intending to implement major changes to submit to FNS copies of procedures and other documents demonstrating that the State has taken steps to minimize the potential negative impact of the proposed change on individuals with disabilities.

• FNS has quite sensibly acknowledged that the data collection requirements mandated by section 4116 of FCEA, as far as possible, should use data and reports already provided or available to meet these requirements.

• Much of the data in question will be a normal part of any APD request in any event. The potential requirement for county-level impact data will be particularly difficult to implement, and that caseload sizes in many counties are low enough that the validity of data will be highly questionable.

• The data collection mandates in this regulation would largely duplicate existing information that FNS has, and create increasingly burdensome data collection and report preparation.

• FNS does an excellent job summing up what the Act requires in the opening paragraph. The remaining information is overly detailed, rigid and so burdensome to States that it will stall innovations, and prevent access and program integrity improvements in the SNAP program.

• States do not have the time or resources to address every issue required to be reported.

Final Rule

The final rule retains the basic requirement that States' reports of major changes include a description of the change to be implemented and an analysis of its expected impacts on SNAP. In addition, the Department agreed with commenters that additional data items are necessary. Consequently, the final provision has been modified to add the following:

- The projected administrative cost of the major change in the year it is implemented and the subsequent year;
- A description of any consultation with stakeholders/advocacy groups or public comment obtained regarding the planned changes; and
- Procedures the State will put in place to minimize the burdens on people with disabilities and other populations relative to the change.

Also, in response to commenters' suggestions, the language of § 272.15(a)(3)(ii)(E) as amended by the final rule has been clarified to replace the use of the word ''and'' in two places with the word ''or''. While seemingly minor, this change is important in examining the potential effect of major changes in SNAP on vulnerable populations.

Some suggestions made for additional data to be reported were not adopted because the Department could not determine how the data would be used in making its determination or what, if any, data would be needed from the State beyond the automatic reporting requirements discussed below.

Provision/Issues—§ 272.15(b)(1)–(5): § 272.15(b)(1) FNS will evaluate the initial report provided by a State to determine if it agrees that the change is, in fact, major and, if so, will propose what information it will require from the State. While FNS reserves the right to require the information it needs to determine the impact of a major change on integrity and access in SNAP, FNS will work with States to determine what information is practicable, and require only the data that is necessary and not otherwise available from ongoing reporting mechanisms. Depending upon the nature of the major change, FNS will require more specific or timely information concerning the impact of the major change (Please see the NPRM for full text of the proposed provision).

§ 272.15(b)(2): Additional data that States could be required to provide, depending upon the type of major change being implemented. (The rule goes on to give specific examples of the types of data that may be required relative to different types of major changes. Please see the NPRM for full text of the proposed provision).

§ 272.15(b)(3): Depending on the type of major change, its implementation schedule and negotiations with FNS, States shall submit reports on their major changes either monthly or quarterly.

§ 272.15(b)(4): States shall submit reports for one year after the major change is fully in place. FNS may extend this timeframe as it deems necessary.

§ 272.15(b)(5): If FNS becomes aware that a State appeared to be implementing a major change that had not been formally reported, FNS would work with the State to determine if it is a major change, and if so proceed as required by this section.

These provisions are closely related and commenters' thoughts and recommendations are best examined together.

Public Comments and Recommendations—Fifteen commenters addressed these provisions of the proposed rule and their comments included the following:

- Collecting detailed data with case reviews is particularly burdensome for State and local staff during transition periods, and could negatively impact customer service.
- Support the proposed regulation's detailed discussion of the types of information that FNS will require from the State as to the impact of the change. We commend FNS for its careful identification of the types of information needed to assess the effects of major changes, especially as they pertain to the effects on beneficiaries.
- The proposed regulation at § 272.15(b)(2)(iii)(B) through (b)(2)(iii)(D) on call centers requires information on ''hold time,'' ''wait time'' and ''abandoned calls''. The final rule should be amended to also include instances when a caller cannot get through (*e.g.,* busy signals or dropped calls).
- Particularly troubling is the emphasis of the proposed rules on potentially requiring county level impact data for changes deemed to be ''major''. Again, such a requirement does not reflect the reality of the way many States operate. Even in those States that have county project areas, caseload size and case activity volumes in a given county often can make the gathering of the representative samples necessary to evaluate the effect of a change on that county difficult, and the confidence level of short term evaluations questionable.
- FNS should categorize major changes as being small, medium or significant and require different reporting based on the scope of the change that the State is planning to make. FNS would retain discretion to require more reports in unusual circumstances, but this change would make the reporting requirements more predictable for States and for FNS.
- FNS should offer States the option to report certain new measures on an ongoing, statewide basis as an alternative to reporting each separate major change with an initial report and the subsequent negotiated data reports.
- The final rule should sort major systems changes into categories based on their likely risk. More data should be required for riskier changes.
- We recommend that the exact measures be made more explicit in the final regulation and that FNS' discretion to introduce new measures and enter into negotiations with States be narrowed. These measures include sub-state information or case reviews to gather more detailed information on measures FNS already has at the State level, such as payment accuracy, negative error rates and timeliness.
- States should have an ongoing data collection system for monitoring their monthly performance in processing of applications and recertifications. FNS should require all States to have such a data collection system, regardless of whether the State is embarking on a major system change.
- To the extent that the final rule continues to rely upon case-by-case negotiated data requests rather than a stronger baseline of data provided on an on-going basis by all States, it also should specify in greater detail the data that the Department is likely to desire and indicate that the Department will attempt to avoid seeking more data than those elements except for the riskier categories of changes.
- FNS should use the extensive data already collected in SNAP except in the most unusual situations.
- The level of detailed data reporting that is being proposed may not be appropriate for all major changes, unless the scope of major changes is significantly narrowed. While the proposed Federal regulations specify that FNS will negotiate with the States on the reporting requirements and that FNS will utilize available data (*e.g.,* quality control data), the amount of information that is required would be administratively onerous and costly given the potentially high degree of frequency that such changes could occur, conflicts with the Paperwork Reduction Act, and neither the counties nor the States have the additional staff resources.
- A State implementing a major change should submit data regarding

individuals with disabilities including the numbers of individuals who requested and received accommodations in the application, interview, or recertification process for disabilities, and the types of accommodations requested and provided (some State benefit agencies already have policies requiring the agency to track this information).

- The final rule should provide for careful evaluation of the sufficiency of the State agency's fallback plan, including the availability of the resources necessary to carry it out. The final rule should provide that returning to the prior method of administration should presumptively be one of the elements of the State agency's fallback plan unless the State agency presents compelling reasons why it should not be.
- The break-out of negative errors is important, but needs to be augmented. It also should include break-outs of denials between substantive and procedural. Moreover, it should be broken-out to identify problems affecting specific types of households, such as elderly persons who may have less comfort with technology or limited English proficient households who may have difficulties with online systems not in their language.
- The proposed regulations reflect a common sense approach to analyzing the effects of a major change. States with effective administration should already be collecting and analyzing the types of data specified in § 272.15(b)(3) regardless of Federal regulations.
- Nowhere in the Act is FNS given the authority to approve or deny a change a State intends to make, and yet throughout the proposed rule this authority is not only implied, but is assumed.
- One commenter recommended that States be required to submit the data for each month on a quarterly basis for two years after the change is implemented (unless States have adopted the recommended ongoing reporting option).

Final Rule

The final rule retains the requirement that States will be required to report on the impact of major changes. However, the most significant modification to this final rule is the adoption of the suggestion from commenters that key ''automatic'' reporting requirements be established for all major changes. This is in response to commenters' suggestions that the regulations prescribe basic data that FNS will require for all major changes, as certain data elements would be useful in examining the impact of any major change in a State's operation. While the final rule retains FNS' ability to require additional information on a case-by-case basis (§ 272.15(b)(5)), the final rule establishes minimum data reporting requirements for all major changes, which will also enable States to build these requirements into their plans and systems when making major changes.

This change has required some reorganization of the provisions as they appeared in the proposed rule. § 272.15(b)(1), (2) and (3) identify the data elements that shall be reported for all major changes, as well as those that must be broken out specifically for households with elderly and disabled members and those that are to be reported at the sub-State level (*e.g.,* counties or local offices). Reporting this information for the most vulnerable SNAP households is consistent with the Act and the need to identify and address adverse impacts on program access for households that may struggle with change more than others. The Department agrees with the comments regarding local level reporting that sub-state information is generally necessary for States and FNS to understand, monitor, and address adverse impacts of a major change. The impacts can be uneven across urban and rural areas, for example, and can vary based upon the how and when a major change is rolled out in different jurisdictions. This is particularly true in county administered/state supervised situations. Since States generally collect sub-state information for their own management purposes, the Department expects the required inclusion of this information in reports to FNS should require minimal additional effort for most States. Therefore, § 272.15(b)(3) as amended by this final rule requires the majority of the key ''automatic'' reporting requirements be disaggregated to provide sub-state information. Because States utilize different units of analysis for management and other purposes, the regulation allows sub-state data to be provided by individual districts, counties, project areas, or local offices, subject to consultation with and approval by FNS. Section 272.15(b)(4) as amended by this final rule retains the provisions from the proposed rule that FNS will evaluate the major change to determine what reporting requirements will be necessary. In light of the ''automatic'' requirements for all major changes discussed above, this determination will focus on what, if any, *additional* reporting requirements will be necessary.

The recommendation that reporting requirements be applied to all certification activities that are carried out using other telephonic methods has not been adopted since States have been using telephones in their operation of SNAP for decades. However, using telephonic technology to accept applications or relying upon an interactive voice response system to provide case status information to participants would be a major change under § 275.15(a)(2)(ii) as amended by this final rule.

Some comments reflected misunderstandings of the proposed rule. As noted earlier, this final rule does not provide FNS with approval authority over States' plans to make a major change. Nor does the Act give the Department the authority to require additional ongoing reporting on State performance and operations beyond the context of major changes.

Some comments suggested that requiring additional reporting indicates an assumption that major changes are detrimental to SNAP participants. On the contrary, FNS has long supported States' efforts to modernize and agrees that many State innovations have improved operations. Nevertheless, there have been times when well-intentioned changes have had adverse impacts on program access or integrity and FNS, not fully informed of States' plans, was unable to work with the State and help mitigate these impacts. Furthermore, certain changes have a greater inherent potential to adversely affect SNAP operations if they are not compensated for appropriately, *e.g.,* office closings or staff reductions.

With regard to the suggestion that the final rule categorize major changes as being small, medium or significant, and require different reporting based on the scope, the Department has not adopted this suggestion because it would complicate the rule and limit FNS' discretion without significantly streamlining the process for States or FNS. This rule is intended to provide FNS with the ability to examine major changes individually and require additional information beyond the automatic reporting requirements. For all major changes, FNS will also look to the data it already collects on an ongoing basis, *i.e.,* quality control data. While FNS is interested in knowing what contingency plans a State may have, the suggestion that FNS should require States to have specific fall back plans is beyond the scope of the Act.

The recommendation that the provisions of the final rule be applied to major changes made prior to its effective date has not been adopted for several reasons. First, States would have to obtain historical data on the impact of

the change and such data is typically more difficult to obtain. Secondly, States' reports received on the impact of these older changes would be out of date and therefore less useful to FNS in monitoring their impact. Finally, the Department only requires retroactive implementation of final rules when it is both practical and there is a compelling need; neither of which apply to this rule. The recommendation for two years of monthly reports would exceed the Departments needs and place an unnecessary burden upon States. The suggestion that States be required to submit the monthly data on a quarterly basis has been adopted in the restructured final rule in § 272.15(b)(5). While the one year requirement is retained from the NPRM in this final rule at § 272.15(b)(6), FNS may extend this timeframe if necessary. The provision from § 272.15(b)(5) in the NPRM is retained in this final rule at § 272.15(b)(7).

Provision/Issues—§ 272.15(b)(6): If the data a State submits regarding its major change or other information FNS obtains indicates an adverse impact on SNAP access or integrity, FNS would work with the State to correct the cause of the problem and provide whatever technical assistance it can. Depending upon the severity of the problem, FNS may require a formal corrective action plan as identified in § 275.16 and § 275.17.

Public Comments and Recommendations—Three commenters addressed these provisions of the proposed rule and their comments included the following:

- Strongly recommend that the final regulation be strengthened to identify the full range of action that FNS is authorized to initiate in response to information from the State about planned major systems changes.
- Although requiring correction of problems that have arisen is sensible and appropriate, it puts the Department and the State agency in the all-too-familiar position of playing catch-up after a problem has occurred. The final rule should restructure this paragraph to focus on the implementation of the State agency's fallback plan or plans.
- ''Adverse impact'' is not defined, which could lead to subjective and inconsistent results among regions regarding when a corrective action plan is imposed. Existing performance measures already have standards that States must meet, and corrective action plans can be required for failure to meet those standards. At best, the new process is duplicative; at worst, it opens up an avenue for corrective action plans for anything that FNS may decide has an ''adverse impact.''

Final Rule

As explained earlier, the Department has neither the authority to approve or deny (unless a State's plans violate a provision of the Act or SNAP regulations) a State's plans, nor can it require that States develop fallback plans. With regard to when a State would be required to submit a corrective action plan due to an adverse impact, the Department agrees that the provisions of this rule could open another avenue for identification and correction of deficiencies in a State's operation; this is the intent of the Act. Therefore, the provision (now at § 272.15(b)(8)) as amended by this final rule remains unchanged from the NPRM.

Provision/Issues—§ 275.3(a): FNS shall conduct management evaluation reviews of certain functions performed at the State agency level in the administration/operation of the program. FNS will designate specific areas required to be reviewed each fiscal year.

Public Comments and Recommendations—Thirteen commenters addressed these provisions of the proposed rule and their comments included the following:

- FNS and States should be engaging in additional monitoring activities of local service delivery, not fewer. The changes FNS proposes to ME reviews have no basis in statute -the 2008 FCEA made no changes to reduce FNS's oversight role. ME reviews are also the primary way that FNS monitors civil rights compliance. The final rule must not back away from FNS's commitment in these areas.
- Caseloads have increased dramatically in recent years while, at the same time, the number of staff to process cases has not kept pace. This development points to the need for more, not less frequent, reviews because of the risk of access barriers. We recommend that the final rule reject these changes to the ME regulations and keep the current requirements.
- The proposed regulation will weaken the longstanding requirement for ME reviews of State certification operations, and fails to require straightforward, publically available and nationally consistent data collection from States making major changes in their service delivery model. The proposal eviscerates a decades-old requirement that States and FNS conduct ME reviews of State certification operations. Such ME reviews are the cornerstone of FNS oversight of client access and program integrity.
- The solution to staffing shortages is to prioritize. Reducing oversight of the largest program in the Department is not a sensible means of prioritizing. If the problem is an insufficient Federal Program Administration appropriation, the Department should realign staffing of the various food assistance programs to be more proportional to the taxpayers' dollars at stake in each.
- Oppose the proposed changes that eliminate the requirement for an annual review of certain functions performed at the State agency level and the elimination of the requirement for a biennial review of the State's ME system. The proposed regulation, which lacks any specified frequency for reviews, could lead to FNS's abdication of these reviews for all practical purposes, now or in the future. The requirement that FNS designate specific areas for review each year does not necessarily mean that FNS must in fact conduct such reviews.
- FNS should define what qualifies as ''at-risk'' to provide for consistency in the different regions. Providing the data for these ''off-site'' activities is more time-consuming for the States unless Federal reviewers are given total access to State systems.
- We agree with the increased flexibility given to FNS in the conduct of MEs under the proposed rule and encourage that similar flexibility and ability to target reviews be given to the States in the conduct of their annual MEs.
- We appreciate FNS' targeted approach and suggest that the reviews be less targeted by frequency and size, but more by performance and need.
- We disagree with FNS removing its own burdens in the ME process while keeping the States' current requirements basically unchanged.
- The term ''at-risk'' is vague. Recommend keeping the current requirement of a biennial review of the State's ME system. Having scheduled Federal reviews on a biennial basis would allow States to plan accordingly.
- State and Federal ME requirements should not be changed. Proposals to weaken them should not be included in the final rule.

Final Rule

Based upon comments received, the Department is withdrawing the changes to this provision from the final rule. The Department agrees that monitoring SNAP is a high priority responsibility for FNS and supports the goal of maintaining sufficient resources to

enable proper oversight of SNAP operations.

Provision/Issues—§ 271.2: Amend the definitions of Large, Medium, and Small project areas for ME review purposes.

Public Comments and Recommendations—Five commenters addressed these provisions of the proposed rule and their comments included the following:

- These changes in the definitions of project areas are likely to have significant negative impacts on civil rights compliance within SNAP. Reducing the frequency or intensity of ME reviews will have the effect of reducing efforts to identify and correct civil rights violations.
- We recommend that the final rule reject these changes to the ME regulations and keep the current requirements.
- We agree with the need for a modification to the definitions of large and medium project areas but contend that the revised definitions do not reflect the reality of the larger States. We recommend further review of these proposed standards and even higher caseload thresholds in order to reflect the project areas of the large States.
- These were the definitions that were in effect for California until FY 2011. Given the limitation of staff and resources, this new definition would create a workload issue in California. We recommend redefine project areas as follows:
  - Large—those with an average monthly caseload of more than 50,000 cases.
  - Medium—those with an average monthly caseload of between 25,000 and 50,000 cases.
  - Small—those with an average monthly caseload up to 24,999 cases.

Final Rule

Comments on this provision of the rule were mixed with some commenters believing that the provision of the proposed rule did not go far enough in reducing the frequency with which States are required to review their project areas. The Department acknowledges that while more monitoring of SNAP is generally more desirable than less monitoring, the quality of the monitoring must also be a factor. Reductions in States' budgets have put pressure on staffing for SNAP and this provision allows States to do a better job in the ME reviews that are conducted. Furthermore, the project area sizes in the current rules were set when the program was less than half its current size in terms of participation. Therefore, this provision of the final rule remains unchanged from the proposed rule.

List of Subjects

7 CFR Part 271

Food stamps, Grant programs-social program, Reporting and recordkeeping.

7 CFR Part 272

Alaska, Civil rights, SNAP, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

7 CFR Part 275

Administrative practice and procedure, SNAP, Reporting, and recordkeeping requirements.

Accordingly, 7 CFR parts 271, 272 and 275 are amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

■ 1. The authority citation for Part 271 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

§ 271.2 [Amended]

■ 2. In § 271.2:
■ a. Amend the definition of *Large project area* by removing the number ''15,000'' and adding in its place the number ''25,000''.
■ b. Amend the definition of *Medium project area* by removing the numbers ''2,001 to 15,000'' and adding in their place the numbers ''5,000 to 25,000''.
■ c. Amend the definition of *Small project area* by removing the number ''2,000'' and adding in its place the number ''4,999''.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

■ 3. The authority citation for Part 272 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 4. Add § 272.15 to read as follows:

§ 272.15 Major changes in program design.

(a) *States' reporting of major changes.* (1) State agencies shall notify FNS when they make major changes in their operation of SNAP. State agencies shall notify FNS when the plans for the change are approved by State leadership, but no less than 120 days prior to beginning implementation of the change or entering into contractual obligations to implement any proposed major changes. If it is not possible for a State to provide notification 120 days in advance, the State shall provide notification as soon as it is aware of the major change and explain why it could not meet the 120-day requirement. No approval from FNS is necessary for a State to proceed with implementation of the major change.

(2) Major changes shall include the following:

(i) Closure of any local office that performs major functions for 750 or more SNAP households or 5 percent of the State's total SNAP monthly caseload, whichever is less, and there is not another office available to serve the affected households within 35 miles. An office performing major functions is an office where households can file an application for SNAP in person and receive assistance from merit system personnel staff.

(ii) Substantial increased reliance on automated systems for the performance of responsibilities previously performed by State merit system personnel (as described in section 11(e)(6)(B) of the Act) or changes in the way that applicants and participants interact with the State's SNAP agency. This includes the replacement of the State's automated systems used in the certification process, adding functionality to the existing automated systems used in the certification process, or changes in the way applicants and participants interact with SNAP. For example, adding an overlay on an existing legacy automated system used by eligibility workers, adding online portals to an existing automated system for use by SNAP applicants, participants or community partners, establishment of an online application, use of telephonic technology to accept applications, relying upon an interactive voice response system to provide case status information to participants or implementation of finger imaging shall be considered major changes. Under this criterion, if the State documents that the change is expected to impact less than five percent of the State's SNAP applicants or participants, it will not be considered a major change. Reporting a major change as required in this section does not relieve States of meeting the requirements for new system approvals in § 277.18 of this chapter.

(iii) Changes in operations that potentially increase the difficulty of households reporting required information. This could include implementation of a call center or internet web portal for change reporting, a major modification to forms that households use to report changes or the discontinuation of an existing avenue for reporting changes (*e.g.,* households can no longer contact the local office because all changes must be reported to

a unit that handles change reports). Selecting a different change reporting policy option as allowed in § 273.12 of this chapter, or the implementation of a policy waiver related to change reporting would not be a major change.

(iv) Any reduction or change of the functions or responsibilities currently assigned to SNAP merit system personnel.

(v) A decrease of more than 5 percent in the total number of merit system personnel involved in the SNAP certification process in the State from one year to the next. In addition, a decrease of more than eight percent in the total number of merit system personnel involved in the SNAP certification process in the State over a two year period would be a major change. These decreases would include those resulting from State budget cuts or hiring freezes, but not include loss of personnel through resignation, retirement or release when the State is seeking to replace the personnel within 6 months. Evidence of the intent to replace personnel shall include advertising to fill positions and having sufficient funding in the personnel budget for the new hires.

(vi) Other major changes identified by FNS.

(3) When a State initially reports a major change to FNS as required in paragraph (a)(1) of this section, an analysis of the expected impact of the major change shall accompany the report. The initial report to FNS that the State is making one of the major changes identified in paragraph (a)(2) of this section, shall include a description of the change and an analysis of its anticipated impacts on program performance.

(i) The description of the change shall include the following:

(A) Identification of the major change the State is implementing;

(B) An explanation of what the change is intended to accomplish;

(C) The schedule for implementation;

(D) How the change will be tested and whether it will be piloted;

(E) Whether the change is statewide or identification of the jurisdictions it will encompass;

(F) How the major change is expected to affect applicants and/or participants and how they will be informed;

(G) How the change will affect caseworkers and, as applicable, how they will be trained;

(H) The projected administrative cost of the major change in the year it is implemented and the subsequent year;

(I) How the impact of the major change will be monitored;

(J) How the major change will affect operation of the State automated system;

(K) The State's backup plans if the major change creates significant problems in one or more of the program measures in paragraph (a)(3)(ii) of this section;

(L) A description of any consultation with stakeholders/advocacy groups or public comment obtained regarding the planned changes; and

(M) Procedures the State will put in place to minimize the burdens on people with disabilities and other populations (as identified in paragraph (a)(3)(ii)(E) of this section) relative to the change.

(ii) The analysis portion of the State's initial report shall include the projected impact of the major change on:

(A) The State's payment error rate;

(B) Program access, including the impact on applicants filing initial applications and recertification applications;

(C) The State's negative error rate;

(D) Application processing timeliness including both the households entitled to 7-day expedited service and those subject to the 30-day processing standards;

(E) Whether the major change will increase the difficulty elderly households, households living in rural areas, households containing a disabled member, homeless households, non-English speaking households, or households living on a reservation will have obtaining SNAP information, filing an initial application, providing verification, being interviewed, reporting changes or reapplying for benefits;

(F) Customer service including the time it takes for a household to contact the State, be interviewed, report changes and any other parameter defined by the State agency; and

(G) Timeliness of recertification actions.

(b) *FNS and State action on reports.* (1) FNS will evaluate the initial report provided by a State to determine if the change is, in fact, a major change as described in paragraph (a)(2) of this section and notify the State of its determination. States implementing a major change shall report the following monthly State-level information to FNS on a quarterly basis beginning with the quarter prior to implementation of the major change:

(i) The number of initial applications received;

(ii) Of the number of initial applications received in paragraph (b)(1)(i) of this section, the number subject to expedited service;

(iii) Of the number of initial applications received in paragraph (b)(1)(i) of this section, the number broken out by method of application (*i.e.,* in-person, online, telephone, mail, fax);

(iv) The number of initial applications that are approved timely;

(v) Of the number of initial applications approved timely in paragraph (b)(1)(iv) of this section, the number subject to expedited service processed within the 7-day processing requirement;

(vi) The number of initial applications that are approved untimely;

(vii) Of the number of initial applications approved untimely in paragraph (b)(1)(vi) of this section, the number subject to expedited service processed outside the 7-day processing requirement;

(viii) The number of initial applications that are denied;

(ix) Of the number of initial applications that were denied in paragraph (b)(1)(viii) of this section, the number broken out by those denied due to ineligibility and those denied because the State agency was unable to determine eligibility;

(x) The total number of households due for recertification;

(xi) The number of recertification applications received;

(xii) Of the number of recertification applications received in paragraph (b)(1)(xi) of this section, the number broken out by method of application (*i.e.,* in-person, online, telephone, mail, fax);

(xiii) The number of households that were recertified without a delay or break in benefits;

(xiv) The number of households that the State recertifies with a delay or break in benefits of less than one month;

(xv) Of the total number of households due for recertification in paragraph (b)(1)(x) of this section, the number of households that fail to reapply for recertification by the required deadline;

(xvi) The number of recertification applications that are denied; and

(xvii) Of the number of recertification applications that were denied in paragraph (b)(1)(xvi) of this section, the number broken out by those denied due to ineligibility and those denied because the State agency was unable to determine eligibility.

(2) The information required by paragraph (b)(1)(1) of this section shall be reported separately for households with elderly members and households with members that have a disability.

(3) At a minimum, the information required by paragraphs (b)(1)(i), (iv),

(vi), (viii), (x), (xi), (xiii), (xiv), (xv), and (xvi) of this section shall be disaggregated to provide sub-state information. FNS will require the State to disaggregate all the information in paragraph (b)(2) if FNS determines that such data are necessary to evaluate the impact of the change. FNS will consult with States on a case-by-case basis to determine if this information shall be reported by: Local offices, call centers, county, project areas, or by other administrative structures within the State. FNS' determination will be based upon the type of major change and the State's SNAP organization.

(4) In addition the information required in paragraphs (b)(1), (2) and (3) of this section, FNS may require additional information to be included in a State's quarterly report. FNS reserves the right to require the information it needs to determine the impact of a major change on integrity and access in SNAP. FNS will work with States to determine what additional information is practicable and require only the data that is necessary and not otherwise available from ongoing reporting mechanisms. While the data elements outlined in paragraph (b)(2) of this section will generally be required to be reported on a statewide basis and at a sub-state level, major changes that are limited to localized areas, such as a county or project area, may only require localized reporting. Depending upon the nature of the major change, States will be required to report more specific or timely information concerning the impact of the major change within the following areas:

(i) *Payment accuracy.* FNS will use Quality Control (QC) data when possible, but may require data from case reviews focused on households with specific characteristics, to obtain greater local reliability, or to provide more timely data.

(ii) *Negative error rates.* FNS will use QC data when possible, but may require data from case reviews focused on households with specific characteristics, to obtain greater local reliability or to provide more timely data on the causes of incorrect denials.

(iii) *Impact on households with specific characteristics.* In addition to the information required by paragraph (b)(2) of this section, a major change that could disproportionately impact the households identified at paragraph (a)(3)(ii)(E) of this section may require additional information on the impact of the change on the participation of these households. The nature of the change and its potential impact would dictate how this information would need to be reported.

(iv) *Impact of certain major changes on customer service.* Some major changes may require specific information that is not typically available from a States automated SNAP system. For example, if a State implements a major change that allowed (or required) households to report changes in their individual circumstances through a change center or allows applicants to apply or reapply for SNAP through the use of call center, the following data may be required:

(A) The total number of calls made to the center;

(B) The average time a caller has to wait to talk to a SNAP worker (includes hold time for transfers);

(C) Based upon the call centers standards and negotiation with FNS, the percentage of calls with excessive wait times;

(D) The percentage of calls abandoned by callers prior to and after being answered by the call center;

(E) The total number of calls dropped by the call center system and the number of callers that received a busy signal; and

(F) Customer satisfaction (based upon survey results).

(5) States shall submit reports containing monthly data on a quarterly basis. As practicable, and based upon consultation with the State, FNS may require any additional information under paragraph (b)(4) of this section regarding the State's operation to be reported for the quarter just prior to implementation of the major change.

(6) States shall submit reports for one year after the major change is fully in place. FNS may extend this timeframe as it deems necessary.

(7) If FNS becomes aware that a State appeared to be implementing a major change that had not been formally reported, FNS would work with the State to determine if it is a major change, and if so proceed as required by this section.

(8) If the data a State submits regarding its major change or other information FNS obtains indicates an adverse impact on SNAP access or integrity, FNS would work with the State to correct the cause of the problem and provide relevant technical assistance, and will require the State to provide additional information as it deems appropriate. Depending upon the severity of the problem, FNS may also require a formal corrective action plan as identified in § 275.16 and § 275.17 of this chapter. States agencies that fail to comply with reporting requirements may be subject to the suspension or disallowance of Federal Financial Participation administrative funds per § 276.4 of this chapter.

PART 275—PERFORMANCE REPORTING SYSTEM

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

Authority: 7 U.S.C. 2011–2036.

■ 6. In § 275.7:

■ a. Revise paragraph (a) to read as set forth below.

■ c. Remove paragraphs (b), (c) and (d).

■ d. Redesignate paragraph (e) as paragraph (b).

■ e. Amend newly redesignated paragraph (b) by removing the word ''on-site''.

§ 275.7 Selection of sub-units for review.

(a) *Definition of sub-units.* Sub-units are the physical locations of organizational entities within project areas responsible for operating various aspects of SNAP and include but are not limited to certification offices, call centers, and employment and training offices.

* * * * *

■ 7. In § 275.9:

■ a. Revise paragraph (b)(1)(iii) to read as set forth below.

■ b. Amend paragraph (b)(1)(iv) by removing the first sentence.

§ 275.9 Review process.

* * * * *

(b) * * *

(1) * * *

(iii) Identification of the sub-units selected for review and the techniques used to select them;

* * * * *

■ 8. In § 275.16 revise paragraph (b)(3) to read as follows:

§ 275.16 Corrective action planning.

* * * * *

(b) * * *

(3) Are identified by FNS reviews, GAO audits, contract audits, reports to FNS regarding the implementation of major changes (as discussed in § 272.15) or USDA audits or investigations at the State agency or project area level (except deficiencies in isolated cases as indicated by FNS); and,

* * * * *

Dated: December 10, 2015.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–00674 Filed 1–15–16; 8:45 am]

BILLING CODE 3410–30–P