



Proposed revisions to APD regulations at 45 CFR Part 95

A briefing for States on the recommendations, options and issues related to DHHS's proposed regulation on APD reform

Where we are today

- The Workgroup, ACF (OCSE, Children's Bureau and OA/OFS) CMS and FNS have worked cooperatively to identify revisions to Federal oversight and monitoring of State IT systems
- Workgroup composition has included:
 - ACF(OCSE, Children's Bureau, OA/OFS), CMS and FNS
 - Workgroup met over two year period -August 2004
 - State representations from AK, CT, GA, MD, PA, TX, NY and VA attended four meetings a year apart



Objectives of the Revisions

■ Objectives:

- Review policies, procedures and regulations in light of advances in technology
- Recommend Revisions to regulatory language
- Recommend a streamlined set of documentation required of states
- Attempt to reach consensus whenever possible
- Create a balance between Federal oversight and state accountability based on risk;

Recommendations

- Change approach to base submission thresholds on Risk, which is determined by type of IT procured as well as funding requested.
- Change approach to exempt O&M activities unless requested to submit, as opposed to current approach of submit unless exempted



Three parts to NPRM

- Technical changes – APD to ITD, HCFA to CMS, delete AFDC references
- Conforming changes- references to part 74
- Substantive revisions to 45 CFR Part 95

Eliminate Federal oversight of low risk projects or acquisitions

- Reduction in Federal oversight requirements:
 - Acquisition Checklist – Permit states to self-certify compliance with Federal and State procurement rules for competitively procured RFP's and Invitation for Bid
 - Operations and Maintenance procurements – eliminate prior approval for RFP, contracts and contract amendments if limited to O&M and, new 1-2 page O&M annual IT update
 - Option years, scheduled extensions and no-cost extensions – eliminate prior approval requirement
 - Contract amendments- eliminate prior approval requirements for contract amendments that are within scope that don't exceed 20% of base contract.
 - Revise annual Cost benefit analysis update to every 3 years.

Revise Submission Thresholds

Base submission thresholds on Risk as well as dollar threshold (with different thresholds based on lower risk);

- Operations and Maintenance – very low risk so eliminate prior approval requirements for O&M procurements, reduce ITDU requirements for O&M only to 1-2 pages annually,
- Hardware and commercial off shelf software upgrades- medium risk so increase threshold from \$5 million to \$20 million;
- Software development – Remains a high risk, so retain \$5 million threshold for prior approval submission but permit flexibility on 20% of increased funding in contact amendments if increase is within scope of original contract.
- Retain requirement for prior approval and sole source justification for high-risk sole source procurements over \$1 million.

Operations and Maintenance

Operations and Maintenance

- Eliminate prior approval requirements for O&M acquisitions (RFP, IFB, contract and contract amendments)
- Reduce ITD requirements for state projects in maintenance and operation mode to 1-2 page annual document that covers:
 - Summary of O&M activities (to ensure that not really software enhancements)
 - Summary of annual funding (to provide approval)
 - Acquisition plan (to ensure full and open competition to maximum extent feasible)

Independent Validation and Verification

- Require ***Independent Validation and Verification for high risk projects.***

Triggers include:

- Miss statutory deadlines;
- Fail to meet a critical milestone;
- Indicate the need for a new project or total system redesign.;
- Are developing systems under waivers,
- Development efforts we determine are at risk of failure, significant delay, or significant cost overrun.

Waiver of any APD requirement

- Provide for ***Waiver process for any APD requirement*** : New to Part 95, but CSE has current regulatory authority
 - Must provide alternative approach that enables it to be in substantial compliance with other requirements.
 - Waiver and alternative approach can be all or portion of APD regulatory provisions
 - Must demonstrate why meeting regulatory provision is unnecessary or inappropriate;
 - Secretary (or designee) will review to assure that all processes provide for effective and efficient program operation.
 - If approved, waiver becomes part of State's approved APD.
 - If approved, State must have IV&V assessment to determine degree of IV&V needed .

Disallowance of FFP for failed projects

- Provide authority to recoup regular rate funding. – current authority is to recoup difference between enhanced and regular rate FFP.



Non-Regulatory reforms

- Acquisition Checklist IM 05-03
- Guidance on Master Contracts IM 05-02
- Guidance on Enterprise Architecture proprietary software IM 05-04
- Cost Allocation Methodology Toolkit

New Definitions

- Acquisition Checklist- self certify compliance of RFP's to Federal procurement requirements
- Base contract- option years but not amendments
- COTS – ready made and available for sale to general public
- Noncompetitive- use long standing criteria for sole source justification
- Software maintenance- used version of IEEE standard (pretty broad)
- Service Orientated Architecture also referred to a Service component based architecture

Conforming Amendments

- ***Definition of Sole Source- Part 92 Applicability***
 - NPRM adds the language in 45 CFR 74.40-48 to Part 95. Subpart F.
 - Plus the 5 criteria for acceptable sole source justification from 74 Appendix S.
 - Rationale for not accepting DHHS Part 92. Part 92 procurement standards permits states to follow their own State procurement policies and procedures that they use for non-Federal projects. This includes using the State's definition of acceptable sole source justification.



Technical Amendments

- Change Advance Planning Document (APD) to Information Technology Planning Document (ITPD)
- Update HCFA to CMS
- Delete most AFDC Title IV-A references
- Correct Automatic to Automated in (ADP)

Reconsideration of Denial of FFP due to lack of submission

- Reconsideration of denial of FFP due to lack of prior approval
- Codify the interpretation in OSSP-00-01
 - Original AT had detailed process and criteria, Decision in regulation to permit future flexibility by the Secretary and his/her designee.

Impact on States- ITDU

- New project – Same Implementation ITD including Feasibility Study, Analysis of Alternatives, Cost Benefit analysis, Cost allocation
- Enhanced Funded As-Needed ITD Project Updates – raise submission threshold from \$100,000 to \$300,000
- Regular rate ITD Project updates
 - Requirement for annual cost benefit update modified to a close out cost benefit two years after full implementation and at 3 year intervals until cost benefit is achieved. (Most CSE systems break even almost immediately)

Impact on States – Operations and Maintenance ITD

- New shorter O&M ITD (summary of activities, acquisitions and annual budget)
- Submit non-competitive if over threshold (\$20 million- hardware, \$5 million- software)
- Don't need to submit competitive O&M acquisition documents if State has submitted the O&M ITD

Impact on States - Procurements

- RFP competitive- Can self-attest using the Checklist IM 05-03
- RFP sole source- If over \$1 million Need to provide justification. Same policy, just codified in regulation
- Contracts
 - Hardware- \$20 million
 - Software Development- kept at \$5 million
 - Hybrid – use the lower threshold
 - Contract amendments – 20% of base contract



How to comment- Hard copy

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NPRM in Federal Register

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How to comment - electronically

- www.regulations.gov
- <http://regulations.acf.hhs.gov> and follow instructions