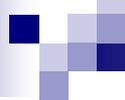


# APD regulations at 45 CFR Part 95

Training for State staff



# Major shifts in oversight

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- Focus on high risk, less oversight over low risk – both project and procurement
- Shift from Federal to State procurement laws, regulations, policies and procedures

# Major Changes in APD Rule

- APDU
  - Exemption of prior approval for procurement in the Annual or As-Needed update.
  - Shorter APD Updates for Maintenance and Operation projects
  - One-two page Operational APD for States not doing any development
- Procurement
  - Permits States to follow procurement standards in Part 92, not Part 74.
  - States may submit acquisition checklist, reducing submission requirements for lower-risk IT projects.
  - Higher dollar thresholds for prior Federal approval; assumes that low-risk procurements will be exempted from prior approval.
  - Department retains authority to provide greater oversight if a State procurement policies increases cost or risk of failure.
- Independent Verification and Validation
  - Authority for all human service programs
  - More IV&V triggers

# APD Requirements

Previous requirement	New final rule
Annual cost benefit analysis update	Annual CBA eliminated
Operations and maintenance – include in APD	Shorter, stand-alone 1-2 page document
.	Include information to request exemption of procurements related to low-risk projects

# Procurement Requirements

Previous Requirement	New Final Rule
\$ 1 million sole source	Submit justification, but defer to state procurement standards for sole source justification
\$5 million competitive	\$6 million software development \$20 million hardware and COTS No submission of procurements for Operational activities if no ongoing development
Exemption of prior approval of RFP and/or contracts – permitted but at Federal program office discretion	Assumption that low-risk procurements will be exempted from prior approval requirements if adequately described in Annual or As-Needed APDU.

# Procurement (con't)

Previous requirement	New final rule
Federal procurement standards under 45 CFR 74	45 CFR Part 92 procurement standards apply. States may follow their own procurement standards (e.g. sole source justification, conflict of interest). Can ask for affirmative attestation from authorized state requestor that this is in compliance with state procurement standards
Sole source justification – must meet one of 4 Federal criteria	Must still submit, but state standards for sole source justification governs (must apply to non-FFP projects)

# Submission Thresholds

- **Submission thresholds are based 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 APDU requirements for O&M to only 1-2 pages annually,
  - Hardware and COTS Software Upgrades- medium risk so increase threshold from \$5 million to \$20 million;
  - Software Development – Remains a high risk, so \$6 million threshold for prior approval submission but permit flexibility on 20% of increased funding in contract amendments if increase is within scope of original contract. State can request exemption from prior approval if adequately described in the APD Update or As-Needed APD.
  - State must still submit justification for high-risk sole source procurements over \$1 million, but State procurement policies govern.

# Low Risk Operations and Maintenance Projects

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

# Impact on States: APDU

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- New Project – Same Implementation APD including Feasibility Study, Analysis of Alternatives, Cost Benefit Analysis, Cost allocation
- Enhanced Funded As-Needed APD Project Updates – raise submission threshold from \$100,000 to \$300,000 [Note: There is currently no authority to provide enhanced funding.]
- Regular Rate APD Project Updates
  - Cost Benefit Analysis – eliminate requirement for annual CBA updates

# Impact on States: Procurements

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- RFP Competitive – Can self-attest using the Checklist IM 05-03
- RFP Sole Source- If over \$1 million, need to provide justification. (Change – the state procurement laws and policies govern sole source justification)
- Contracts
  - Hardware – \$20 million
  - Software Development – \$6 million
  - Hybrid – use the lower threshold
  - Contract Amendments – don't need to submit for prior approval until exceeds 20% of base contract

# Independent Verification and Validation

- Require Independent Verification and Validation for high risk projects. Triggers include:
  - Are at risk of missing statutory deadlines;
  - Are at risk of failing to meet a critical milestone;
  - Indicate the need for a new project or total system redesign;
  - Develop systems under waivers;
  - At risk of failure, significant delay, or significant cost overrun;
  - Fail to adequately involve state program offices in development and implementation of system project.
  - States procurement policies put the project at risk

# Waiver of Any APD Requirement

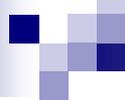
- Provide for ***Waiver process for any APD requirement*** : New to Part 95, but CSE has current regulatory authority
  - Must provide alternative approach that enables it to be in substantial compliance with other requirements.
  - Waiver and alternative approach can be all or portion of APD regulatory 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.



# Electronic Submissions

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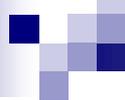
- Final rule eliminates most references to “in writing” to allow for electronic submissions and approvals in future
- Program offices at different readiness for accepting electronic submissions
  - Size limitations of firewall



# Electronic Submissions (con't)

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- ACF's email system will reject large files without notifying either party that the transmission was unsuccessful.
- Highlights the importance of receiving acknowledgement letter and/or email acknowledgement to make sure ACF has received your submission
- Experimenting with States access to posting submissions on Sharepoint (MA and AR)
- ACF street address for Federal Express, DHL and other courier mail is different from our mailing address



# Disallowance of FFP for Failed Projects

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- Provide authority to recoup regular rate funding.
- Current authority is limited to recouping difference between enhanced and regular rate FFP.

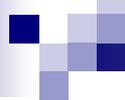
# Reconsideration of Denial of FFP Due to Lack of Submission

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

# New Definitions Added

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- 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 as Service Component Based Architecture



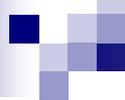
# Examples of high risk

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- Does it trigger an IV&V? (same as on slide 11)
  - New system development or total system redesign?
  - Under waiver?
  - Missed critical milestones?
  - Lack of program office involvement?
  - Late APD, schedule, cost overrun?
- Does it trigger an As-Needed APD?
- Regulatory thresholds indicate Federal assessment of high-low risk
  - Operations vs. development
  - Competitive vs. sole source procurements
  - Hardware and operational software vs. application software development

# Difference between M&O and development

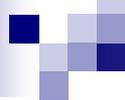
- Definition of Software maintenance in final rule
- DCL 03-16 Examples of significant application software changes in Close out guidance
- IM-06-03 Maintenance and Operations Phase



# Changes to APD Updates

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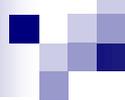
- Previously closed APD's will have to submit Annual Operational APD Updates
- No annual CBA or adjustments to cost and benefits
- New section for requesting Exemptions



# NPRM and Final Rule in Federal Register

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- March 7, 2008, Vol.73, No. 46  
pages 12341-12354
- Comments closed May 6, 2008
- Final Regulation published  
October 28, 2010 in Federal  
Register



# States with Closed APD's

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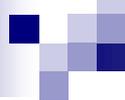
- Will have to submit an Operational APDU annually. A 1-2 page summary of activities, procurements and estimated FFP.
- Flexible on effective date- please work with your Federal program analyst
- Solicit your participation in workgroup to develop template.



# Annual APD

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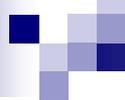
- New section on Acquisition summary (only needed if you are requesting exemption from prior approval for specified RFP and contracts)
- Eliminate the annual cost benefit analysis and Revenue Stream module



# Acquisitions

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- Federal programs will defer to state procurement standards
- Can request exemption from submitting for prior Federal approval if adequately described in APDU
- Must still comply with Federal laws (Davis Bacon, Clean Air and Water, Software Ownership Rights)



# Next steps

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- Workgroup to help develop the 1-2 page Operational APD
- Please review and comment on the DRAFT APD State Systems Guide – mistakes, what is missing, other charts or information that would be useful?
- Federal systems analysts will be contacting their assigned States and Territories to follow up on additional technical assistance