

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), (e)(4)(H), and (e)(4)(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, and potential witnesses, and confidential informants.

Dated: September 1, 2010.

**Mary Ellen Callahan**,  
Chief Privacy Officer, Department of  
Homeland Security.

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 253

[FNS-2008-001]

RIN 0584-AD85

#### Food Distribution Program on Indian Reservations: Administrative Funding Allocations

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to establish the requirements regarding the allocation of administrative funds for the Food Distribution Program on Indian Reservations and the Food Distribution Program for Indian Households in Oklahoma, both of which are referred to as "FDPIR" in this rulemaking. The rulemaking would propose amendments to FDPIR regulations to ensure that administrative funding is allocated in a fair and equitable manner. The proposed rule would also revise FDPIR regulations to clarify current program requirements relative to the distribution of administrative funds to Indian Tribal Organizations (ITOs) and State agencies.

**DATES:** To be assured of consideration, comments must be received on or before December 7, 2010.

**ADDRESSES:** FNS invites interested persons to submit comments on this proposed rule. You may submit

comments, identified by Regulatory Identifier Number (RIN) number 0584-AD85, by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Preferred method; follow the online instructions for submitting comments on "FNS-2008-001."

- **Fax:** Submit comments by facsimile transmission to Laura Castro at (703) 305-2420.

- **Mail:** Send comments to Laura Castro, Branch Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 500, 3101 Park Center Drive, Alexandria, Virginia 22302-1594.

- **Hand Delivery or Courier:** Deliver comments to the above address during regular business hours.

Comments submitted in response to this 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>.

#### FOR FURTHER INFORMATION CONTACT:

Laura Castro at the above address or telephone (703) 305-2662. You may also contact Dana Rasmussen at (703) 305-1628, or via e-mail at [Dana.Rasmussen@fns.usda.gov](mailto:Dana.Rasmussen@fns.usda.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Procedural Matters
- III. Background and Discussion of the Proposed Rule

#### I. Public Comment Procedures

Your written comments on this proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain your reason(s) for any change you recommend or proposal(s) you oppose. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. Comments received after the close of the comment period (*see DATES*) will not be considered or included in the Administrative Record for the final rule.

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (*e.g.*, grouping and order of sections, use of headings, and paragraphs) make it clearer or less clear?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the preamble section entitled "Background and Discussion of the Proposed Rule" helpful in understanding the rule? How could this description be more helpful in making the rule easier to understand?

#### II. Procedural Matters

In the following discussion and regulatory text, the term "State agency," as defined at 7 CFR 253.2, is used to include ITOs authorized to operate FDPIR in accordance with 7 CFR parts 253 and 254.

##### A. Executive Order 12866, "Regulatory Planning and Review"

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. Therefore it was not reviewed by the Office of Management and Budget (OMB).

##### B. Title 5, United States Code 601-612, "Regulatory Flexibility Act"

This proposed 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 action will not have a significant impact on a substantial number of small entities. While State agencies that administer FDPIR will be affected by this rulemaking, the economic effect will not be significant.

##### C. Public Law 104-4, "Unfunded Mandates Reform Act of 1995" (UMRA)

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, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-

effective or least burdensome alternative that achieves the objectives of the rule.

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

*D. Executive Order 12372, "Intergovernmental Review of Federal Programs"*

The program addressed in this action is listed in the Catalog of Federal Domestic Assistance under No. 10.567. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice published at 48 FR 29115 on June 24, 1983, the donation of foods in such programs is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

*E. Executive Order 13132, "Federalism"*

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.

1. Prior Consultation With State and Local Officials

The programs that receive FDPIR administrative funding from FNS' Regional Offices are all Tribal or State-administered, federally-funded programs. On an ongoing basis, the FNS National and Regional Offices have formal and informal discussions related to FDPIR with Tribal and State officials. FNS meets regularly with the Board and the membership of the National Association of Food Distribution Programs on Indian Reservations (NAFDPIR), an association of Tribal and State-appointed FDPIR Program Directors, to discuss issues relating to the program.

This rulemaking proposes regulatory changes regarding the distribution of FDPIR administrative funds to the FNS Regional Offices for allocation to the ITOs and State agencies that administer FDPIR. Section F, *Tribal Consultation*, below, provides additional information on FNS' efforts to work directly with the ITOs and State agencies in the development of the funding methodology proposed in this rule.

2. Nature of Concerns and the Need To Issue This Rule

Current regulations at 7 CFR part 253 do not specify how FDPIR administrative funds must be distributed. For many years, the National Office of the FNS used fixed percentages to allocate FDPIR administrative funds to each of the FNS Regional Offices, which in turn distributed the available funding to FDPIR State agencies. As noted previously, FDPIR State agencies include both ITOs and agencies of state government. The funding methodology did not account for any administrative cost drivers, such as the number of ITOs and State agencies within each Region or the number of individuals served by each ITO/State agency. Therefore, it did not provide a rational basis for allocating funds to the Regional Offices. FDPIR State agencies expressed concern that the methodology did not allocate funds equitably to the FNS Regional Offices, and in turn negatively impacted certain State agencies' ability to adequately administer the program.

3. Extent To Which We Address Those Concerns

FNS has considered the impact of the proposed rule on FDPIR State agencies. FNS does not expect the provisions of this rule to conflict with any State or local laws, regulations, or policies. The intent of this rule is to respond to the concerns of the State agencies by ensuring that funds are allocated to the FNS Regional Offices as fairly as possible; and to ensure that related program requirements with regard to the allocation of administrative funds to State agencies, as well as State agency matching requirements, are clear and easy to understand.

*F. Executive Order 13175, "Tribal Impact Statement"*

This rulemaking proposes regulatory changes regarding the distribution of FDPIR administrative funds to the FNS Regional Offices, which further allocate the funds to the ITOs and State agencies that administer FDPIR. These amendments are intended to ensure that FDPIR administrative funding is distributed to the FNS Regional Offices in a fair and equitable manner. The proposed rule would also revise FDPIR regulations to clarify current program requirements relative to the allocation of administrative funds to ITOs and State agencies. During the course of developing this rule, FNS has taken a number of actions to ensure meaningful and timely input by elected tribal leaders. In 2005 FNS convened a work

group comprised of FNS staff and Tribal and State-appointed FDPIR Program Directors representing NAFDPIR and its membership. The work group was asked to develop a proposal(s) for a new funding methodology for the allocation of FDPIR federal administrative funds. The work group conducted its deliberations via 33 conference calls and six face-to-face meetings from May 2005 through October 2007. Discussions were also held at the annual meetings of the membership of NAFDPIR, in which some elected Tribal leaders took part. The work group and FNS solicited written comments from elected Tribal leaders and State officials at various stages of the development of the funding methodology proposed in this rule. In addition to the requests for written comments, FNS hosted public meetings that were held in January 2007 at four locations throughout the country. Elected Tribal leaders and State officials were invited to discuss the proposal to develop a funding methodology at those public meetings. Discussion from the public meetings and written comments submitted to the work group were considered by the work group in the development of its recommendations to FNS' Administrator. On October 19, 2007, the work group presented recommendations for a funding methodology. These recommendations were used to develop the funding methodology proposed in this rule.

In fiscal year 2008, FNS implemented the funding methodology proposed in this rulemaking on a trial basis. FNS solicited comments from elected Tribal leaders and State officials on the impact of the funding methodology in fiscal year 2008 for consideration in determining the funding methodology to be used in fiscal year 2009, pending the development of this proposed rulemaking.

A regulatory work plan was developed in fiscal year 2008 for the development of this proposed rulemaking with the intent of soliciting comments from elected Tribal leaders, State officials, and other interested members of the public in response to the funding methodology implemented in fiscal year 2008 and proposed in this rule.

A summary of concerns raised by tribal officials, the agency's need to issue this regulation, and an explanation of how these concerns have been addressed is thoroughly discussed in section III of the preamble.

*G. Executive Order 12988, "Civil Justice Reform"*

This proposed rule has been reviewed under Executive Order 12988, Civil

Justice Reform. Although the provisions of this rule are not expected to conflict with any State or local laws, regulations, or policies, the rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

#### *H. Department Regulation 4300-4, "Civil Rights Impact Analysis"*

FNS has reviewed this rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule will not in any way limit or reduce the ability of participants to receive the benefits of donated foods on the basis of an individual's or group's race, color, national origin, sex, age, political beliefs, religious creed, or disability. FNS found no factors that would negatively and disproportionately affect any group of individuals.

#### *I. Title 44, United States Code, Chapter 35, "Paperwork Reduction Act"*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This proposed rule does not contain any new information collection requirements subject to review and approval by OMB under the Paperwork Reduction Act of 1995. However, previous burdens for 7 CFR part 253 information collections associated with this rule have been approved under OMB control number 0584-0293.

#### *J. Public Law 107-347, "E-Government Act Compliance"*

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

### **III. Background and Discussion of the Proposed Rule**

The proposed rule would amend the regulations for FDPIR at 7 CFR 253.11 and impact 7 CFR part 254, which cross-references 7 CFR part 253.

#### *A. Prior Administrative Funding Allocation Methodology*

Currently, FDPIR regulations at 7 CFR 253.11 do not specify a methodology for the allocation of administrative funds. Under the traditional practice, the FNS National Office allocated funds to the FNS Regional Offices using fixed percentages. These funding percentages varied from one Region to the next, did not change for many years prior to fiscal year 2008, and did not reflect cost drivers such as each Region's share of national program participation and current number of ITOs and State agencies. Regional Offices then allocated each State agency its share of administrative funds based on negotiations between the two entities. Because FNS Regional Offices received funding without regard to the effect of cost drivers, similar State agencies in different Regions could have received significantly different funding levels. This in turn could have impacted program operations and potentially resulted in inconsistent or uneven service to participants.

#### *B. FDPIR Funding Methodology Work Group and Public Meetings*

To address concerns raised by FDPIR State agencies over potential FDPIR administrative funding inequities, a funding methodology work group was convened by FNS in 2005. The work group, which was comprised of FDPIR program representatives, including NAFDPIR officers, and FNS staff, was charged with developing a new methodology for the distribution of FDPIR administrative funds that would be fair, objective, and easy to understand.

After conducting data collection and analysis for several months, the work group completed a preliminary proposal in November 2006 and submitted it to elected Tribal leaders and State officials for written comment. Elected Tribal leaders and State officials were also invited to attend public meetings held in January 2007 at four locations across the country in order to discuss the work group's preliminary proposal—Green Bay, Wisconsin, Oklahoma City, Oklahoma, Rapid City, South Dakota, and San Francisco, California. Over 100 elected Tribal leaders, State officials, and FDPIR program officials attended the public meetings and/or submitted

written comments on the preliminary proposals.

The work group met in April 2007 to review the written comments and transcripts of the four public meetings. The comments reflected a diversity of opinion among elected Tribal leaders and State officials. From April through October 2007, the work group diligently attempted to address the issues and concerns presented in the comments, and resolve any differences of opinion within the work group as well. The work group submitted its final recommendations to former FNS Administrator in a letter dated October 19, 2007. The work group was unable to reach consensus on a single approach, thus it provided three funding allocation methodology proposals. All of the work group members supported at least one of the proposals.

Under the work group's first proposal, individual State agencies would have submitted annual budgets to their respective FNS Regional Offices that reflected their individual program needs. If the total amount requested by all State agencies combined exceeded the amount of the available funding in any fiscal year, the FNS National Office would have reduced each Region's total request by an equal percentage.

Under the work group's second proposal, the FNS National Office would have allocated funds to the Regional Offices based on three weighted factors: Each Region's share of the national participation level averaged over the most recent three-year period; the current number of programs in each Region; and the current number of programs in each Region with tailgate operations, home delivery, and/or multiple warehouses or other issuance methods. As a background, tailgate operations are mobile distribution systems where food packages are delivered to a site or sites nearer to clients' residences rather than being distributed solely out of a central location. Under the work group's second proposal, the FNS Regional Offices would have negotiated budgets with their State agencies within the amount of funds made available.

Under the work group's third proposal, the FNS National Office would have employed a formula to determine a basic grant amount that each State agency would receive. Each State agency would have had the opportunity to negotiate with their FNS Regional Office for supplemental funds to meet their individual needs. Under this proposal, 85 percent of the available funding each year would have been allocated to the State agencies in the form of a basic grant. The basic grant

would have been determined by two factors: A fixed base amount that would be adjusted annually by an inflation factor; and an amount based on each State agency's share of the national participation level averaged over the most recent three-year period. The FNS National Office would have allocated the remaining 15 percent of available funding to the FNS Regional Offices based on each Region's share of the national participation level averaged over the most recent three-year period. That funding would have been used by the FNS Regional Offices to supplement the basic grants to the State agencies based on individual negotiations.

#### *C. Pilot Funding Allocation Methodology and Comment Solicitation*

In response to the work group's proposals, FNS developed an administrative funding allocation methodology that was based in large part on the work group's second proposal, to be piloted in fiscal year 2008. The methodology, which has been used in FDPIR since fiscal year 2008, allocates funding to the extent practicable to the Regional Offices based on two weighted components: Each Region's share of the total number of participants nationally, and each Region's share of the total current number of State agencies administering the program nationally. Proportionally more weight is given to the first element, program participation, which FNS believes to be a major cost driver in the administration of FDPIR. Sixty-five percent of all administrative funds available nationally are allocated to FNS Regional Offices in proportion to their share of the number of participants nationally, averaged over the three previous fiscal years. In order to recognize the fixed costs common to programs of all participation levels, the remaining 35 percent of all administrative funds available nationally are allocated to each FNS Regional Office in proportion to its share of the total current number of State agencies administering the program nationally.

By selecting these two factors, FNS intended to design a funding methodology that would provide each FNS Regional Office with the funding to support the operational costs of all of its programs, particularly those impacted by the number of participants served by each State agency. FNS believes that this methodology is based on objective and current cost drivers and provides a reasonable basis for allocating administrative funds.

FNS did not include the factor in the work group's second proposal which

would have allocated funds based on each Region's share of tailgate operations, home deliveries, and/or multiple warehouses. FNS recognizes that such operations are important program components and contribute significantly to the cost of administering a program. Some State agencies expend considerable resources in conducting tailgate operations and maintaining multiple warehouses. However, this factor, as proposed by the work group, did not differentiate among the degree of service provided. In addition, exclusion of this factor was not expected to significantly impact Regional allocations because 90 percent of FDPIR programs have some degree of tailgate operations, home delivery, and/or multiple warehouses.

As a result, FNS opted to disregard this factor and provide proportionally greater emphasis to the other two factors outlined above. FNS believes that this approach offers a proper balance by providing each FNS Regional Office with funding to support the operational costs of all of its programs in relation to the number of participants served by each State agency.

The decision to pilot a new funding methodology in fiscal year 2008 was prompted by Congressional action. Recognizing the funding inequities in FDPIR, Congress appropriated a total of \$34.7 million in FDPIR administrative funding for fiscal year 2008, an increase of nearly \$7.7 million over the fiscal year 2007 level. Report language from both the House of Representatives and the Senate (House Report 110-258, accompanying H.R. 3161, and Senate Committee Report 110-134, accompanying S. 1859, respectively) communicated Congress' expectation that this funding be used "to address current inequities among tribes in the allocation of funds \* \* \*." On October 31, 2007, FNS announced the decision to pilot the funding methodology in a letter to elected Tribal leaders and State officials. In that letter, FNS sought comments with regard to the impact of the piloted methodology on the program. The comments received were considered in the development of this proposed rule.

#### *D. Comments Received and Analysis*

FNS received written comments from three elected Tribal leaders, one State official, and two FDPIR program administrators regarding FNS' decision. Five commenters supported the methodology as implemented, while one commenter opposed the allocation methodology. Of the five commenters supporting the funding allocation methodology, four specifically cited

sufficient or improved State agency funding levels as one of the reasons for their support. Three of the five commenters cited equity or fairness as another factor in their support of the methodology. Three supporting commenters cited the funding methodology's positive impact on the program services provided to participants.

One commenter opposed the manner in which administrative funds were allocated to the Regional Offices in fiscal year 2008. The commenter stated three key objections: FNS did not consult with the Tribes and State agencies prior to pilot implementation; the funding methodology implemented in fiscal year 2008 was not one of the three methodologies recommended by the work group; and FNS failed to address the work group's recommendation regarding food storage and transportation costs for the seven independent FDPIR programs serviced by the Montana and North Dakota State agencies.

Regarding the commenter's first objection referencing Tribal consultation, the work group and FNS consulted with elected Tribal leaders and State officials on multiple occasions prior to the piloting the methodology, as outlined above. The decision to pilot the methodology was made in response to the Congressional expectation that FNS address funding inequities with the additional funds provided in fiscal year 2008. The pilot permitted FNS to test the new methodology in fiscal year 2008 in order to meet this Congressional expectation, while at the same time continuing to consult with elected Tribal leaders and State officials. The consultation process continues in this proposed rulemaking.

Regarding the commenter's second objection, the commenter was correct in asserting that the funding methodology implemented was not one of the three methodologies recommended by the work group. However, as described above, the funding methodology which was implemented was based in large part on one of the work group's three proposals. The pilot included the two work group-proposed factors regarding the proportionate Regional Office shares of national program participation and the current number of State administering agencies. FNS removed the work group-proposed factor which would have allocated funds based on each Region's share of tailgate operations, home deliveries, and/or multiple warehouses, because it did not differentiate among the degree of service provided and was not expected to

significantly impact Regional allocations.

Regarding the commenter's final objection, currently, the Montana and North Dakota State agencies maintain central warehouses to receive, store, and transport USDA foods to local programs that they administer. In addition, these two State agencies perform ordering, storage, and delivery functions for seven programs that are not under the administration of the two State agencies. Both Montana and North Dakota receive FDIPIR administrative funds to support the Federal share of costs for warehousing and transporting USDA foods to both the independent programs and those programs that they administer directly. Because the two State agencies are performing functions similar to those performed by FNS, the work group recommended that Montana's and North Dakota's warehousing and transportation costs for the seven independent programs be paid with Federal funds appropriated for the purchase and delivery of USDA foods (*i.e.*, "food funds") rather than administrative funds.

However, funds appropriated for the purchase and delivery of USDA foods may only be used for food shipments to and from a USDA-contracted warehouse, or directly to a FDIPIR program operator. The seven programs are too small to regularly take full-truck shipments directly from a vendor without significantly exceeding maximum inventory requirements and risking foods going out of condition. Therefore, the only way to shift their warehousing and delivery costs from administrative to food dollars would be to require that these independent operators be served by a USDA-contracted warehouse rather than the Montana and North Dakota warehouses.

FNS researched this approach and found no evidence that the seven programs would receive better service from the national warehouse. Serving these independent programs through a USDA-contracted warehouse would increase costs significantly. Also, the Montana and North Dakota State agencies expressed objections in writing to this proposal. Since there is no evidence indicating that the seven independent programs would receive better service from the national warehouse, this was not considered a workable solution.

As a result of the increase in the program appropriation and the pilot funding allocation methodology, the FNS Mountain Plains Regional Office, which provides administrative funds to Montana and North Dakota, received a sufficient increase in funding in fiscal

year 2008 to fully meet the budget requests of all State agencies. On April 22, 2008, the Director, FNS Food Distribution Division advised the Montana and North Dakota State agencies and the affected FDIPIR program operators that FNS did not intend to alter current warehousing and delivery arrangements for the seven independent programs served by Montana and North Dakota. They were also advised that the FNS National Office will work with the Mountain Plains Regional Office to ensure that future administrative funding needs are met.

#### *E. Proposed Regulatory Revisions*

Based on the comments submitted on the pilot implementation of the funding methodology, FNS is proposing revisions to Federal regulations at 7 CFR 253.11 to clarify existing program requirements relative to the allocation of appropriated FDIPIR administrative funds to the FNS Regional Offices, and the further allocation of such funds to State agencies. FNS is also proposing revisions to 7 CFR 253.11 in order to make clear State agency administrative funding matching requirements. Additional guidance is contained in FNS Instruction 700-1, Rev. 2, FNS Instruction 716-4, Rev. 1, and FNS Handbook 501.

First, FNS proposes to amend 7 CFR 253.11 by revising the title of that section to read "Administrative funds" rather than "Administrative funds for State agencies." This proposed revision would provide greater flexibility, permitting further explanation of the FNS National Office administrative funding allocations to FNS Regional Offices. This revision is necessary to more clearly detail the funding allocation process.

As an overview, this rule proposes to amend 7 CFR 253.11(a) by removing the current regulatory language from that section, and replacing it with language specific to how administrative funds are allocated to FNS Regional Offices. This rule further proposes to redesignate paragraphs (b) through (h) of current 7 CFR 253.11 as paragraphs (d) through (j). Applicable provisions contained in current 7 CFR 253.11(a) would be rewritten in plain language and set out in the newly designated and proposed paragraphs (b) and (c). Additional information reflecting current program requirements would be added to newly designated paragraph (c) of this proposed section as well.

In new section 253.11(a), we are proposing to clarify that administrative funds would be allocated to the FNS Regional Offices in the following

manner: Sixty-five percent of all administrative funds available nationally would be allocated to each FNS Regional Office in proportion to its share of the number of participants nationally, averaged over the three previous fiscal years; and thirty-five percent of all administrative funds available nationally would be allocated to each FNS Regional Office in proportion to its share of the total current number of State agencies administering the program nationally.

As an outcome of the pilot implementation, FNS identified the need to incorporate regulatory language to ensure that the funding methodology does not have undue negative impact on individual FDIPIR State agencies. FNS recognized that funding must be made available to support participation of new State agencies for which prior participation data is not available. Based on State agency total approved budgets, FNS also recognized the need to ensure that funding not needed by one FNS Regional Office could be distributed to other FNS Regional Offices. Finally, FNS recognized that some flexibility is required within the funding allocation methodology described above in order for it to meet 75 percent of State agency administrative costs approved by the FNS Regional Offices, should funding levels permit. Therefore, this proposed rule would permit the FNS National Office to allocate administrative funds to the FNS Regional Offices based on the proportionate shares of national program participation and the current number of State agencies administering the program, "to the extent practicable \* \* \*." This language would permit FNS some limited flexibility to meet individual State agency administrative funding needs not reflected under the two weighted factors. However, similar to current practice, the FNS National Office would allocate the vast majority of all administrative funds to the FNS Regional Offices based on each Region's proportionate shares of national program participation and the current number of State agencies administering the program.

Regarding the current requirement at 7 CFR 253.11(a) that annual budget submissions and revisions must be approved by FNS, we propose to relocate this requirement to the new proposed section 253.11(b) with the clarification that the budget request must be sent to the FNS Regional Office for approval. This proposed requirement is consistent with FNS Instruction 700-1, Rev. 2, which gives each FNS Regional Administrator the authority to review State agency budget submissions. The current provision at 7

CFR 253.11(a) requiring State agencies to submit only those administrative costs which are allowable under 7 CFR part 277 would be relocated to proposed section 253.11(b) as well. This requirement is currently contained in FNS Instruction 716-4, Rev. 1, and FNS Handbook 501. Finally, the current provision at 7 CFR 253.11(a) which specifies that, within funding limitations, FNS provides State agencies with administrative funds necessary to meet 75 percent of approved administrative costs would be revised in plain language and relocated to proposed section 253.11(b), with the clarification that FNS Regional Offices provide the administrative funds to State agencies. This reflects current program practice.

The newly designated section 253.11(c) would set forth the State agency matching requirements. Paragraph (c)(1) of this proposed section would specify that the State agency matching requirement is 25 percent of approved administrative costs, and that both cash and non-cash contributions may be used to meet the matching requirement. This is currently required via FNS Instruction 716-4, Rev. 1. For the sake of clarity, paragraph (c)(1) of this proposed section would list the criteria for allowable cash and non-cash contributions, similar to what is currently provided in 7 CFR part 277.

The current provision at 7 CFR 253.11(a) regarding requests for Federal matching rates that exceed 75 percent and compelling justification would be rewritten in plain language and relocated to the newly designated 7 CFR 253.11(c)(2). In paragraph (c)(2) of this proposed section, consistent with FNS Instruction 716-4, Rev. 1, and FNS Handbook 501, we require the State agency to submit a summary statement and supporting financial documents to the FNS Regional Office when providing compelling justification in its budget proposal. Furthermore, we propose to add a provision which gives the FNS Regional Office the discretion to provide additional administrative funds beyond 75 percent. This is consistent with current program practice, and the Regional Office authority to approve State agency budget requests per proposed section 253.11(b). Finally, the types of acceptable compelling justification provided in current 7 CFR 253.11(a) and FNS Instruction 716-4, Rev. 1, would be specified in paragraph (c)(2) of this proposed section. Per proposed paragraph (c)(2) of this section, compelling justification may include but would not be limited to: the need for additional administrative funding for startup costs during the first

year of program operation, or the need to prevent a reduction in the level of necessary and reasonable program services provided.

#### List of Subjects in 7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR part 253 is proposed to be amended as follows:

### PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

1. The authority citation for 7 CFR part 253 continues to read as follows:

**Authority:** 91 Stat. 958 (7 U.S.C. 2011-2036).

2. In § 253.11:

- a. Revise the heading of this section;
- b. Remove paragraph (a);
- c. Redesignate paragraphs (b) through (h) as paragraphs (d) through (j); and
- d. Add new paragraphs (a) through (c).

The revisions and additions read as follows:

#### § 253.11 Administrative funds.

(a) *Allocation of administrative funds to FNS Regional Offices.* Each fiscal year, after enactment of a program appropriation for the full fiscal year and apportionment of funds by the Office of Management and Budget, administrative funds will be allocated to each FNS Regional Office for further allocation to State agencies. To the extent practicable, administrative funds will be allocated to FNS Regional Offices in the following manner:

(1) 65 percent of all administrative funds available nationally will be allocated to each FNS Regional Office in proportion to its share of the number of participants nationally, averaged over the three previous fiscal years; and

(2) 35 percent of all administrative funds available nationally will be allocated to each FNS Regional Office in proportion to its share of the total current number of State agencies administering the program nationally.

(b) *Allocation of administrative funds to State agencies.* Prior to receiving administrative funds, State agencies must submit a proposed budget reflecting planned administrative costs to the appropriate FNS Regional Office for approval. Planned administrative costs must be allowable under part 277 of this chapter. To the extent that funding levels permit, the FNS Regional

Office provides each State agency administrative funds necessary to cover 75 percent of approved administrative costs.

(c) *State agency matching requirement.*

(1) Unless Federal administrative funding is approved at a rate higher than 75 percent in accordance with paragraph (c)(2) of this section, each State agency must contribute 25 percent of its total approved administrative costs. Cash or non-cash contributions, including third party in-kind contributions, may be used to meet the State agency matching requirement. To be considered allowable towards meeting this requirement, both cash and non-cash contributions must meet the criteria established under Part 277 of this chapter. State agency contributions must:

- (i) Be verifiable;
- (ii) Not be contributed for another federally-assisted program, unless authorized by Federal legislation;
- (iii) Be necessary and reasonable to accomplish program objectives;
- (iv) Be allowable under part 277 of this chapter;
- (v) Not be paid by the Federal Government under another assistance agreement unless authorized under the other agreement and its subject laws and regulations; and
- (vi) Be included in the approved budget.

(2) The State agency may request a waiver to reduce its matching requirement below 25 percent. In its proposed budget, the State agency must submit compelling justification to the appropriate FNS Regional Office that it is unable to meet the 25 percent matching rate and that additional administrative funds are necessary for the effective operation of the program. The FNS Regional Office may, at its discretion, provide additional administrative funds beyond 75 percent of approved administrative costs to a State agency that provides compelling justification. In its compelling justification submission, the State agency must include a summary statement and recent financial documents, in accordance with FNS instructions. Compelling justification may include but is not limited to:

- (i) The need for additional administrative funding for startup costs during the first year of program operation; or
- (ii) The need to prevent a reduction in the level of necessary and reasonable program services provided.

\* \* \* \* \*

Dated: August 31, 2010.

**Jeffrey Tribiano,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 2010-22247 Filed 9-7-10; 8:45 am]

**BILLING CODE 3410-30-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2010-0852; Directorate Identifier 2010-NM-005-AD]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A330-200 and -300 and A340-200 and -300 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A debonding area was detected on the RH [right-hand] elevator of an A340 in-service aeroplane during a scheduled maintenance task inspection.

Investigation has revealed that this debonding may have been caused by water ingress and, if not detected and corrected, might compromise the structural integrity of the elevators [and could result in reduced controllability of the airplane].

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by October 25, 2010.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between

9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail [airworthiness.A330-A340@airbus.com](mailto:airworthiness.A330-A340@airbus.com); Internet <http://www.airbus.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2010-0852; Directorate Identifier 2010-NM-005-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

We will post all comments we receive, without change, to [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov), including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

#### Discussion

On September 29, 2005, we issued AD 2005-20-32, Amendment 39-14329 (70 FR 59263, October 12, 2005). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2005-20-32, we have determined that the existing inspection of the upper and lower elevator skin panels needs to be a repetitive inspection in order to adequately address the identified unsafe condition. We have also added airplane models to the applicability of this proposed AD, and we have identified additional affected elevators in Table 1 of this proposed AD. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009-0255, dated December 1, 2009 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

A debonding area was detected on the RH [right-hand] elevator of an A340 in-service aeroplane during a scheduled maintenance task inspection.

Investigation has revealed that this debonding may have been caused by water ingress and, if not detected and corrected, might compromise the structural integrity of the elevators [and could result in reduced controllability of the airplane].

DGAC [Direction Générale de l'Aviation Civile] France AD F-2004-118 R1 (EASA approval N. 2004-10125) required a one-time inspection of elevators skin panels installed on MSN up to 091, to detect potential liquid ingress and repair as necessary, in accordance with Airbus inspection service bulletins (ISB) A330-55-3032 and A340-55-4029.

Following the AD issuance, further in-service experience has shown that in order to ensure the structural integrity of all A330/A340 elevators skin panels with sandwich construction (excluding A340-500/-600), it is necessary to perform the same elevators panels inspection and to repair as necessary, but in a repetitive manner.

The aim of this AD, which supersedes DGAC France AD F-2004-118 R1, is to require this additional inspection program in order to maintain the structural integrity of the elevators.

The required actions include repetitive special detailed inspections and repetitive re-protection of the elevator assembly. The special detailed inspections consist of the following actions: