

have lost their numbers and could cause them to have to reapply for the program. TSA also will retain application data to protect applicants' right to correct underlying information in the case of an initial denial.

Two commenters questioned whether applicant information should be shared both within and outside DHS. TSA follows standard information-sharing principles among DHS components in accordance with the Privacy Act. In addition, TSA has narrowly tailored the routine uses that it has proposed to serve its mission and promote efficiency within the Federal Government.

A public interest research center objected to three of the routine uses proposed for the system of records, arguing that the routine uses would result in blanket sharing with law enforcement agencies, foreign entities, and the public for other purposes. DHS has considered the comment but disagrees. The exercise of any routine use is subject to the requirement that sharing be compatible with the purposes for which the information was collected.

Several commenters objected that the TSA Pre✓™ Application Program violates the U.S. Constitution or international treaty. DHS disagrees with the commenters as to the Constitutionality of the program, and notes that the treaty cited by an advocacy group expressly contradicts the position taken by the commenter by excluding requirements provided by law or necessary for national security from the treaty's proscription.

After careful consideration of public comments, the Department will implement the rulemaking as proposed.

#### List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

#### PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

**Authority:** 6 U.S.C. 101 *et seq.*; Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add new paragraph 71 to Appendix C to Part 5 to read as follows:

#### Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

\* \* \* \* \*

71. The Department of Homeland Security (DHS)/Transportation Security Administration (TSA)-021 TSA Pre✓™

Application Program System of Records consists of electronic and paper records and will be used by DHS/TSA. The DHS/TSA-021 Pre✓™ Application Program System of Records is a repository of information held by DHS/TSA on individuals who voluntarily provide personally identifiable information (PII) to TSA in return for enrollment in a program that will make them eligible for expedited security screening at designated airports. This System of Records contains PII in biographic application data, biometric information, pointer information to law enforcement databases, payment tracking, and U.S. application membership decisions that support the TSA Pre✓™ Application Program membership decisions. The DHS/TSA-021 TSA Pre✓™ Application Program System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain PII collected by other federal, state, local, tribal, territorial, or foreign government agencies. The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(1) and (k)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f). Where a record received from another system has been exempted in that source system under 5 U.S.C. 552a(k)(1) and (k)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here. Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting also would permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition,

permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (H), and (I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to the existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, potential witnesses, and confidential informants.

Dated: December 20, 2013.

**Karen L. Neuman,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2013–31183 Filed 12–31–13; 8:45 am]

BILLING CODE 9110–9M–P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 271, 272, 274, 276, and 277

RIN 0584–AD99

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

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Nutrition Service (FNS) is adopting as a final rule, without substantive changes, the proposed rule that amends the Supplemental Nutrition Assistance Program (SNAP) regulations to implement Section 4121 of the Food, Conservation, and Energy Act of 2008 (the Farm Bill), which requires adequate system testing before and after implementation of a new State automated 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. The rule 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 final rule specifies the requirements for submission of a test plan, and changes 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 amends SNAP regulations relating to the establishment of an ADP and information retrieval system and to provide clarifications and updates, which have occurred since this section was last updated in 1996.

**DATES:** This rule is effective March 3, 2014.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this rulemaking should be addressed to Karen Painter-Jaquess, Director, State Systems Office, Food and Nutrition Service—USDA, 3101 Park Center Drive, Alexandria, VA 22302–1500; by telephone at (303) 844–6533; or via the Internet at <mailto:karen.painter-jaquess@fns.usda.gov>.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 23, 2011, the Department published a proposed rule (76 FR 52581), which requires adequate system testing before and after implementation of a new State ADP and information retrieval system. The comment period ended on October 24, 2011, and FNS received 12 comments. Eight of those were from State/local agencies, two were from advocacy organizations, and two were from associations. Two of the commenters supported the rule changes and raised no issues or concerns, and the remaining commenters had the following issues/concerns:

1. *Comment:* Six comments were received that indicated concern that the rule as proposed would impose additional work for States, cause potential project delays, and incur additional costs that will be caused by requirements for FNS' prior approval of the testing plan, the decision to move from user acceptance testing (UAT) to

pilot, and the decision to move from pilot to statewide implementation.

*Response:* Section 4121 of the Food, Conservation, and Energy Act of 2008 reflects Congress' concern that FNS use the Federal approval process to more deliberately review and monitor State agencies' plans for major system implementation, and encourage all State agencies to implement new systems using sound testing practices. FNS knows that many State agencies already include testing and pilot projects as well as some form of graduated roll out when implementing major systems and that system testing is part of the overall project management and risk management planning process. A thorough testing plan, an evaluation of the results of UAT before proceeding to pilot, and a pilot evaluation prior to wider implementation of the system are components of a well-managed system project. FNS does not see these requirements as additional work for the State agencies in projects where sound management practices are in place. FNS anticipates that there should be more than adequate time after the initial approval of a project for a State agency to submit its testing plan well in advance of the start of testing. The testing plan itself does not require approval. It must be submitted so that FNS can make a sound determination as to the validity of the test results and the State's decision to proceed to pilot, which does require FNS concurrence. By submitting the plan well in advance of testing, the State enables FNS to be an informed and timely reviewer of test results. FNS understands that the typical project timeline for testing, pilot and rollout includes specific go/no-go decision points. By communicating with FNS throughout the testing and pilot phases regarding results and the status of the State's go/no-go criteria, State agencies can help ensure that there is no need for additional delay at the key decision points. FNS does not anticipate the need for a separate test or pilot evaluation period, in addition to the State agency's own, if it is kept fully informed throughout the process. This regulation will codify the testing standards already found in well managed State projects in order to assure that all State agencies meet those standards.

2. *Comment:* Three commenters stated concerns that the three-month recommended minimum pilot period as stated in § 277.18(g)(2)(ii) could potentially extend project schedules and drive up project costs.

*Response:* 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. Pilots are when the State has the best opportunity to identify defects in either the system or the implementation approach before they become costly large-scale problems. State agencies must operate pilot projects until a state of routine operation is reached with the full caseload in the pilot area. FNS has always recommended that there be sufficient time in the pilot to thoroughly test all system functionality, including time for evaluation prior to beginning the wider implementation of the system. FNS believes that a minimum duration of three months to pilot would permit the system to work through all functions and potential system problems. However, if the pilot is going well early on, then the process of evaluation and FNS approval can start during the pilot period and lessen or eliminate any delay. Further, the length of the pilot can be agreed upon by the State agency and FNS to include such factors as 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.

3. *Comment:* One comment was received that questioned the requirement to pilot the new system in a limited area of the State, which would require having two systems operating and synchronized. The commenter suggested allowing parallel testing rather than the piloting of the fully operational system.

*Response:* FNS believes that evaluation of data from pilot projects in limited areas provides the greatest opportunity to manage risk because it tests the fully operational system in a live production environment. Before FNS could approve any alternate testing strategies, the State agency would have to demonstrate that the risks associated with the proposed alternate strategies, such as parallel testing, would accurately test the new system. The comparison of strategies would need to be identified in the testing plan, demonstrating how sufficient go/no-go decision criteria would be met by the proposed pilot and conversion methodology.

4. *Comment:* There were three commenters who questioned how the proposed rule would affect enhancements to systems that are currently operational. One commenter stated the rule should only be applicable to full-scale development and not to maintenance and operation (M&O) efforts, but recommended that if applicable to M&O it should only apply to large scale additions of system components (e.g., online application

system) and not to programmatic changes.

*Response:* FNS believes system testing is part of the overall project management and risk management planning process and that it is essential for successful system implementation outcomes including enhancement work. For projects that cross the threshold requiring FNS prior approval (if the total project cost is \$6 million or more), testing plan requirements will be based on the scope, level and risk involved in that particular project. A shorter pilot period or no pilot at all may be justified for enhancements to current systems that have been otherwise adequately tested.

5. *Comment:* One commenter pointed out inconsistencies in references in the preamble to new systems design and implementation as opposed to reprogramming or adding new programming to an existing system. The rule references new, then occasionally references reprogramming of an existing system or adding new programming to an existing system.

*Response:* FNS' intent is for the rule to apply to both new system design and implementation, and enhancements or reprogramming of an existing system, or adding new programming to an existing system.

6. *Comment:* One commenter stated the proposed rule did not adequately define enhancements or changes, other than establishing a \$6 million threshold for total project costs, and that failure to adequately define enhancements could put the State at risk for failing to follow the rules when making maintenance changes in support of system processes.

*Response:* FNS did provide in the proposed rule a definition for enhancements under § 277.18(b), which states that 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, and which cross the \$6 million threshold, will require submission of an Implementation Advance Planning Document (IAPD) or an As Needed IAPD Update (IAPDU).

7. *Comment:* One commenter pointed out inconsistencies found in the rule relating to the thresholds for prior approval of projects and acquisitions. The phrases "more than \$6 million" and "\$6 million and more" were used interchangeably for the same threshold. The same applied to the "more than \$1

million" non-competitive acquisition threshold.

*Response:* FNS agrees there were inconsistencies in the proposed rule in stating the prior approval thresholds for competitive and non-competitive acquisitions and has corrected the regulation threshold language to read "\$6 million or more" and "less than \$6 million" to be consistent.

8. *Comment:* Two commenters recommended that States be permitted to implement the testing provisions of the rule prospectively and not retroactively. This is based on the concern that imposing this rule retroactively on existing projects and contracts would require rewriting schedules to allow sufficient time for FNS involvement and/or approval of a test plan prior to system implementation.

*Response:* FNS believes Section 4121 of the Food, Conservation, and Energy Act of 2008 intended adequate system testing be applied to all projects in active development of a new State information system and that the testing requirements in this final rule become effective for active projects 60 days after publication in the **Federal Register**. Further, FNS believes that current projects should already have sufficient time built into the timeline to test and pilot the new system.

9. *Comment:* Two commenters indicated the rule lacked detail regarding documentation that must be submitted to obtain written approval from FNS to expand beyond the pilot and stated concern that approval requirements could expand at the discretion of FNS.

*Response:* In order for FNS to be more responsive to States that are implementing information systems, as circumstances warrant, specific content and detailed guidance for what type of documentation to submit can be found in FNS Handbook 901, "Advanced Planning Documents".

10. *Comment:* Three commenters questioned FNS' response time for review of project documents.

*Response:* As stated in § 277.18(c)(5), FNS will reply promptly to State agency requests for prior approval. However, FNS has up to 60 days to provide a written approval, disapproval or a request for additional information.

11. *Comment:* Under § 277.18(c)(5), it states that FNS will reply promptly to State agency requests for prior approval. One commenter questioned what does "promptly reply" mean.

*Response:* Promptly reply would mean as soon as possible but no longer than 60 days as specified in regulation.

12. *Comment:* Two commenters pointed out that the rule as proposed does not address specific timeframes for FNS to complete reviews for pre-implementation and post-implementation of the system. Also, one commenter was concerned that project schedules will have to accommodate FNS review time and could result in months of project delays and added costs for FNS and States.

*Response:* As noted in the regulation at § 277.18(g)(2) and (g)(2)(iii), these pre- and post- implementation reviews are optional, and the need for such reviews will be determined on a case-by-case basis based on the risk of the project. FNS will work with States to the extent possible to ensure project schedules are not adversely impacted. It is not FNS' intent to unnecessarily delay project implementation nor to add additional costs.

13. *Comment:* One commenter expressed concern that FNS would have approval over a State's test, pilot, and implementation schedule and asked what would happen if FNS is unavailable to participate in go/no-go decisions. The commenter recommended adding hold harmless language, protecting a State's funding or at the very least providing increased funding if implementation delays are caused by FNS' unavailability.

*Response:* Again, FNS' intent is not to in any way unnecessarily delay a State's project timelines. FNS is committed to being available and will work with State agencies to provide the most expedited review as possible. A State agency can limit the potential impact of FNS review by ensuring that FNS is provided with the test plan, test results and pilot evaluation results in a timely manner throughout each phase.

14. *Comment:* FNS regulations at § 277.18(d)(1) currently state that the Planning Advance Planning Document (PAPD) shall contain adequate documentation to demonstrate the need to undertake a planning process. One commenter requested the rule define "adequate documentation".

*Response:* In order for FNS to be more responsive to States that are implementing information systems and to revise requirements in the future by policy rather than regulation if circumstances warrant, specific content and detailed guidance for a PAPD can be found in FNS Handbook 901, "Advanced Planning Documents." This is also the same for an Implementation APD (IAPD), Annual APDU and As Needed APDU.

15. *Comment:* One commenter wanted to know which request for proposals (RFP) and contracts are "specifically

exempted” from prior approval under § 277.18(c)(2)(ii)(A) and (c)(2)(ii)(B).

*Response:* As specified in regulation, any RFP and contract with a projected cost that is less than \$6 million are exempted and noncompetitive acquisitions less than \$1 million are exempted.

16. *Comment:* One commenter requested clarification under § 277.18(f)(2) of the meaning of “other State agency systems.” Currently it states that in no circumstances will funding be available for systems which duplicate other State agency systems, whether presently operational or planned for future development.

*Response:* To clarify, FNS will not fund systems that duplicate other State agency systems that already have similar functionality to support FNS programs. FNS will fund the ongoing operation (legacy) system during the development and implementation of its replacement.

17. *Comment:* One comment was received regarding § 277.18(h), which questioned if Federal financial participation (FFP) is disallowed, how long the suspension of FFP would last and how the suspension can be cured.

*Response:* This would be determined by FNS on a case-by-case basis.

18. *Comment:* One commenter requested additional clarification to identify which federal public assistance programs should be included when determining the 50 percent threshold for service agreements in § 277.18(e)(6).

*Response:* Typically FNS would designate programs such as, but not limited to, Temporary Assistance for Needy Families, Refugee Assistance, Child Support Enforcement, Child Welfare, and Medicaid.

19. *Comment:* One commenter questioned how long service agreements must be kept as specified under § 277.18(e)(9).

*Response:* Supplemental Nutrition Assistance Program regulations at § 272.1(f) require fiscal records and accountable documents be retained for a period of 3 years from the date of fiscal or administrative closure. Therefore, service agreements would be required to be kept for a period of 3 years beyond the expiration date.

20. *Comment:* One commenter questioned whether the periodic risk analysis that the State agency must complete would be subject to review by FNS.

*Response:* Yes, any documents produced as part of the information system security requirements and review process should be maintained by the State agency and be available for Federal review upon request.

21. *Comment:* One commenter stated concern under § 277.18(k) with FNS having access to code in development which raises security concerns and wants FNS to acknowledge that their staff will be subject to State procedures and policies to protect software and data integrity.

*Response:* FNS is fully aware that State security procedures and policies would need to be followed and would ensure integrity of the system.

#### 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 final 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 Supplemental Nutrition Assistance Program (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 (Special Nutrition Programs); 48 FR 29115 for FSP (Food Stamp Program)], 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 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 Indian 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. FNS is unaware of any current Tribal laws that could be in conflict with the rule.

*Civil Rights Impact Analysis*

FNS has reviewed this final 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 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 § 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 § 272.6. Discrimination in any aspect of program administration is prohibited by these regulations, the Food and Nutrition Act of 2008 (Pub. L. 110-246), as amended (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 accordance 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 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 final 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 proposed rule, for OMB's review and approval. When the information collection requirements have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval.

*Title:* Program and Budget Summary Statement (Forms FNS-366A & FNS-366B).

*OMB Number:* 0584-0083.

*Expiration Date:* 12/31/2013.

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

*Abstract:* This final 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 Supplemental Nutrition Assistance Program (SNAP) Advance Planning Document (APD) approval processes. Although FNS is requiring 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 § 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. This rule finalized that 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 an average of five (5) APD, Plan, or Update submissions for a total of 265 annual responses. At an average estimate of 2.5 hours per response, the reporting burden is 662.5 hours. The recordkeeping burden, to maintain records of the approximately 265 annual responses, is estimated to average .11 minutes per record, for a total of 29.15 recordkeeping burden hours. Since this rule will lessen the burden for submittal and recordkeeping of M&O IAPDs, it is now estimated that the burden will lessen to four (4) APD, Plan or Update submittals annually. This results in a reduction of 138.3 burden hours for reporting and recordkeeping.

OMB number 0584-0083 includes burden hours for four information collection activities: form FNS-366A; form FNS-366B; the plan of operation updates submitted as attachments to the FNS-366B or waivers; and APD, Plan or Update submissions. As described above, the estimated burden for APD, Plan, or Update submissions will be reduced by this rulemaking. The other information collection burden estimates for 0584-0083 remain unchanged. The estimated total annual burden for this collection is 2,728 (2,696 reporting hours and 32 recordkeeping hours). A summary of information collection burden appears in the table below:

BURDEN SUMMARY TABLE FOR 0584-0083

Affected public	Information collection activities	Number of respondents	Frequency of response	Total annual responses	Time per response (hours)	Annual reporting burden hours
<b>Reporting</b>						
State Agencies .....	FNS-366A .....	53	1	53	13.00	689.00
	FNS-366B .....	53	1	53	17.93	950.29
	Plan of Operation Updates (366B).	53	1	53	6.58	348.99
	Plan of Operation Updates (Waivers).	45	3.94	177.3	1.00	177.30
	Other APD Plan or Update.	53	4	212	2.5	530
Reporting Burden .....		53	.....	548.3	.....	2,695.58
<b>Recordkeeping</b>						
	FNS-366A .....	53.00	1.00	53.00	0.05	2.65
	FNS-366B .....	53.00	1.00	53.00	0.05	2.65
	Plan of Operations .....	53.00	1.00	53.00	0.07	3.71
	Other APD Plan or Update.	53.00	4.00	212	0.11	23.32
Recordkeeping Burden ..		53.00	.....	371	.....	32.33
Grand Total .....		53	17.35	919.30	2.97	2,727.91

E-Government Act Compliance

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

List of Subjects

7 CFR Part 271

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

7 CFR Part 272

Alaska, Civil rights, Claims, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

7 CFR Part 274

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

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs-social programs.

7 CFR Part 277

Food stamps, Fraud, Grant programs-social programs, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Parts 271, 272, 274, 276 and 277 are amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

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

Authority: 7 U.S.C. 2011-2036a.

■ 2. Section 271.8 is amended by revising the entry for § 277.18 to read as follows:

§ 271.8 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control No.
* * * * *	* * * * *
277.18 (a), (c), (d), (f), (i) .....	0584-0083
* * * * *	* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

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

Authority: 7 U.S.C. 2011-2036a.

■ 4. Section 272.1 is amended by revising the second sentence of paragraph (g)(159) to read as follows:

§ 272.1 General terms and conditions.

\* \* \* \* \*  
 (g) \* \* \*  
 (159) \* \* \* The conforming amendment to Food Stamp Program regulations in §§ 272.1(g), 272.2(c)(3), 272.11(d) and (e), 274.12(k), 277.4(b) and (g), 277.9(b), 277.18(b), (d), and (f),

and OMB Circular A-87 (2 CFR Part 225) are effective June 23, 2000.

\* \* \* \* \*

■ 5. Section 272.2 is amended by revising paragraph (f)(1)(i)(D) to read as follows:

§ 272.2 Plan of operation.

\* \* \* \* \*

(f) \* \* \*  
 (1) \* \* \*  
 (i) \* \* \*

(D) The revisions pertain to the addition of items requiring prior approval by FNS in accordance with the provisions of the applicable cost principles specified in OMB Circular A-87 (available on OMB's Web site at [http://www.whitehouse.gov/omb/circulars\\_default/](http://www.whitehouse.gov/omb/circulars_default/)).

\* \* \* \* \*

PART 274—ISSUANCE AND USE OF PROGRAM BENEFITS

■ 6. The authority citation for part 274 continues to read as follows:

Authority: 7 U.S.C. 2011-2036a.

■ 7. Section 274.1 is amended by revising paragraph (e)(2), the last sentence of paragraph (f)(2)(vi), and paragraph (k)(2) to read as follows:

§ 274.1 Issuance system approval standards.

\* \* \* \* \*

(e) \* \* \*

(2) The State agency shall comply with the procurement standards prescribed under § 277.18(c)(2)(iii) of this chapter. Under service agreements,

the procurement of equipment and services which will be utilized in the SNAP EBT system shall be conducted in accordance with the provisions set forth under § 277.18(e) of this chapter.

(f) \* \* \*

(2) \* \* \*

(vi) \* \* \* The contingency plan shall be incorporated into the State system security plan after FNS approval as prescribed at § 277.18(m) of this chapter.

\* \* \* \* \*

(k) \* \* \*

(2) The State agency shall comply with the provisions set forth under § 277.18 of this chapter and OMB Circular A-87 (available on OMB's Web site at [http://www.whitehouse.gov/omb/circulars\\_default/](http://www.whitehouse.gov/omb/circulars_default/)) in determining and claiming allowable costs for the EBT system.

\* \* \* \* \*

■ 8. Section 274.8 is amended by revising the introductory text of paragraph (b)(3) and the first sentence of paragraph (b)(3)(v) to read as follows:

**§ 274.8 Function and technical EBT system requirements.**

\* \* \* \* \*

(b) \* \* \*

(3) *System security.* As an addition to or component of the Security Program required of Automated Data Processing systems prescribed under § 277.18(m) of this chapter, the State agency shall ensure that the following EBT security requirements are established:

\* \* \* \* \*

(v) A separate EBT security component shall be incorporated into the State agency Security Program for Automated Data Processing (ADP) systems where appropriate as prescribed under § 277.18(m) of this chapter. \* \* \*

\* \* \* \* \*

**PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS**

■ 9. The authority citation for part 276 continues to read as follows:

Authority: 7 U.S.C. 2011–2036a.

■ 10. Section 276.4 is amended by revising the first sentence in paragraph (d) to read as follows:

**§ 276.4 Suspension/disallowance of administrative funds.**

\* \* \* \* \*

(d) *Warning process.* Prior to taking action to suspend or disallow Federal funds, except those funds which are disallowed when a State agency fails to adhere to the cost principles of part 277 and OMB Circular A-87 (available on

OMB's Web site at [http://www.whitehouse.gov/omb/circulars\\_default/](http://www.whitehouse.gov/omb/circulars_default/)), FNS shall provide State agencies with written advance notification that such action is being considered. \* \* \*

\* \* \* \* \*

**PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES**

■ 11. The authority citation for part 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2036a.

■ 12. Section 277.6(b)(6) is revised to read as follows:

**§ 277.6 Standards for financial management systems.**

\* \* \* \* \*

(b) \* \* \*

(6) Procedures to determine the reasonableness, allowability, and allocability of costs in accordance with the applicable provisions prescribed in OMB Circular A-87 (available on OMB's Web site at [http://www.whitehouse.gov/omb/circulars\\_default/](http://www.whitehouse.gov/omb/circulars_default/)).

\* \* \* \* \*

■ 13. Section 277.9(c)(2) is revised to read as follows:

**§ 277.9 Administrative cost principles.**

\* \* \* \* \*

(c) \* \* \*

(2) *Indirect cost.* Allowable indirect costs may also be claimed at the 50 percent or higher reimbursement funding level as specified in this part and OMB Circular A-87 (available on OMB's Web site at [http://www.whitehouse.gov/omb/circulars\\_default/](http://www.whitehouse.gov/omb/circulars_default/)).

\* \* \* \* \*

■ 14. In § 277.13:

■ a. Revise the introductory text of paragraph (b)(2)(iii);

■ b. Revise paragraph (b)(2)(iii)(A);

■ c. Revise paragraph (b)(3);

■ d. Revise paragraph (c)(1);

■ e. Revise paragraph (e)(3); and

■ f. Revise the last sentence of paragraph (g).

The revisions 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 \$5,000, 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 \$5,000 per unit, the State agency may sell the property and retain the proceeds.

(ii) If the property had an acquisition cost of \$5,000 or more per unit, the State agency shall:

(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's selling and handling expenses.

(c) *Transfer of title to certain property.*

(1) Where FNS determines that an item of nonexpendable personal property with an acquisition cost of \$5,000 or more which is to be wholly borne by FNS is unique, difficult, or costly to replace, FNS may reserve the right to require the State agency to transfer title of the property to the Federal Government or to a third party named by FNS.

\* \* \* \* \*

(e) \* \* \*

(3) *Disposition.* When there is no longer a need for the property in the program and there is a residual inventory exceeding \$5,000 the State agency shall:

(i) Use the property in other federally sponsored projects or programs;

(ii) Retain the property for use on non-federally sponsored activities; or

(iii) Sell it.

\* \* \* \* \*

(g) \* \* \* This includes copyrights on ADP software as specified in OMB Circular A-87 (available on OMB's Web site at [http://www.whitehouse.gov/omb/circulars\\_default/](http://www.whitehouse.gov/omb/circulars_default/)).

■ 15. Revise § 277.16(b)(2) to read as follows:

**§ 277.16 Suspension, disallowance and program closeout.**

\* \* \* \* \*

(b) \* \* \*  
(1) \* \* \*

(2) FNS may also disallow costs and institute recovery of Federal funds when a State agency fails to adhere to the cost principles of this part and OMB Circular A-87 (available on OMB's Web site at [http://www.whitehouse.gov/omb/circulars\\_default/](http://www.whitehouse.gov/omb/circulars_default/)).

\* \* \* \* \*

■ 16. 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 (SNAP) and as prescribed by appropriate Food and Nutrition Service (FNS) directives and guidance (i.e., FNS Handbook 901, OMB Circulars, etc.).

(b) *Definitions.* As used in this section:

*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 basis (As Needed APDU) 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 (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, an APD Update, 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 FFP 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 \$6 million or more 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 § 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 acquisitions estimated to cost less than \$6 million or competitive procurements from non-governmental sources and that 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 \$1 million or more. 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 less than \$6 million and for noncompetitive acquisitions from nongovernmental sources costing less than \$1 million and that 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 (b)(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 (c)(2)(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 (c)(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 IAPD 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 shall 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 (b)(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 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 statutes and 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, to include functional requirements testing, error condition handling and destructive testing, security testing, recovery testing, controls testing, stress and throughput performance testing, and regression testing; and

(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 paragraph (c) of this section 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 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:

(1) 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.

(2) 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 (available on OMB's Web site at [http://www.whitehouse.gov/omb/circulars\\_default/](http://www.whitehouse.gov/omb/circulars_default/)) 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 (available on OMB's Web site at [http://www.whitehouse.gov/omb/circulars\\_default/](http://www.whitehouse.gov/omb/circulars_default/)), 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 (available on OMB's Web site at [http://www.whitehouse.gov/omb/circulars\\_default/](http://www.whitehouse.gov/omb/circulars_default/)) 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 (b) of this section shall not be subject to the ownership provisions in paragraphs (l)(1)(i) and (l)(1)(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 Security Program for IS and installations involved in the administration of the SNAP. 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: December 24, 2013.

**Yvette S. Jackson,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 2013-31347 Filed 12-31-13; 8:45 am]

**BILLING CODE 3410-30-P**

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## DEPARTMENT OF ENERGY

**10 CFR Parts 218, 431, 490, 601, 820, 824, 851, 1013, 1017, and 1050**

**RIN 1990-AA43**

### Inflation Adjustment of Civil Monetary Penalties

**AGENCY:** Office of the General Counsel, U.S. Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (“DOE”) today publishes this final rule to adjust DOE’s civil monetary penalties (“CMPs”) for inflation as mandated by the Debt Collection Improvement Act of

1996. This rule adjusts CMPs within the jurisdiction of DOE to the maximum extent allowed by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

**DATES:** This rule is effective February 3, 2014.

**FOR FURTHER INFORMATION CONTACT:** Preeti Chaudhari, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8078.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Method of Calculation
- III. Summary of Final Rule
- IV. Final Rulemaking
- V. Regulatory Review

#### I. Background

In order to preserve the deterrent effect of civil penalties and foster compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) (“the Act”), requires Federal agencies to regularly adjust each CMP provided by law within the jurisdiction of the agency. Also, the Act in part requires each agency to make further adjustments at least once every four years.

The Act provides that any increase in a CMP due to the calculated inflation adjustments shall apply only to violations that occur after the date the increase takes effect and states that the initial inflation adjustment may not exceed 10 percent of the existing penalty.

#### II. Method of Calculation

Under the Act, the inflation adjustment for each applicable CMP is determined by increasing the maximum civil penalty amount per violation by the cost-of-living adjustment. The “cost-of-living” adjustment is defined as the amount by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the year in which the amount of such civil penalty was last set or adjusted pursuant to law. Any calculated increase under this adjustment is rounded to the nearest—

- (1) Multiple of \$10 in the case of penalties less than or equal to \$100;
- (2) Multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;
- (3) Multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;