



ISM

IT Solutions Management for Human Services

an affiliate of the American Public Human Services Association

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Office of Child Support Enforcement
Administration for Children and Families
U.S. Department of Health and Human Services
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Mail Stop: ACF/OCSE/DSTS 4th floor West

Re: 45 CFR Part 95 State Systems Advance Planning Document (APD) Process

To Whom It May Concern:

The American Public Human Services Association (APHSA) and its affiliate, the IT Solutions Management for Human Services (ISM), respectfully submit this comment letter regarding the Notice of Proposed Rule Making with Comment Period on the *State Systems Advance Planning Document (APD) Process*, published in the *Federal Register* on March 7, 2008 (73 FR 12341-12354), for the Administration for Children and Families of the U.S. Department of Health and Human Services.

Please be assured that APHSA and ISM share ACF's commitment to reduce the submission requirements for obtaining federal approval for lower-risk information technology (IT) projects and procurements, and thank DHHS for its efforts. We appreciate the opportunity to provide you with the following comments.

Part 1 Technical revisions that delete or update obsolete references

For the most part, these revisions are intended to delete or update obsolete references, such as replacing "Health Care Financing Administration (HCFA)" with "Centers for Medicare and Medicaid Services (CMS)", and have no other impact on the substance of the rule and need no further comment. There are some proposed revisions to the rule that are categorized as technical revisions, that merit further discussion and suggested changes to the proposed terminology. For example, regarding the terminology change from Advance Planning Document (APD) to Information Technology Document (ITD), an argument is made by HHS that the term APD has, in the past, been confused with Automatic Data Processing (ADP). When federal and state staff had discussions in the past about APDs for the procurement of ADP, there may have been

occasional confusion; however, the best way to avoid that confusion in the future is not to abandon the acronym APD, which is now engrained and used by states to plan for the acquisition of IT equipment and services acquisitions, but to abandon the term ADP in favor of the term IT. Instead of changing APD to ITD (Information Technology Document), APHSA and ISM would propose using the terminology ITAPD, which is an acronym for IT Advanced Planning Document.

Part 2 Conforming revisions to regulations

Revising Section 95.613 to include much of the procurement language currently in 45 CFR Part 74 makes the proposed rule less cumbersome and is a positive action.

Part 3 New or modified revisions that eliminate or reduce the documentation required to be submitted for Federal approval

The most important and substantive change to the state systems Advance Planning Document process effected by the NPRM is the Section 95.605 definition of an “Acquisitions checklist” and the implementing Section 95.611(b)(1)(iii). States can, under a revised Section 95.611(b)(1)(iii), be “specifically exempted” from the requirement of submitting “acquisition solicitation documents” (RFPs) for HHS prior approval. This change relieves the states of the requirement to submit RFPs when the resulting base contract is expected to exceed \$5 million for competitive procurements and \$1 million for noncompetitive procurements. The existing regulation is somewhat similar except the NPRM now contains an objective criterion for determining the Department’s exemption, namely the “acquisitions checklist.” ACF’s existing Information Memorandum IM 05-03, dated May 2, 2005, and Titled Acquisition Checklist currently allow the states to request and receive an exemption from the current requirement at Section 95.611(b)(1)(iii). Although the relief from a federal requirement already exists as part of an existing IM, it is always better to have the relief in the form of a rule rather than an IM. APHSA and ISM support this change and encourage DHHS to assure that when developing the acquisitions checklist that they make it as simple as possible. Additionally, APHSA and ISM as always take the position that if a state was in compliance with its procurement rules, that it should be able to self-declare that its IT procurement meets all state standards and this should be sufficient for federal approval. We request that the acquisition checklist would be used as a vehicle for this self-declaration.

A new Section 95.610 (c)(3), Operations & Software Maintenance Information Technology Document Update, in conjunction with the addition to Section 95.505, a definition for software maintenance, responds to a long-standing state question of when does an IT project end. APHSA and ISM are in support of this new section.

Conclusion

APHSA and ISM generally feel that this NPRM is a step in the right direction towards reforming the APD process and again thank DHHS for their efforts. There are two other specific issues, however, that should be addressed.

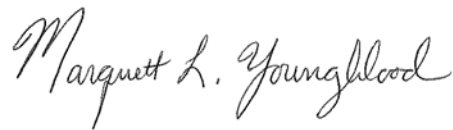
1. Under Subpart 95.605 Definitions – Commercial off the shelf (COTS) was added to mean “proprietary software products that are ready-made and available for sale to the general public at established catalog or market prices. Examples of COTS include: Standard word processing, database, and statistical packages.” This definition apparently is intended to exclude frameworks which were developed to address specific programs such as Child Support Enforcement. If this was the intention, APHSA and ISM feel that this definition should be changed to include such COTS. While DHHS may counter that this would not be an off-the-shelf purchase but a transfer of a system, we would respectfully disagree and suggest that allowing such COTS under the definition would simplify state procurements.
2. Does DHHS know whether USDA/FNS plans to issue an NPRM for the State Systems Advance Planning Document (APD) process? APHSA and ISM feel strongly that APD reform will not be complete unless both DHHS and USDA are operating under the same rules.

Thank you for the opportunity to comment on this regulation. If you have any additional questions, please contact Michael Coulson at 717-245-0651 or michael.coulson@aphsa.org.

Sincerely,



Jerry W. Friedman
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APHSA



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