

Proposed Rules

Federal Register

Vol. 60, No. 146

Monday, July 31, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Part 277

[Amendment No. 368]

RIN 0584-AB92

Food Stamp Program: Automated Data Processing Equipment and Services; Reduction in Reporting Requirements

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to increase the cost thresholds above which prior written Federal approval of State automated data processing (ADP) equipment and services acquisitions is required for Federal financial participation. The effect of the proposed changes would be a reduction in State reporting requirements.

Additionally, State request would be deemed to have provisionally met the prior approval requirement if FCS does not approve, disapprove, or request additional information about the request within 60 days of the agency's letter to the State acknowledging its receipt. Finally, this rule proposes to eliminate the requirement that State agencies submit written information pertaining to the State biennial system security reviews. States would be required to maintain copies of the report and pertinent supporting documentation for FCS review.

DATES: Comments must be received on or before September 29, 1995 in order to be assured of consideration.

ADDRESSES: Comments should be addressed to John H. Knaus, Chief, Quality Control Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, Room 904, Alexandria, Virginia 22302. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at that address.

FOR FURTHER INFORMATION CONTACT:

Questions concerning this proposed rulemaking should be addressed to Mr. Knaus at the above address or by telephone at (703) 305-2474.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rulemaking has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program (FSP) is listed in the Catalog of Federal Domestic Assistance under 10.551 and information on State agency administrative matching grants for the FSP is listed under 10.561. For the reasons set forth in the final rule and related notice to 7 CFR 3015, subpart v (48 FR 29115), the FSP is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This rulemaking has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the FSP 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 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-QC liabilities) or Part 283 (for rules related to QC Liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This rulemaking has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980, 5 U.S.C. 601-612). Ellen Haas, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule will affect State agencies by reducing the reporting requirements applicable to them.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), information collection requirements relating to automated data processing and information retrieval systems have been approved by OMB Approval No. 0584-0083. The provisions of this rule do not contain any additional reporting and/or recordkeeping requirements subject to OMB approval.

Background

State agencies acquire ADP equipment and services for computer operations which support the FSP. For Federal financial participation, States are required to obtain prior written Federal approval when ADP acquisitions for total State and Federal costs exceed the thresholds established in 7 CFR 277.18. Currently, prior approval is required for competitively bid ADP acquisitions of \$500,000 or more; sole source acquisitions costing more than \$100,000; project increases of \$300,000 or more; most procurement documents (requests of proposals (RFPs) and contracts) of \$500,000 or more; and contract amendments that cost \$100,000 or more.

ADP equipment and services acquisitions under \$5 million account for a small percentage of the total cost of State systems development. In the interest of improved efficiency and effectiveness of the ADP process, the Department proposes to increase thresholds above which prior approval is required. This change would reduce the reporting burden on States and provide for better use of Federal resources.

The higher thresholds proposed in this rule would require prior approval from the U.S. Department of Agriculture (USDA) Food and Consumer Service

(FCS) for: (1) advance planning documents (APDs) for ADP equipment and services acquisitions of \$5 million or more in total Federal and State costs; (2) justifications for noncompetitive ADP acquisitions from nongovernment sources of more than \$1 million but no more than \$5 million in total Federal and State costs; (3) requests for proposals and contracts of more than \$5 million in total Federal and State costs for competitive procurements and more than \$1 million for noncompetitive acquisitions from nongovernmental sources, unless specifically exempted by FCS; (4) contract amendments for cost increases exceeding \$1 million or time extensions of more than 120 days; (5) annual APD updates for projects with total acquisition costs of more than \$5 million; and (6) as-needed APD updates for cost increases of \$1 million or more (the percentage of cost benchmark is removed).

Additionally, this rule proposes to add a provision to regulations which will promote efficient operation of the prior approval requirement. The prior approval requirement would be deemed to have been provisionally met if FCS has not approved, denied or requested additional information on the request within 60 days of the Agency's written acknowledgement of its receipt. With this change, States would have a firmer basis upon which to establish project timeframes, including the need for FCS approvals. The possibility of increased costs attributable to a delay in FCS action on State funding requests would also be reduced.

This change would allow States which are confident that their requests are in compliance of Federal requirements to proceed after the 60-day period has expired without awaiting final FCS approval. However, the provisional approval would not exempt a State from having to meet all other Federal requirements which pertain to the acquisition of ADP equipment and services. Such acquisitions remain subject to Federal audit and review, and the final determinations of these audits and reviews.

Currently, State agencies are required to submit to FCS information pertaining to the biennial security review. As proposed, State agencies would no longer be required to submit this information; but security review reports and pertinent supporting documentation would have to be maintained for Federal onsite review.

This rulemaking reflects concerned efforts on the part of USDA and DHHS to promote inter-Departmental consistency and standardization. The Departments are publishing similar

regulations in coordination with each other.

Regulation Changes

Regulations now require prior written approval for acquisition of ADP equipment and services if total costs are \$500,000 or more in Federal and State funds. If the State plans to acquire the equipment and services non-competitively from a non-government source, prior approval is required when the total acquisition costs are greater than \$100,000.

This rulemaking proposes to revise 7 CFR 277.18(c)(1) by raising the thresholds for approval of competitive acquisitions to those that will cost \$5 million or more in total Federal and State funds. As proposed, noncompetitive acquisitions of \$5 million or more would also require prior approval. In addition, noncompetitive acquisitions from a non-governmental source that have total State and Federal acquisition costs of more than \$1 million but no more than \$5 million would need prior approval of the justification for the sole source purchase. No changes are proposed for the requirements in this paragraph that apply to Electronic Benefit Transfer (EBT) systems.

Paragraphs (c)(2)(ii) (A) and (B) currently provide that, unless specifically exempted by FCS, prior written approval must be received before the release of a Request for Proposal (RFP) or execution of a contract where costs are anticipated to equal or exceed \$500,000. This rule proposes to increase the threshold for prior approval of competitive procurements to those costing more than \$5 million and, for noncompetitive procurements from non-government sources, to those costing more than \$1 million. States could be required to submit RFPs and contracts under the threshold amounts on an exception basis or if the procurement strategy is not adequately described in the APD.

Changes to thresholds for contract amendments, specified in paragraph (c)(2)(ii)(C), are also proposed. Regulations now require that, unless specifically exempted by FCS, prior approval is required before the State's signing of a contract amendment unless it involves cost increases of less than \$100,000 or time extensions of less than 60 days, and is an integral part of the APD. This rule proposes to change that requirement to provide that, unless specifically exempted by FCS, prior Federal approval would be required for contract amendments involving cost increases greater than \$1 million or contract time extensions of more than

120 days. States would also be required to submit contract amendments under these thresholds on an exception basis or if the contract amendment is not adequately justified in the APD.

Proposed changes to paragraphs (c)(2)(ii) (A), (B) and (C), as discussed above, would retain FCS' right to review and approve all RFPs, contracts, and contract amendments, regardless of dollar amount on an exception basis. The exception basis could include instances where new program requirements or technology are involved, or when adequate justification in the APD has not been provided. EBT system requirements in these paragraphs would be unchanged.

States are currently required to submit for approval an annual APD Update for approved planning and implementation APDs when the total acquisition costs exceed \$1 million. This rule proposes to increase the threshold for submission of these documents to those costing more than \$5 million.

Paragraph (e)(3)(i) now recommends submission of "as-needed" APD updates whenever there is a significant increase (\$300,000 or 10 percent, whichever is less) in total costs for a commitment of Federal financial participation for the increase. As proposed, the amount of a significant increase in total project costs would be raised to \$1 million or more. There would no longer be a percentage of cost benchmark.

This rule proposes to add a new paragraph after paragraph (c)(4). To promote operation of the prior approval requirement, this new paragraph, (c)(5), would provide for provisional approval of the prior approval requirement if FCS has not provided written approval, disapproval, or a request for additional information within 60 days of issuing an acknowledgment of receipt of a State's request.

Finally, this rule proposes to amend paragraph (p)(3), which requires States agencies to submit information related to the biennial security review. As proposed, State agencies would be required to maintain reports of their biennial ADP system reviews and pertinent supporting documentation for Federal on-site review.

List of Subjects in 7 CFR Part 277

Claims, Computer technology, Grant programs, Social programs.

Accordingly, 7 CFR part 277 is proposed to be amended as follows:

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

1. The authority citation for Part 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 277.18,

- a. paragraph (c)(1) is revised;
- b. the second sentence in paragraph (c)(2)(ii)(A) is removed and two sentences are added in its place;
- c. the second sentence in paragraph (c)(2)(ii)(B) is removed and two sentences are added in its place;
- d. the second sentence in paragraph (c)(2)(ii)(C) is removed and two sentences are added in its place;
- e. paragraph (c)(5) is added;
- f. paragraph (e)(1) is amended by removing to words “\$1 million” and adding in their place the words “\$5 million”;
- g. paragraph (e)(3)(i) is amended by removing the words “(\$300,000 or 10 percent, whichever is less)” and adding in their place the words “(\$1 million or more)”;
- h. the third and fourth sentences of paragraph (p)(3) are removed and one sentence is added in their place.

The revisions and additions read as follows:

§ 277.18 Establishment of an Automated Data Processing (ADP) and Information Retrieval System.

* * * * *

(c) *General acquisition requirements.*—(1) *Requirement for prior FCS approval.* A State agency shall obtain prior written approval from FCS as specified in paragraph (c)(2) of this section when it plans to acquire ADP equipment or services with proposed FFP that it anticipates will have total acquisition costs of \$5 million or more in Federal and State funds. This applies to both competitively bid and sole source acquisitions. A State agency shall also obtain prior written approval from FCS of its justification for a sole source acquisition when it plans to acquire ADP equipment or services non-competitively from a non-governmental source which has a total State and Federal acquisition cost of more than \$1 million but no more than \$5 million. However, a State agency shall obtain prior written approval from FCS for the acquisition of ADP equipment or services to be utilized in and EBT system regardless of the cost of the acquisition. The State agency shall request prior FCS approval by submitting the planning APD, the Implementation APD or the justification for the sole source acquisition signed by

the appropriate State official to the FCS regional office.

(2) *Specific prior approval requirements.* * * *

(ii) * * *

(A) * * * However, RFPs costing up to \$5 million for competitive procurement and up to \$1 million for noncompetitive acquisitions from non-governmental sources and which are an integral part of the approval APD need not be submitted to FCS. Stated will be required to submit RFPs under this threshold amount on an exception basis or if the procurement strategy is not adequately described in an APD. * * *

(B) * * * However, contracts costing up to \$5 million for competitive procurements and up to \$1 million for noncompetitive acquisitions from nongovernmental sources, and which are an integral part of the approved APD need not be submitted to FCS. States will be required to submit contracts under this threshold amount on an exception basis or if the procurement strategy is not adequately described in an APD. * * *

(C) * * * However, contract amendments involving cost increases of up to \$1 million or time extensions of up to 120 days, and which are an integral part of the approved ADP need not be submitted to FCS. States will be required to submit contract amendments under these threshold amounts on an exception basis or if the contract amendment is not adequately justified in an APD. * * *

* * * * *

(5) *Prompt action on requests for prior approval.* FCS will reply promptly to State requests for prior approval. If FCS has not provided written approval, disapproval or a request for additional information within 60 days of FCS’ letter acknowledging receipt of the State’s request, the request will be deemed to have provisionally met the prior approval requirement in 277.18(c). However, provisional approval will not exempt a State from having to meet all other Federal requirements which pertain to the acquisition of ADP equipment and services. Such requirements remain subject to Federal audit and review.

* * * * *

(p) * * *

(3) * * * State agencies shall maintain reports of their biennial ADP system security reviews, together with pertinent supporting documentation, for Federal on-site review.

* * * * *

Dated: July 26, 1995.

Ellen Haas,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 95–18789 Filed 7–28–95; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–95–110A]

RIN 1904–AA64

Alternative Fuel Transportation Program

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of limited reopening of the comment period.

SUMMARY: On February 28, 1995, the Department of Energy (DOE) published a notice of proposed rulemaking (60 FR 10970) to implement statutorily-required alternative fueled vehicle acquisition requirements applicable to certain alternative fuel providers and State government fleets under sections 501 and 507(o) of the Energy Policy Act of 1992 (Act), respectively. Public hearings were held in three cities and the 60-day public comment period closed on May 1, 1995. The principal purpose of this notice is to reopen the comment period for 30 days in order to solicit comments on: options for defining the term “substantial portion” which is used to determine coverage for certain petroleum producers and importers; and options for modifying the proposed definition of “alternative fuel” with respect to alcohol fuels and biodiesel. In addition, this document announces DOE’s receipt of new information regarding automakers’ alternative fueled vehicle production plans for the near future.

DATES: Written comments (11 copies) on the issues presented in this notice must be received by the Department on or before August 30, 1995.

ADDRESSES: Written comments (11 copies) should be addressed to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–33, Docket No. EE–RM–95–110A, 1000 Independence Ave., SW, Washington, DC 20585, (202–586–3012).

Docket: Supporting information used in developing the proposed rule and written comments received on the Notice of Proposed Rulemaking are