

# Proposed Rules

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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 Nutrition Service

#### 7 CFR Part 277

RIN 0584-AD99

#### Automated Data Processing and Information Retrieval System Requirements

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend Supplemental Nutrition Assistance Program (SNAP)—formerly the Food Stamp Program) regulations to implement the Food, Conservation, and Energy Act of 2008 (the Farm Bill), which requires adequate system testing before and after implementation of a new State automatic data processing (ADP) and information retrieval system, including the evaluation of data from pilot projects in limited areas for major systems changes, before the Secretary approves the system to be implemented more broadly. It also provides that systems be operated in accordance with an adequate plan for continuous updating to reflect changed policy and circumstances, and for testing the effects of the system on access by eligible households and on payment accuracy. This proposed rule would also specify the requirements for submission of a test plan. Further, the rule proposes changing the due date of an Advance Planning Document Update (APDU) from 90 days after to 60 days prior to the expiration of the Federal financial participation (FFP) approval and revises language regarding the Federal share of costs in consolidated information technology (IT) operations to specify that the threshold for service agreements applies to federally aided public assistance programs, rather than to SNAP alone. In addition, this rule proposes to amend the SNAP regulations relating to the establishment of an automated data processing and

information retrieval system and to provide clarifications and updates which have occurred since this section was last updated in 1996.

**DATES:** Comments must be received on or before October 24, 2011.

**ADDRESSES:** The Food and Nutrition Service, USDA, invites interested persons to submit comments on this proposed rule. Comments may be submitted by one of the following methods:

- Preferred method: *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>; follow the online instructions for submitting comments on docket FNS-2009-0020.
- *Mail:* Comments should be addressed to Neva Terry, Director, State Systems Office, Food and Nutrition Service—USDA, 3101 Park Center Drive, Room 820, Alexandria, VA 22302-1500.
- *Hand Delivery or Courier:* Deliver comments to the Food and Nutrition Service, State Systems Office, 3101 Park Center Drive, Room 820, Alexandria, Virginia 22302-1500, during business hours of 9 a.m.–4:30 p.m. Eastern Time, from Monday–Friday, excluding Federal holidays.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via <http://www.regulations.gov>. All written submissions will be available for public inspection at the address above during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this rulemaking should be addressed to Neva Terry, Director, State Systems Office, at the above address if mailed, by telephone at (703) 605-4315 or via the Internet at [neva.terry@fns.usda.gov](mailto:neva.terry@fns.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Additional Information on Comment Filing

###### *Written Comments*

Comments on the proposed rule should be specific, confined to issues pertinent to the proposal, and explain the reason for any change you

recommend. Where possible, you should reference the specific section or paragraph of the proposed rule you are addressing. We may not consider or include in the Administrative Record those comments received after the close of the comment period or comments delivered to an address other than that listed above.

##### II. Procedural Matters

###### *Executive Order 12866 and Executive Order 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been designated non-significant under section 3(f) of Executive Order 12866.

###### *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 would not have significant economic impact on a substantial number of small entities. State agencies which administer SNAP will be affected to the extent that they implement new State automated systems or major changes to existing systems.

###### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the

Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

#### *Executive Order 12372*

SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.561. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice published at [48 FR 29114 for SNP; 48 FR 29115 for FSP], June 24, 1983, this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### *Executive Order 13132*

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 Executive Order 13132 (Prior Consultation With State Officials, Nature of Concerns and the Need To Issue This Rule, and Extent to Which We Meet Those Concerns). FNS has considered the impact of this rule on State and local governments and determined that this rule does not have Federalism implications. This proposed rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

#### *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 which conflict with its provisions or which would otherwise impede its full implementation. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

#### *Executive Order 13175*

E.O. 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. In late 2010 and early 2011, USDA engaged in a series of consultative sessions to obtain input by Tribal officials or their designees concerning the affect of this and other rules on tribes or Indian Tribal governments, or whether this rule may preempt Tribal law. In regard to this rule, no adverse comments were offered at those sessions. Further, the policies contained in this rule would not have Tribal implications that preempt Tribal law. Reports from the consultative sessions will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will offer future opportunities, such as webinars and teleconferences, for collaborative conversations with Tribal leaders and their representatives concerning ways to improve rules with regard to their affect on Indian country.

We are unaware of any current Tribal laws that could be in conflict with the proposed rule. We request that commenters address any concerns in this regard in their responses.

#### *Civil Rights Impact Analysis*

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of SNAP households and individual participants, FNS has determined that there are no civil rights impacts in this proposed rule. All data available to FNS indicate that protected individuals have the same opportunity to participate in SNAP as non-protected individuals.

FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate based on age, race, color, sex, handicap, religious creed, national origin, or political beliefs. SNAP nondiscrimination policy can be found at 7 CFR 272.6 (a). Where State agencies have options, and they

choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6. Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act of 1977 (the Act), the Age Discrimination Act of 1975 (Pub. L. 94-135), the Rehabilitation Act of 1973 (Pub. L. 93-112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 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. This proposed rule contains information collections that are subject to review and approval by OMB; therefore, FNS has submitted an information collection under 0584-0083, which contains the changes in burden from adoption of the proposals in the rule, for OMB's review and approval.

Comments on the information collection in this proposed rule must be received by October 24, 2011.

Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Neva Terry, Director, State Systems Office, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 820, Alexandria, VA 22302-1500. For further information, or for copies of the information collection requirements, please contact Neva Terry at the address indicated above.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) 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.

All responses to this request for comments will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

This is a revision of a currently approved collection. The new provisions in this rule, which do not increase burden hours, affect the information collection requirements that will be merged into OMB Control Number 0584-0083, once approved by OMB. The current burden inventory for this collection is 0584-0083. These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval.

*Title:* Supporting Statement for Paperwork Reduction Act Submission.

*OMB Number:* 0584-0083.

*Expiration Date:* 12/31/2013.

*Type of Request:* Revision of a currently approved collection;

*Abstract:* This proposed rule will have no impact on the State agency

workload with regard to the additional testing requirements, as rigorous testing is already part of any well-managed systems project. Most State agencies will recognize the similarities between the documents already prepared during customary System Development Life Cycle (SDLC) processes, and those required by the SNAP APD approval processes. Although FNS is proposing to require information from State agencies on their plans for adequate system testing, FNS believes this information is already part of the regular SDLC process; it should already be in the State agencies' possession and only needs to be submitted to FNS for review and approval.

Further, information collections associated with maintenance and operation (M&O) procurements prescribed under 7 CFR 277.18 would be reduced as systems move past their implementation phase. Currently, State agencies are required to submit to FNS Implementation APDs (IAPD) for M&O of their ADP systems. As proposed, State agencies would no longer be required to submit this IAPD information unless they contain significant changes such as system

development through modifications and/or enhancements. State agencies will continue to be asked to provide copies to FNS of the requests for proposals and contracts relating to system M&O.

Currently it is estimated that up to 53 State agencies may submit on an average of five (5) APD, Plan, or Update submission for a total of 265 annual responses at an average estimate of 2.5 hours per respondent. The reporting burden is 662.5 hours. In addition, FNS estimated that up to 53 State agencies may submit on an average of 5 APD, Plan, or Update submission and approximately 265 records at an average estimate of .11 minutes per recordkeeper for an estimated total of 29.15 recordkeeping burden for this activity hours per recordkeeper. Since this proposed rule will lessen the burden for submittal of M&O IAPDs it is now estimated that the burden will lessen to four (4) APD, Plan or Update submittals.

The average burden per response, the annual burden hours and the annualized cost to respondents are summarized in the charts which follow.

**REPORTING ESTIMATES OF HOUR BURDEN**

Affected public	Activity	Number of respondents	Frequency of response	Total annual responses	Time per response	Annual reporting burden
State Agencies .....	Other APD Plan or Update.	53	4	212	2.5	530

**RECORDKEEPING BURDEN**

Activity	Number of recordkeepers	Number of records per respondent	Est. total annual records	Hours per recordkeeper	Total burden
Other APD Plan or Update .....	53	4	212	0.11	23.32

**ANNUALIZED COST TO RESPONDENTS**

	Type of survey instruments	Reporting and recordkeeping burden	Hourly wage rate	Respondent cost—prior to Federal cost sharing
Total .....	Other APD Plan or Update .....	553.32	\$33.29	\$18,420
	.....	7,463.26	33.29	246,310

**E-Government Act Compliance**

The Food and Nutrition Service is committed to complying with the E-Government Act, 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.

**III. Background**

Section 4121 of the Food, Conservation and Energy Act of 2008 amends subsection 16(g) of the Food and Nutrition Act of 2008 (7 U.S.C. 2016) to require adequate system testing before and after implementation of a new State ADP and information retrieval system, including the

evaluation of data from pilot projects in limited areas for major systems changes, before the Secretary approves the system to be implemented more broadly. It also provides that systems be operated in accordance with an adequate plan for continuous updating to reflect changed policy and circumstances, and for testing the effects

of the system on access by eligible households and on payment accuracy.

Systems development or acquisition, whether in the public or private sector, goes through a detailed process of planning, analysis, preparation, budgeting, and negotiation. In order to receive Federal funding to develop, acquire, and/or implement information systems (IS) that support the operation of FNS programs there are policies and procedures that State agencies must follow. This is referred to as the Advance Planning Document (APD) process which employs common industry standards that are required for any well-planned and executed Systems Development Life Cycle (SDLC) project. The preparation, submission, review, approval, and use of the APD process and its related documents for project planning, management, and control purposes comprise the successive steps through which a State agency can meet Federal oversight requirements and subsequently receive Federal written prior approval and financial participation in IT projects.

In developing this proposed rule, FNS has drawn on its experience with State IS and with systems for Electronic Benefits Transfer in the SNAP. FNS views this rule as having minimal impact on State agency workload with regard to the additional testing requirements, as rigorous testing is already part of any well-managed IS project. Most State agencies will recognize the similarities between the documents already prepared during customary SDLC processes, and those proposed to be required by the SNAP APD approval processes. This regulation proposes to codify the testing standards already found in well managed State projects in order to assure that all State agencies meet those standards.

Many State agencies already include testing and pilot projects as well as some form of graduated roll out when implementing major systems. System testing is part of the overall project management and risk management planning process; testing is essential for successful system implementation outcomes. In the past few years, some State agencies have attempted aggressive implementation schedules of major system and program changes, which have had adverse effects on household access to SNAP benefits and payment accuracy. Section 4121 of the Farm Bill reflects Congress' concern that USDA use the Federal approval process to more deliberately review and monitor State agencies' plans for major system implementations, and encourage all State agencies to implement new systems using sound testing practices.

Since the access of needy people to nutrition assistance is dependent upon the proper functioning of SNAP automated systems, FNS is now required to ensure that all eligibility systems are adequately reviewed and tested.

The law requires accountability for ensuring test results are satisfactory prior to system implementation as a condition for continued funding of the project. If a State makes a decision to proceed to the next phase of the project (a "go/no-go" decision point, such as testing or pilot) when significant errors have been identified but are not resolved satisfactorily to support the decision to proceed, FNS can suspend or disallow Federal funds in whole or in part until the problems are resolved.

Section 277.18 of the FNS regulations addresses the Establishment of an Automated Data Processing and Information Retrieval System. Section 277.18(n) (Basis for continued Federal financial participation) is proposed to be amended as a result of Section 4121 of the Farm Bill regarding IS testing. In addition, this regulation proposes to add or modify the following requirements:

- Change the Annual APDU due date from 90 days after anniversary of approval to 60 days prior to the expiration of the FFP approval;
- Revise language regarding Federal share of costs in consolidated IT operations, consistent with the Department of Health and Human Services (DHHS), to specify the threshold for service agreements applies to federally aided public assistance programs, rather than to SNAP alone; and
- Propose clarification and simplification of existing regulations relating to the APD process.

*1. What changes is FNS proposing for 277.18(n), basis for continued Federal financial participation, as a result of the Food, Conservation and Energy Act of 2008?*

FNS is proposing to move section 277.18(n) (Basis for continued Federal financial participation) and renumber it as 277.18(g). In addition, proposed language is being added to describe FNS' expectations for a detailed testing plan starting at User Acceptance Testing (UAT) through pilot testing and including opportunities for State agency and/or Federal reviews prior to UAT as well as after the system is fully implemented.

State agencies would submit a test plan which describes how all system testing will be conducted in order to verify that the system complies with SNAP requirements and system design

specifications. The level of detail specified in proposed section 277.18(g)(2) would be provided to FNS prior to the State agency beginning its testing of the system. The test plan would include a contingency plan component which identifies alternative strategies that may be used if specific risk events occur, such as a failure of test results to support a decision to proceed to the next phase of the project. Examples include alternative schedule activities, staffing plans and emergency responses to reduce the impact of risk events.

*2. What would need to be addressed in the contingency plan for testing?*

Under the pressures of an overly optimistic schedule, a State agency may feel compelled to move forward with a project even when testing results indicate that the system is not ready for the next step. The purpose of a testing contingency plan is to assure FNS that the State agency has an agreed upon alternative in place if testing indicates that the system is not ready to progress to the next stage. The plan should address what steps will be taken in response to an excessive failure rate or "no-go" decision at any point in the testing process. Such steps might include: Delaying or revising staffing plans; rescheduling training; adjusting pilot plans; and/or extending, rescheduling or redeploying testing resources such as space, contractor and state staff, servers and other equipment. Plans might include researching, in advance, the authority to exercise personnel policies, utilize overtime pay or compensatory time, or to withdraw or reschedule approved discretionary leave. It should also include plans for revising other dependent schedules such as those for legacy system maintenance or the implementation of required annual mass changes. The plan should address who has the authority to activate contingency procedures and how decisions will be made. Contingency plans should address both project and business dependencies. Although FNS would not dictate exactly what must be included, the plan would be expected to demonstrate the State agency's awareness that testing is, by definition, the period when problems are identified which may result in delays. The plan must demonstrate that the State agency is prepared to adjust and "fall back" to a sustainable position to continue testing when necessary, and not allow a project to proceed with unacceptable risks in order to stay on schedule.

### 3. How will FNS assess the adequacy of a State agency's system test plan?

As proposed, FNS would review a State agency's overall plan to ensure that risk is mitigated and managed to the extent feasible. FNS' examination of State agencies' plans would include, but not be limited to, the following areas: Risk management, rigorous methodologies, industry standards, professional test management, repeatable test processes, specific pass/fail metrics, adequate time allotted for testing, and an unbiased decision-making process.

FNS intends to use a pro-active analysis of State test plans. Results from the UAT and Pilot Test and others, if appropriate, would be evaluated from a system perspective as well as a program perspective to determine whether their outcomes can be considered successful.

Although successful UAT and Pilot Test are commonly used decision points, "go/no-go" points may be established at any milestone in the SDLC to assess the project status and determine if continuing to the next phase is in the best interest of the project. The project should not advance to the next phase until all critical criteria are satisfactorily addressed. FFP could be in jeopardy if the State agency advances to the next phase without FNS approval.

### 4. What data will a State agency need to provide to FNS to demonstrate its system testing is adequate?

The State agency will need to provide a preliminary test plan in its initial IAPD, a final test plan prior to the start of the testing phase, and test results throughout the testing phase. FNS proposes to evaluate the initial information provided by a State agency to determine if the State agency's plans, methodology, results tracking and analysis approach are adequate, and whether additional information is needed. FNS intends to work with the State agency to determine what information is practicable and require only information that is necessary and not otherwise available. FNS would expect to negotiate the reporting requirements necessary to evaluate system performance with each State agency.

### 5. What would be considered adequate system testing?

Even before State testing begins, "adequate testing" should include holding the system developer responsible for delivering a product that has been thoroughly tested by the developer and is ready for UAT.

Adequate testing includes ensuring that high standards for test results are set and met before the system is considered to have passed the tests and be ready for the next phase. However, once delivered, the State agency must validate that the system meets the performance expectations and all functional requirements described in the functional design specifications document. Testing methodology must be rigorous and results must be documented thoroughly. If errors are identified in the system's functionality or performance, the fixes the developer makes to the system to resolve these errors should be regression tested. Regression testing is the process that requires the users to validate that the error has been fixed and that the fix does not adversely impact the system in other ways. Only when these conditions are met can testing be considered adequate to demonstrate that the system is ready for pilot.

Documentation of the results of performance and UAT of the system before the system is piloted in a production environment needs to be provided to FNS and FNS concurrence to advance from testing to pilot will be a condition for continued FFP. Also, the State agency needs to provide documentation to FNS of the pilot evaluation. FNS' approval to implement the system more broadly will also be a condition for continued FFP.

### 6. What is meant by UAT?

User Acceptance Testing (UAT) is a crucial part of the integration and testing phase of the SDLC. UAT is necessary to confirm that the developed system meets all State agency functional and technical requirements. Testers should work with users early in the project to define system criteria for meeting user needs, incorporate them into the acceptance test plan, and create detailed test scripts. UAT should be conducted in a user environment in which simulated or real target platforms and infrastructures are used. This environment should be separate from the development and production environments, but as similar to the production environment as possible. Typically, a separate test environment is set up for testing by developers and an additional test environment is set up for UAT.

UAT is a final test of the complete SDLC that is conducted prior to pilot and implementation and the point at which the State agency "accepts" the system. It involves testing the system capabilities as documented in the system design, and is a precursor to accepting delivery of the system.

Functional demonstrations and acceptance testing should be completed prior to implementation of the pilot. FNS staff may participate to a limited extent in the functional demonstrations and acceptance testing.

### 7. What are the components of a successful UAT?

A State agency should develop a formal test plan for UAT that includes real-life scenarios and establishes error severity levels, error tracking software, results reporting, and regression testing. The system should be tested from end-to-end, including both normal and abnormal conditions such as user mistakes. Once the UAT plan is executed, an acceptance decision is made based on the results of this testing, followed by users' sign-off upon successful completion of the UAT plan.

### 8. What is the purpose of the Pilot Test?

The purpose of the Pilot Test (Pilot) is to provide the State agency with a smaller scale shakedown test prior to expansion. Most State agencies recognize the need for Pilot project operations and first implement systems on a small scale. The length of the Pilot would need to be agreed upon by the State agency and FNS. Some of the factors that would need to be taken into consideration will be the size of the Pilot; the rate of phase-in of the Pilot caseload; and the track record, if any, of the system being implemented. A Pilot is important for more than just providing a dry run for the computer system. It is also an opportunity for State agencies to determine and ensure that that all parties (e.g. recipients and State/local staffs) are comfortable with the system, the State agency's approach to training is effective, and any program and system interfaces are effective. This rule does not remove the latitude provided to State agencies in choosing the Pilot sites. State agencies should, however, take into consideration how well the Pilot's caseload represents the demands on the fully operational system.

The Pilot is a key milestone in project development and occurs when a fully functional prototype system is available for testing, but before statewide implementation. The Pilot needs to include operating all components of the system in a live environment. The State agency should define its own "go/no-go" criteria and FNS may also establish additional "go/no-go" criteria and decision points for continuing with system implementation of the project. In some cases, FNS may make approval of Federal funds for implementation conditional on the result of the Pilot.

FNS may also participate in the Pilot to assist and corroborate the findings of the State agency.

Under this proposal, State agencies would likely be reporting activity to FNS for the duration of the Pilot, which would provide FNS with an opportunity to monitor Pilot activities, anticipate the success of the Pilot, and determine if rollout may occur. The State agency must allow sufficient time after the Pilot period to evaluate Pilot results and secure FNS concurrence for rollout.

Pilot tests may also be necessary in limited areas for major system changes. FNS proposes to interpret the limited area as not synonymous with a geographic area, but rather focus on a limited scale or scope of the Pilot.

*9. How does a State agency move forward and expand beyond the pilot phase?*

Upon successful completion of the Pilot project, the State agency would have to receive written approval from FNS before expanding beyond the Pilot. This rule proposes at paragraph 277.18(g)(2)(ii) that State agencies operate Pilot projects until a state of routine operation is reached with the full caseload in the Pilot area (usually a minimum duration of three months). This waiting period would permit the system to work through all functions and potential system problems.

*10. Does FNS propose to certify system testing and outcomes?*

No. To “certify” a system generally means that the certifying entity verifies through independent evaluation that a fixed set of standardized tests have been passed or criteria on a standard checklist have been met. The certifying agency issues some sort of statement or document attesting to the certification, which may have legal implications. FNS does not certify systems or system testing. FNS may, however, conduct pre and/or post implementation reviews. These reviews would be intended to: Evaluate system performance and accuracy; verify that functional requirements were met; ensure that the policy to be administered is accurate; analyze data capture, integrity edits and calculations; verify that UAT was thorough and successfully completed; and, ensure that the system interfaces successfully with other programs and external entities, including EBT. FNS may conduct reviews either onsite or by examining relevant documents provided by the State agency. Post implementation reviews may be conducted once the system is fully operational Statewide. These system reviews encompass technical and

security components as well as program and financial aspects. Reviews by FNS are a function of its regulatory oversight authority. Resolution of any issues identified or completion of corrective action required by FNS, and subsequent closure of a report, review or project does not constitute “certification.”

*11. Why is FNS proposing changes to the annual Advanced Planning Document Update (APDU) due date?*

FNS proposes in paragraph 277.18(c)(3)(i)(C) to align the due date for the annual APDU from the current requirement of within 90 days after the anniversary date of the original APD approval to the current Department of Health and Human Services (DHHS) requirement of 60 days prior to the expiration of the FFP approval. Although this proposal shortens the timeframe provided to State agencies for submission of annual updates, since most APDs are submitted to both USDA and DHHS, FNS believes creating consistency on this due date would simplify the process for State agencies and increase the likelihood that the document will be submitted timely to both Departments.

*12. Why is FNS proposing a change to the provision regarding service agreements?*

Service agreements are used when IT services are to be provided by a centralized State facility or another State or local agency. The current regulatory language at paragraph 277.18(f)(6) references the need to obtain FNS approval when these equipment and services will primarily support the SNAP by billing it for more than 50 percent of the total charges made to all users. FNS is proposing to modify this language at paragraph 277.18(e)(6) to clarify that the 50 percent threshold for service agreements applies to the sum total of all Federal public assistance programs and not just the SNAP portion. This modification would make the FNS language more consistent with that of DHHS, which does not identify any specific programs in its regulatory language relating to service agreements.

*13. Why is FNS proposing additional changes to the Automated Data Processing and Information Retrieval System requirements section of the regulations beyond those mandated by the Farm Bill?*

The last changes made to § 277.18 were in 1996. Since then FNS has identified provisions in this section of the regulations that need clarification and enhancement to improve the

public's understanding of the process. Some subsections would be moved and renumbered to improve the flow and clarity of the entire section and improve its usefulness as a reference for regulatory authority.

FNS' intent is to stress the importance of project management and risk management in the system planning process. These are not new concepts, but this renewed emphasis is to assist State agencies' focus on these areas in order to increase the likelihood of positive outcomes.

*14. How is FNS changing the current order in § 277.18 and moving provisions within the section?*

Paragraph 277.18(a) (Scope and application) provides an introductory statement for the rest of the section. It currently contains a sentence regarding cost allocation which has been moved to paragraph 277.18(j) (General cost requirements).

Paragraph 277.18(d) (APD content requirements) contains a discussion on the cost allocation plan for the Planning APD (PAPD). This is clarified and moved to new paragraph 277.18(d)(1)(vii).

Paragraph 277.18(e) (APD update) is moved and renumbered as 277.18 (d)(3).

Paragraph 277.18(f) (Service agreements) language which requires a State agency to maintain a copy of its service agreements in its files for Federal review is moved from the introductory paragraph to a new paragraph 277.18(e)(9) and the entire paragraph is moved and renumbered as 277.18(e).

Paragraph 277.18(g) (Conditions for receiving FFP), is moved and renumbered as 277.18(f).

Paragraph 277.18(h) (Emergency acquisition requirements), is moved and renumbered as 277.18(i).

Paragraph 277.18(i) (Cost determination and claiming costs) is renamed as General cost requirements, moved, and renumbered as 277.18(j).

Paragraph 277.18(j) (Procurement requirements) is moved and renumbered as 277.18(c)(2)(iii).

Paragraph 277.18(n) (Basis for continued Federal financial participation) is moved and renumbered as 277.18(g)

Paragraph 277.18(o) (Disallowance of Federal financial participation) is moved and renumbered as 277.18(h).

Paragraph 277.18(p) (ADP system security requirements and review process) is moved and renumbered as 277.18(m).

No changes are being made to paragraph 277.18(k) (Access to the system and records).

FNS removed paragraph 277.18(m) (Use of ADP systems) as it was determined to be unnecessary.

*15. What terminology changes would be made in this proposed rule?*

There are two terminology changes made in § 277.18. All instances of the use of the “Food Stamp Program” or “FSP” are changed to the “Supplemental Nutrition Assistance Program” or “SNAP” the name made effective by the Food, Conservation, and Energy Act of 2008 on October 1, 2008. In addition, all instances of the use of “Automated Data Processing” (ADP) would be changed to “Information System” (IS) or to “Information Technology” (IT), as appropriate given the context of their use.

*16. What changes is FNS making to the definitions § 277.18(b)?*

This paragraph currently provides definitions for 18 terms commonly used in the remainder of this section. Some definitions are antiquated and therefore would be removed, globally replaced (as discussed in the previous question); or renamed. Others would be incorporated in the subsection that specifically addresses that topic, such as Feasibility Study. Four definitions are added to this section which are not related to new requirements, but intended to provide a ready reference summary for terms used in this section: acquisition, project, Commercial Off-the- Shelf software, and enhancements.

*17. Why are definitions proposed to be added for “acquisition” and “project”?*

In paragraph 277.18(b) (Definitions), the terms “acquisition” and “project” are changed to clarify the difference between the two. FNS added these definitions to assist the reader in noting that projects and acquisitions are separate events and while they may be related in the holistic view of the project, the review requirements and submission thresholds vary as discussed in paragraph 277.18(c).

*18. Why is the definition of Commercial Off-the-Shelf software added to the regulation?*

In paragraph 277.18(b) (Definitions), FNS added the definition of Commercial Off-the-Shelf (COTS) products which are beginning to find a place in the Human Services sector. A definition is added to specify FNS’ criteria for software to be considered COTS, and clarify where Federal ownership rules do and do not apply to COTS products.

*19. Why is a definition for “Enhancement” added?*

State agencies often make corrective and adaptive changes in the course of normal maintenance and operations of a system. For extensive renovation or replacement of a system, a State agency would undertake a detailed planning process. Enhancements to a system often fall somewhere in between. By providing a definition of “enhancement” this regulation will help State agencies understand the distinctions, and know when an enhancement may represent a substantial enough change in system functionality to require FNS approval. Guidance presented in FNS Handbook 901, “Advance Planning Documents” as well as this rulemaking clarifies when enhancements may require prior approval via the submission of documentation to FNS.

*20. Why would FNS expand the definition of Implementation APD?*

The definition would be expanded to delineate the major activities of the System Development Life Cycle (SDLC) that are expected to occur during the Implementation Phase, which the Implementation APD encompasses. These major activities are defined as design, development, testing, and implementation. The intent is to provide clarification to State agencies that the APD process follows that of the SDLC and mirrors State government and industry standards.

*21. Why would the APDU definition be revised?*

In paragraph 277.18(b) (Definitions), FNS clarifies that the APDU is more than an annual report as the current definition states. The APDU is an annual or as needed report of activities as well as a request for continuation of funding, either at the current or an updated funding amount. The APDU reports the status of activities as well as changes to the project’s scope, schedule, budget, cost allocation or procurement strategy. As previously defined, it may have been implied this was simply a report and did not emphasize the importance of this update as a requirement for continuing funding for the project. FNS often approves funding or project approval for a specified period of time during the project. The mechanism to ensure that funding and project approval continues for future development through project completion is the APDU, either annual or as needed, whichever is appropriate for the conditions of a specific project. The phrase “self-certification” was

removed as this is not the intent of the APDU.

*22. Why is FNS waiving the annual APDU if an As Needed APDU has been submitted?*

In paragraph 277.18(c)(3)(i)(C) FNS includes a provision for FNS to waive the annual APDU or reset the APD anniversary date to coincide with the As Needed APDU, if appropriate. Recognizing that many State agencies which submit As Needed APDUs may be duplicating their efforts when submitting annual APDUs, FNS hopes to alleviate this burden by waiving the submission of the Annual APDU until the following year or modifying the Annual APDU due date to be one year from the approval of the As Needed APDU. This is intended to lessen the State reporting burden.

*23. Are State agencies required to approve all IS acquisitions no matter how small?*

In paragraph 277.18(c)(4) (Approval by the State agency) FNS is revising the language to allow the State agency to delegate approval authority to any subordinate entity for those acquisitions of IS equipment and services not requiring prior approval by FNS. The State agency is free to set its own pre-approval thresholds so long as those thresholds do not exceed the FNS pre-approval thresholds.

*24. Why is FNS making changes to the APD content requirements in paragraphs 277.18(c), 277.18(d) and 277.18(e)?*

Language on content requirements for an PAPD, Implementation APD (IAPD), Annual APDU and As Needed APDU is being revised to allow FNS to be more responsive to States that are implementing IS and to revise requirements in the future by policy rather than regulation if circumstances warrant. Detailed guidance on the specific content can be found in FNS Handbook 901, “Advanced Planning Documents.”

*25. Why is FNS making changes to the dollar thresholds for prior approval of IS procurements?*

FNS proposes in 277.18(c)(1) and 277.18(c)(2) to align the dollar thresholds for prior approval for IS procurements to the current Department of Health and Human Services (DHHS) requirement of \$6 million versus the current FNS requirement of \$5 million. Also, FNS proposes to align the dollar thresholds for prior approval of contract amendments to the current DHHS requirement of 20 percent

(cumulatively) of base contract costs. FNS believes creating consistency on these dollar thresholds would simplify the process for State agencies.

*26. Why would FNS remove the requirement that a system be used for the lifespan specified in the cost benefit analysis of the Implementation Advance Planning Document?*

The requirements for the cost benefits analysis in paragraph 277.18(d)(2)(vii) included a statement indicating the period of time the State agency intended to use the proposed equipment or system. Paragraph 277.18(m) required that systems designed, developed or installed with FFP be used for the period of time specified in the cost benefit analysis. These were determined to be unnecessary and therefore have been removed. These were originally meant to assure that a system was kept in use long enough to reach the "break even" date determined in the cost benefit analysis. However, experience has shown that many facts and assumptions used in that analysis change significantly over the life of the system, likely making the break even date, and therefore the anticipated lifespan inaccurate. Furthermore, State agencies often keep systems in use long past the anticipated lifespan due to budget pressures, and consider system replacement only when driven by technological necessity, such as unsupported platforms, outdated programming languages, or the excessive cost of maintaining antiquated systems. Finally, the advance planning period and SDLC associated with a large-scale, complex project require that State agencies begin the process of system replacement years before their legacy systems reach the true end of their lifespan and become insupportable.

*27. Is FNS changing the requirements for an Emergency Acquisition Request (EAR)?*

No, the changes in paragraph 277.18(h) regarding EARs, as in paragraph 277.18(i), only clarify the relationship of emergency acquisition requirements to general acquisition requirements. The existing language might have been interpreted to mean that FNS may recognize the need for a State agency to act quickly, but does not actually approve anything until after the receipt of an approvable IAPD following the emergency action. The revised language is intended to clarify that FNS does provide formal conditional approval of EARs, assuring financial support for up to 90 days, until an approvable IAPD is submitted. If

complete documentation is not received within that timeframe, costs may be disallowed.

*28. Why is FNS renaming the paragraph currently called "Cost determination and claiming costs"?*

In paragraph 277.18(i)(Cost determination and claiming costs), FNS is renaming the paragraph as "General cost requirements" to increase consistency within the section. In the paragraph on Development costs, FNS is inserting a reference to the cost principles set forth in OMB Circular A-87 (2 CFR part 225). This Circular establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units). The paragraph on Budget authority, clarifies that an As Needed APDU report, as well as an amended budget, would be required for FNS approval.

*29. What is the purpose of adding a discussion of Commercial Off-the-Shelf (COTS) software to the regulation?*

In paragraph 277.18(l) (Ownership rights), FNS clarifies that software packages which meet the definition of COTS at paragraph 277.18(b) are not subject to the ownership provisions of this paragraph. Along with long-established licensed COTS products such as operating systems, database software and desktop/office software, FNS recognizes the potential of COTS software in the Human Services sector to provide a proprietary framework and/or tool set which can be used to standardize, simplify and speed the process of building public domain modules, objects or processes within it. The addition of language about COTS products seeks to recognize exceptions to the overarching ownership provisions in the rule. However, a clarification in the language emphasizes that FFP would not be available for COTS products developed specifically for the SNAP program.

*30. What is the impact of the language added to Disallowance of FFP?*

Current regulatory language at paragraph 277.18 (o) states that FFP in a project can be disallowed for failure to comply with the criteria, requirements, and other undertakings described in the approved or modified APD. The language makes it more consistent with DHHS regulations and allows FNS flexibility in dealing with these occurrences by giving FNS the options

of suspending or disallowing a part of the funding.

*31. Why is FNS removing Appendix A to Part 277 (Principles for Determining Costs Applicable to Administration of the SNAP by State Agencies)?*

FNS is removing Appendix A to Part 277 (Principles for Determining Costs Applicable to Administration of the SNAP by State Agencies) because it is now obsolete and has been replaced by an updated version of OMB Circular A-87 Cost Principals for State, Local, and Indian Tribal Governments as found at 2 CFR 225. As a result of this removal, FNS is also relocating two provisions and updating references to Appendix A in other sections.

FNS is relocating one provision from Appendix A to another section to enhance the information provided in that section. The section to be enhanced includes: paragraph 277.13(b) (nonexpendable personal property) to increase the \$1,000 threshold for capital expenditures to \$5,000, as currently provided for in Appendix A.

References to Appendix A included in eight other regulatory sections would be changed to refer to OMB Circular A-87 (2 CFR 225). These sections include: 272.1 (159) Amendment (385) which relates to funding; 274.12(k)(2) which relates to costs; 276.4(d) which relates to disallowance; 277.6(b)(6) which relates to costs; 277.9(c)(2) which relates to costs; 277.13(g) which relates to copyrights; 277.16(b)(2) which relates to disallowance; and 277.18(i)(1) which relates to costs. In addition, although § 277.4 does not currently contain a reference to Appendix A, FNS is adding a reference to OMB Circular A-87 (2 CFR 225) as this section relates to funding and allowable costs.

*32. Does FNS plan to provide additional guidance for State agencies to assist their implementing this rulemaking?*

Yes, FNS plans to update the FNS Handbook 901, "Advance Planning Documents," and provide other training and technical assistance materials, once the final rulemaking is issued. FNS invites suggestions for areas in which guidance would be useful. At this time, the following items have been tentatively identified for further guidance:

- When system enhancements may require prior approval;
- PAPD requirements, including: proposed budget and cost allocation plan;
- IAPD requirements, including: cost benefit analysis, project management plan; resource requirements statement;



cost allocation plan; implementation plan; training plan; and test plan.

#### List of Subjects in 7 CFR Part 277

Food stamps, Fraud, Government procedure, Grant programs—social programs, Records, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 277 is proposed to be amended as set forth below:

#### 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. 2011–2036.

2. In § 277.13:

a. Revise the figure “\$1,000” to read “\$5,000” wherever it occurs in the following paragraphs:

i. (b)(2)(iii)(A);

ii. (b)(3)(i);

iii. (b)(3)(ii) introductory text;

iv. (c) introductory text; and

v. (e)(3) introductory text; and

b. Revise paragraphs (b)(2)(iii)(A) and (b)(3) to read as follows:

#### § 277.13 Property.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) When the State agency no longer has need for such property in any of its federally financed activities, the property may be used for the State agency’s own official activities in accordance with the following standards:

(A) If the property had a total acquisition cost of less than \$1,000, the State agency may use the property without reimbursement to FNS.

\* \* \* \* \*

(3) *Disposition.* If the State agency has no need for the property, disposition of the property shall be made as follows:

(i) If the property had a total acquisition cost of less than \$1,000 per unit, the State agency may sell the property and retain the proceeds.

(ii) If the property had an acquisition cost of \$1,000 or more per unit, the State agency:

(A) If instructed to ship the property elsewhere, the State agency shall be reimbursed with an amount which is computed by applying the percentage of the State agency’s participation in the cost of the property to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(B) If instructed to otherwise dispose of the property, the State agency shall be

reimbursed by FNS for the cost incurred in such disposition.

(C) If disposition or other instructions are not issued by FNS within 120 days of a request from the State agency the State agency shall sell the property and reimburse FNS an amount which is computed by applying the percentage of FNS participation in the cost of the property to the sales proceeds. The State agency may, however, deduct and retain from FNS’ share \$500 or 10 percent of the proceeds, whichever is greater, for the State agency selling and handling expenses.

3. Revise § 277.18 to read as follows:

#### § 277.18 State Systems Advance Planning Document (APD) process.

(a) *Scope and application.* This section establishes conditions for initial and continuing authority to claim Federal financial participation (FFP) for the costs of the planning, development, acquisition, installation and implementation of Information System (IS) equipment and services used in the administration of the Supplemental Nutrition Assistance Program and as prescribed by appropriate Food and Nutrition Service (FNS) directives and guidance (i.e., FNS Handbook 901, OMB Circulars, etc.).

(b) *Definitions.*

*Acquisition* means obtaining supplies or services through a purchase or lease, regardless of whether the supplies or services are already in existence or must be developed, created, or evaluated.

*Advance Planning Document for project planning or Planning APD (APD or PAPD)* means a brief written plan of action that requests FFP to accomplish the planning activities necessary for a State agency to determine the need for, feasibility of, projected costs and benefits of an IS equipment or services acquisition, plan the acquisition of IS equipment and/or services, and to acquire information necessary to prepare an Implementation APD.

*Advance Planning Document Update (APDU)* means a document submitted annually (Annual APDU) by the State agency to report the status of project activities and expenditures in relation to the approved Planning APD or Implementation APD; or on an as needed (As Needed APDU) basis to request funding approval for project continuation when significant project changes occur or are anticipated.

*Commercial Off-the-Shelf (COTS)* means proprietary software products that are ready-made and available for sale to the general public at established catalog or market prices in which the software vendor is not positioned as the

sole implementer or integrator of the product.

*Enhancement* means modifications which change the functions of software and hardware beyond their original purposes, not just to correct errors or deficiencies which may have been present in the software or hardware, or to improve the operational performance of the software or hardware. Software enhancements that substantially increase risk or cost or functionality will require submission of an IAPD or an As Needed IAPDU.

*Implementation Advance Planning Document or Implementation APD*

(IAPD) means a written plan of action requesting FFP to acquire and implement information system (IS) services and/or equipment. The Implementation APD includes the design, development, testing, and implementation phases of the project.

*Information System (IS)* means a combination of hardware and software, data, and telecommunications that performs specific functions to support the State agency, or other Federal, State, or local organization.

*Project* means a related set of information technology related tasks, undertaken by a State, to improve the efficiency, economy and effectiveness of administration and/or operation of its human services programs. A project may also be a less comprehensive activity such as office automation, enhancements to an existing system, or an upgrade of computer hardware.

*Request for Proposal or RFP* means the document used for public solicitations of competitive proposals from qualified sources as outlined in § 277.14(g)(3).

(c) *Requirements for FNS prior approval of IS projects.*—(1) *General prior approval requirements.* The State agency shall request prior FNS approval by submitting the Planning APD, the Implementation APD, the draft acquisition instrument, and/or the justification for the sole source acquisition if applicable, as specified in paragraph (c)(2) of this section. A State agency must obtain written approval from FNS to receive federal financial participation of any of the following activities:

(i) When it plans a project to enhance or replace its IS that it anticipates will have total project costs in Federal and State funds of \$6 million or more.

(ii) Any IS competitive acquisition that costs more than \$6 million in Federal and State funds.

(iii) When the State agency plans to acquire IS equipment or services non-competitively from a nongovernmental

source, and the total State and Federal cost is more than \$1 million.

(iv) For the acquisition of IS equipment or services to be utilized in an Electronic Benefit Transfer (EBT) system regardless of the cost of the acquisition in accordance with 7 CFR 274.12 (EBT issuance system approval standards).

(2) *Specific prior approval requirements.* (i) For IS projects which require prior approval, as specified in paragraph (c)(1) of this section, the State agency shall obtain the prior written approval of FNS for:

(A) Conducting planning activities, entering into contractual agreements or making any other commitment for acquiring the necessary planning services;

(B) Conducting design, development, testing or implementation activities, entering into contractual agreements or making any other commitment for the acquisition of IS equipment or services.

(ii) For IS equipment and services acquisitions requiring prior approval as specified in paragraph (c)(1) of this section, prior approval of the following documents associated with such acquisitions is also required:

(A) *Requests for Proposals (RFPs).* Unless specifically exempted by FNS, the State agency shall obtain prior written approval of the RFP before the RFP may be released. However, RFPs for acquisition estimated to cost up to \$6 million or competitive procurements from non-governmental sources and which are an integral part of the approved APD, need not receive prior approval from FNS. The State agency shall submit a written request to get prior written approval to acquire IS equipment or services non-competitively from a nongovernmental source when the total State and Federal cost is more than \$1 million. State agencies shall submit RFPs under this threshold amount on an exception basis. The State agency shall obtain prior written approval from FNS for RFPs which are associated with an EBT system regardless of the cost.

(B) *Contracts.* All contracts must be submitted to FNS. Unless specifically exempted by FNS, the State agency shall obtain prior written approval before the contract may be signed by the State agency. However, contracts for competitive procurements costing up to \$6 million and for noncompetitive acquisitions from nongovernmental sources costing up to \$1 million and which are an integral part of the approved APD need not be submitted to FNS. State agencies shall submit contracts under this threshold amount on an exception basis. The State agency

shall obtain prior written approval from FNS for contracts which are associated with an EBT system regardless of the cost.

(C) *Contract amendments.* All contract amendments must be submitted to FNS. Unless specifically exempted by FNS, the State agency shall obtain prior written approval from FNS of any contract amendments which cumulatively exceed 20 percent of the base contract costs before being signed by the State agency. The State agency shall obtain prior written approval from FNS for contracts which are associated with an EBT system regardless of the cost.

(iii) *Procurement requirements.*—(A) Procurements of IS equipment and services are subject to § 277.14 (procurement standards) regardless of any conditions for prior approval contained in this section, except the requirements of § 277.14(b)(1) and (2) regarding review of proposed contracts. Those procurement standards include a requirement for maximum practical open and free competition regardless of whether the procurement is formally advertised or negotiated.

(B) The standards prescribed by § 277.14, as well as the requirement for prior approval in this paragraph (c), apply to IS services and equipment acquired primarily to support SNAP regardless of the acquiring entity.

(C) The competitive procurement policy prescribed by § 277.14 shall be applicable except for IS services provided by the agency itself, or by other State or local agencies.

(iv) The State agency must obtain prior written approval from FNS, as specified in paragraphs (c)(2)(i) and (ii) of this section, to claim and receive reimbursement for the associated costs of the IS acquisition.

(3) *Document submission requirements.*—(i) For IS projects requiring prior approval as specified in paragraphs (c)(1) and (2) of this section, the State agency shall submit the following documents to FNS for approval:

(A) *Planning APD as described in paragraph (d)(1) of this section.*

(B) *Implementation APD as described in paragraph (d)(2) of this section.*

(C) *Annual APDU as described in paragraph (d)(3) of this section.* The Annual APDU shall be submitted to FNS 60 days prior to the expiration of the FFP approval, unless the submission date is specifically altered by FNS. In years where an As Needed APDU is required, as described in paragraph (c)(3)(i)(D) of this section, FNS may waive or modify the requirement to submit the annual APDU.

(D) *As Needed APDU as described in paragraph (d)(4) of this section.* As Needed APDU are required to obtain a commitment of FFP whenever significant project changes occur. Significant project changes are defined as changes in cost, schedule, scope or strategy which exceed FNS-defined thresholds or triggers. Without such approval, the State agency is at risk for funding of project activities which are not in compliance with the terms and conditions of the approved APD and subsequently approved APDU until such time as approval is specifically granted by FNS.

(E) *Acquisition documents as described in § 277.14(g).*

(F) *Emergency Acquisition Requests as described in paragraph (i) of this section.*

(ii) The State agency must obtain prior FNS approval of the documents specified in paragraph (c)(3)(i) of this section in order to claim and receive reimbursement for the associated costs of the IS acquisition.

(4) *Approval by the State agency.* Approval by the State agency is required for all documents and acquisitions specified in § 277.18 prior to submission for FNS approval. However, the State agency may delegate approval authority to any subordinate entity for those acquisitions of IS equipment and services not requiring prior approval by FNS.

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

(d) *APD content requirements*—(1) *Planning APD (PAPD).* The PAPD is a written plan of action to acquire proposed services or equipment and to perform necessary activities to investigate the feasibility, system alternatives, requirements and resources needed to replace, modify or upgrade the State agency's IS. The PAPD shall contain adequate documentation to demonstrate the need to undertake a planning process, as well as a thorough description of the proposed planning activities, and estimated costs and

timeline, as specified by FNS in Handbook 901.

(2) *Implementation APD (IAPD)*. The IAPD is a written plan of action to acquire the proposed IS services or equipment and to perform necessary activities to design, develop, acquire, install, test, and implement the new IS. The Implementation APD shall contain detailed documentation of planning and preparedness for the proposed project, as enumerated by FNS in Handbook 901, demonstrating the feasibility of the project, thorough analysis of system requirements and design, a rigorous management approach, stewardship of Federal Funds, a realistic schedule and budget, and preliminary plans for key project phases.

(3) *Annual APDU content requirements*. The Annual APDU is a yearly update to ongoing IS projects when planning or implementation activities occur. The Annual APDU shall contain documentation on the project activity status and a description of major tasks, milestones, budget and any changes, as specified by FNS in Handbook 901.

(4) *As Needed APDU content requirements*. The As Needed APDU document shall contain the items as defined in paragraph (c)(3)(i)(D) of this section with emphasis on the area(s) where changes have occurred or are anticipated that triggered the submission of the APDU, as detailed by FNS in Handbook 901.

(e) *Service agreements*. The State agency shall execute service agreements when IS services are to be provided by a State central IT facility or another State or local agency. Service Agreement means the document signed by the State or local agency and the State or local central IT facility whenever an IT facility provides IT services to the State or local agency. Service agreements shall:

(1) Identify the IS services that will be provided;

(2) Include a schedule of rates for each identified IS service, and a certification that these rates apply equally to all users;

(3) Include a description of the method(s) of accounting for the services rendered under the agreement and computing services charges;

(4) Include assurances that services provided will be timely and satisfactory;

(5) Include assurances that information in the IS as well as access, use and disposal of IS data will be safeguarded in accordance with provisions of § 272.1(c) (disclosure) and § 277.13 (property);

(6) Require the provider to obtain prior approval from FNS pursuant to

paragraph (c)(1) of this section for IS equipment and IS services that are acquired from commercial sources primarily to support federally aided public assistance programs and require the provider to comply with § 277.14 (procurement standards) for procurements related to the service agreement. IS equipment and services are considered to be primarily acquired to support federally aided public assistance programs when the Programs may reasonably be expected to either be billed for more than 50 percent of the total charges made to all users of the IS equipment and services during the time period covered by the service agreement, or directly charged for the total cost of the purchase or lease of IS equipment or services;

(7) Include the beginning and ending dates of the period of time covered by the service agreement; and

(8) Include a schedule of expected total charges to the Program for the period of the service agreement.

(9) *State Agency Maintenance of Service Agreements*. The State agency will maintain a copy of each service agreement in its files for Federal review upon request.

(f) *Conditions for receiving Federal financial participation (FFP)*.—(1) A State agency may receive FFP at the 50 percent reimbursement rate for the costs of planning, design, development or installation of IS and information retrieval systems if the proposed system will:

(i) Assist the State agency in meeting the requirements of the Food and Nutrition Act of 2008, as amended;

(ii) Meet the Automation of Data Processing/Computerization of Information Systems Model Plan program standards specified in § 272.10(b)(1) through (3) of this chapter, except the requirements in § 272.10(b)(2)(vi), (b)(2)(vii), and (b)(3)(ix) of this chapter to eventually transmit data directly to FNS;

(iii) Be likely to provide more efficient and effective administration of the program; and

(iv) Be compatible with such other systems utilized in the administration of other State agency programs including the program of Temporary Assistance for Needy Families (TANF).

(2) State agencies seeking FFP for the planning, design, development or installation of IS shall develop State wide systems which are integrated with TANF. In cases where a State agency can demonstrate that a local, dedicated, or single function (issuance or certification only) system will provide for more efficient and effective administration of the program, FNS may

grant an exception to the State wide integrated requirement. These exceptions will be based on an assessment of the proposed system's ability to meet the State agency's need for automation. Systems funded as exceptions to this rule, however, should be capable to the extent necessary, of an automated data exchange with the State agency system used to administer TANF. In no circumstances will funding be available for systems which duplicate other State agency systems, whether presently operational or planned for future development.

(g) *Basis for continued Federal financial participation (FFP)*.—(1) FNS will continue FFP at the levels approved in the Planning APD and the Implementation APD provided that project development proceeds in accordance with the conditions and terms of the approved APD and that IS resources are used for the purposes authorized. FNS will use the APDU to monitor IS project development. The submission of the Update as prescribed in § 277.18(d) for the duration of project development is a condition for continued FFP. In addition, periodic onsite reviews of IS project development and State and local agency IS operations may be conducted by or for FNS to assure compliance with approved APDs, proper use of IS resources, and the adequacy of State or local agency IS operations.

(2) *Pre-implementation*. The State agency must demonstrate through thorough testing that the system meets all program functional and performance requirements. FNS may require a pre-implementation review of the system to validate system functionality prior to State agency testing.

(i) *Testing*. The State agency must provide a complete test plan prior to the start of the testing phase. The State agency must provide documentation to FNS of the results of performance and User Acceptance Testing (UAT) before the system is piloted in a production environment. FNS concurrence to advance from testing to pilot is a condition for continued FFP. All aspects of program eligibility must be tested to ensure that the system makes accurate eligibility determinations in accordance with federal regulations and approved state policies, and that system functionality meets the required functional specifications. The State agency shall describe how all system testing will be conducted and the resources to be utilized in order to verify the system complies with SNAP requirements, system design specifications, and performance standards including responsiveness,

usability, capacity, and security. Testing includes but is not limited to unit testing, integration testing, performance testing, end-to-end testing, UAT, and regression testing. During UAT detailed scripts covering all areas of program functionality shall be used so that any errors identified can be replicated, corrected, and re-tested.

At a minimum, the Test Plan shall address:

(A) The types of testing to be performed;

(B) The organization of the test team and associated responsibilities;

(C) Test database generation;

(D) Test case development;

(E) Test schedule;

(F) Documentation of test results;

(G) Acceptance testing shall include functional requirements testing, error condition handling and destructive testing, security testing, recovery testing, controls testing, stress and throughput performance testing, and regression testing;

(H) The decision criteria, including specific test results which must be met before the State may exit the testing phase, the roles or titles of the individuals responsible for verifying that these criteria have been met, and the sign-off process which will document that the criteria have been met.

(I) FNS may require any or all of these tests to be repeated in instances where significant modifications are made to the system after these tests are initially completed or if problems that surfaced during initial testing warrant a retest. FNS reserves the right to participate and conduct independent testing, as necessary, during UAT and at appropriate times during system design, development, implementation, and operations.

(ii) *Pilot*. Prior to statewide rollout of the system there must be a test of the fully operational system in a live production environment. Pilots must operate until a state of routine operation is reached with the full caseload in the pilot area. The design of this pilot shall provide an opportunity to test all components of the system as well as the data conversion process and system performance. The duration of the pilot must be for a sufficient period of time to thoroughly evaluate the system (usually a minimum duration of three months). The State agency must provide documentation to FNS of the pilot evaluation. FNS approval to implement the system more broadly is a condition for continued FFP.

(iii) *Post-implementation Review*. After the system is fully implemented FNS may conduct a review to validate

that program policy is correctly applied, whether project goals and objectives were met, that IS equipment and services are being properly used and accurate inventory records exist, and the actual costs of the project.

(h) *Disallowance of Federal financial participation* (FFP). If FNS finds that any acquisition approved under the provisions of § 277.18(c) fails to comply with the criteria, requirements, and other undertakings described in the approved or modified APD, payment of FFP may be suspended or may be disallowed in whole or in part.

(i) *Emergency acquisition requirements*. The State agency may request FFP for the costs of IS equipment and services acquired to meet emergency situations in which:

(1) The State agency can demonstrate to FNS an immediate need to acquire IS equipment or services in order to continue operation of SNAP; and the State agency can clearly document that the need could not have been anticipated or planned for and precludes the State from following the prior approval requirements of paragraph (c) of this section. FNS may provide FFP in emergency situations if the following conditions are met:

(2) The State agency must submit a written request to FNS prior to the acquisition of any IS equipment or services. The written request shall include:

(i) A brief description of the IS equipment and/or services to be acquired and an estimate of their costs;

(ii) A brief description of the circumstances which result in the State agency's need to proceed with the acquisition prior to fulfilling approval requirements at paragraph (c) of this section; and

(iii) A description of the adverse impact which would result if the State agency does not immediately acquire the IS equipment and/or services.

(3) Upon receipt of a written request for emergency acquisition FNS shall provide a written response to the State agency within 14 days. The FNS response shall:

(i) Inform the State agency that the request has been disapproved and the reason for disapproval; or,

(ii) FNS recognizes that an emergency situation exists and grants conditional approval pending receipt of the State agency's formal submission of the IAPD information specified at paragraph (d)(2) of this section within 90 days from the date of the State agency's initial written request.

(iii) If FNS approves the request submitted under paragraph (i)(1) of this section, FFP will be available from the

date the State agency acquires the IS equipment and services.

(iv) If the complete IAPD submission required by paragraph (d)(2) of this section is not received by FNS within 90 days from the date of the initial written request, costs may be subject to disallowance.

(j) *General cost requirements*.—(1) *Cost determination*. Actual costs must be determined in compliance with OMB Circular A–87 (2 CFR 225) and an FNS approved budget, and must be reconcilable with the approved FNS funding level. A State agency shall not claim reimbursement for costs charged to any other Federal program or uses of IS systems for purposes not connected with SNAP. The approved APD cost allocation plan includes the methods which will be used to identify and classify costs to be claimed. This methodology must be submitted to FNS as part of the request for FNS approval of funding as required in paragraph (d) of this section. Operational costs are to be allocated based on the statewide cost allocation plan rather than the APD cost plan. Approved cost allocation plans for ongoing operational costs shall not apply to IS system development costs under this section unless documentation required under paragraph (c) of this section is submitted to and approvals are obtained from FNS. Any APD-related costs approved by FNS shall be excluded in determining the State agency's administrative costs under any other section of this part.

(2) *Cost identification for purposes of FFP claims*. State agencies shall assign and claim the costs incurred under an approved APD in accordance with the following criteria:

(i) *Development costs*. Using its normal departmental accounting system, in accordance with the cost principles set forth in OMB Circular A–87 (2 CFR 225), the State agency shall specifically identify what items of costs constitute development costs, assign these costs to specific project cost centers, and distribute these costs to funding sources based on the specific identification, assignment and distribution outlined in the approved APD. The methods for distributing costs set forth in the APD should provide for assigning identifiable costs, to the extent practicable, directly to program/ functions. The State agency shall amend the cost allocation plan required by § 277.9 (administrative cost principles) to include the approved APD methodology for the identification, assignment and distribution of the development costs.

(ii) *Operational costs.* Costs incurred for the operation of an IS shall be identified and assigned by the State agency to funding sources in accordance with the approved cost allocation plan required by § 277.9 (administrative cost principles).

(iii) *Service agreement costs.* States that operate a central data processing facility shall use their approved central service cost allocation plan required by OMB Circular A-87 (2 CFR part 225) to identify and assign costs incurred under service agreements with the State agency. The State agency shall then distribute these costs to funding sources in accordance with paragraphs (j)(2)(i) and (ii) of this section.

(3) *Capital expenditures.* The State agency shall charge the costs of IT equipment having unit acquisition costs or total aggregate costs, at the time of acquisition, of more than \$25,000 by means of depreciation or use allowance, unless a waiver is specifically granted by FNS. If the equipment acquisition is part of an APD that is subject to the prior approval requirements of paragraph (c)(2) of this section, the State agency may submit the waiver request as part of the APD.

(4) *Claiming costs.* Prior to claiming funding under this section the State agency shall have complied with the requirements for obtaining approval and prior approval of paragraph (c) of this section.

(5) *Budget authority.* FNS approval of requests for funding shall provide notification to the State agency of the budget authority and dollar limitations under which such funding may be claimed. FNS shall provide this amount as a total authorization for such funding which may not be exceeded unless amended by FNS. FNS's determination of the amount of this authorization shall be based on the budget submitted by the State agency. Activities not included in the approved budget, as well as continuation of approved activities beyond scheduled deadlines in the approved plan, shall require FNS approval of an As Needed APD Update as prescribed in paragraphs (c)(3)(i)(D) and (d)(4) of this section, including an amended State budget. Requests to amend the budget authorization approved by FNS shall be submitted to FNS prior to claiming such expenses.

(k) *Access to the system and records.* Access to the system in all aspects, including but not limited to design, development, and operation, including work performed by any source, and including cost records of contractors and subcontractors, shall be made available by the State agency to FNS or its authorized representatives at

intervals as are deemed necessary by FNS, in order to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system. Failure to provide full access to all parts of the system may result in suspension and/or termination of SNAP funds for the costs of the system and its operation.

(l) *Ownership rights—(1) Software.—*  
(i) The State or local government shall include a clause in all procurement instruments which provides that the State or local government shall have all ownership rights in any software or modifications thereof and associated documentation designed, developed or installed with FFP under this section.

(ii) FNS reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation.

(iii) Proprietary operating/vendor software packages which meet the definition of COTS at paragraph 277.18(b) shall not be subject to the ownership provisions in paragraphs (l)(1)(i) and (ii) of this section. FFP is not available for development costs for proprietary application software developed specifically for SNAP.

(2) *Information Systems equipment.* The policies and procedures governing title, use and disposition of property purchased with FFP, which appear at § 277.13 (property) are applicable to IS equipment.

(m) *Information system security requirements and review process—(1) Information system security requirements.* State and local agencies are responsible for the security of all IS projects under development, and operational systems involved in the administration of SNAP. State and local agencies shall determine appropriate IS security requirements based on recognized industry standards or compliance with standards governing security of Federal information systems and information processing.

(2) *Information security program.* State agencies shall implement and maintain a comprehensive IS Security Program for IS and installations involved in the administration of the SNAP. IS Security Programs shall include the following components:

(i) Determination and implementation of appropriate security requirements as prescribed in paragraph (m)(1) of this section.

(ii) Establishment of a security plan and, as appropriate, policies and

procedures to address the following areas of IS security:

- (A) Physical security of IS resources;
- (B) Equipment security to protect equipment from theft and unauthorized use;
- (C) Software and data security;
- (D) Telecommunications security;
- (E) Personnel security;
- (F) Contingency plans to meet critical processing needs in the event of short- or long-term interruption of service;
- (G) Emergency preparedness; and
- (H) Designation of an Agency IS Security Manager.

(iii) *Periodic risk analyses.* State agencies shall establish and maintain a program for conducting periodic risk analyses to ensure that appropriate, cost-effective safeguards are incorporated into new and existing systems. In addition, risk analyses shall be performed whenever significant system changes occur.

(3) *IS security reviews.* State agencies shall review the security of IS involved in the administration of SNAP on a biennial basis. At a minimum, the reviews shall include an evaluation of physical and data security, operating procedures, and personnel practices. State agencies shall maintain reports of their biennial IS security reviews, together with pertinent supporting documentation, for Federal review upon request.

(4) *Applicability.* The security requirements of this section apply to all IS systems used by State and local governments to administer SNAP.

Dated: August 10, 2011.

**Audrey Rowe,**

*Administrator, Food and Nutrition Service.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2011-0596; Directorate Identifier 2008-SW-37-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Eurocopter Canada Ltd. Model BO 105 LS A-3 Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes superseding an existing airworthiness directive (AD) for Eurocopter Canada