

provide that noncompetitive acquisitions of greater than \$5 million continue to be subject to the requirements of paragraph (b), which provides specific prior approval requirements.

The Department expects that justifications for sole source acquisitions of between \$1 million and \$5 million would address pertinent Federal and State requirements. For example, the justification should include a description of the proposed acquisition, the circumstances identified at 45 CFR part 74, Appendix G under which a grantee may undertake a noncompetitive acquisition, and assurances that the sole source acquisition meets the requirements of State laws, regulations and other relevant guidelines. Contracts which results from sole source acquisitions of greater than \$1 million are subject to prior approval in accordance with 45 CFR 95.611(b)(1)(iii).

We are also proposing to eliminate paragraph (a)(3), which provides a separate threshold amount for acquisitions in support of State Medicaid systems funded at the 75 percent FFP rate. The Health Care Financing Administration (HCFA) would apply the new thresholds of Title XIX funded projects and these rules would be described in an upcoming revision to Part 11 of the *State Medicaid Manual*. Additionally, we are proposing to modify paragraph (a)(2) to delete a reference to paragraph (a)(3) and to redesignate paragraphs (a)(4) through (a)(7) as paragraphs (a)(3) through (a)(6). We are also proposing to revise paragraph (a)(4), as redesignated, to change the reference from (a)(6) to (a)(5).

Paragraph (b)(1)(iii), which provides that unless specifically exempted by the Department, approval must be received prior to release of a Request for Proposal (RFP) or execution of a contract where costs are anticipated to exceed \$300,000, is proposed to be revised to increase the threshold to \$5 million with respect to competitive procurements and \$1 million for noncompetitive acquisitions from nongovernment sources. As proposed, this paragraph would provide that States may be required to submit RFPs and contracts under the threshold amounts on an exception basis or if the procurement strategy is not adequately described and justified.

With respect to contract amendments, we are proposing to revise 45 CFR 95.611(b)(1)(iv) is revised to provide that prior approval is needed, unless specifically exempted by the Department, prior to execution of a contract amendment involving cost

increases of greater than \$1 million or time extensions of more than 120 days. In addition, States would be required to submit for approval contract amendments under these threshold amounts on an exception basis or if the contract amendment was not adequately described and justified in the APD.

As indicated, with respect to both proposed changes to paragraph (b), HHS would retain the right to review and approve all RFPs, contracts, and contract amendments, regardless of dollar amount, on an exception basis. This could include instances where new program requirements or technology are involved, as in electronic benefits transfer, or when adequate description and justification has not been provided in the APD.

Paragraph (c)(1), which provides specific approval requirements with respect to regular FFP requests, is also proposed to be revised to provide increased thresholds. First, under (c)(1)(i), the \$1 million threshold with respect to the need for written approval from the Department of Annual Advanced Planning Document Updates (APDU) would be increased to \$5 million. In paragraph (c)(1)(ii)(A), the threshold with respect to the requirement for approval of an "as needed" APDU of projected cost increases would be raised from a lesser of \$300,000 or 10 percent of the project cost, to projected cost increases of \$1 million or more.

We are also proposing to revise 45 CFR 95.611 to provide prompt Federal action on State funding requests. Accordingly, paragraph (d) would be revised to provide that, if the Department has not provided written approval, disapproval, or a request for information within 60 days of issuing an acknowledgement of receipt of a State's request, the request would be provisionally deemed to have met the prior approval requirements.

Finally, we are proposing to amend 45 CFR 95.621(f)(6), which requires States to submit biennial security reports for Federal review and approval, to require that such reports be maintained by States for on-site review by HHS in the future.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. No costs are associated with this rule as it merely decreases reporting burden on States.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (Pub. L. 96-354), which requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities, the Secretary certifies that this rule has no significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

List of Subjects in 45 CFR Part 95

Claims, Computer technology, Grant programs—health, Grant programs, Social programs, Social Security.

(Catalog of Federal Domestic Assistance Program Numbers 93.645 Child Welfare Services-State Grants; 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.563, Child Support Enforcement Program; 93.174, Medical Assistance Program; 93.570, Assistant Payments-Maintenance Assistance)

Dated: November 29, 1994.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: March 30, 1995.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, 45 CFR is proposed to be amended as follows:

PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS (PUBLIC ASSISTANCE AND MEDICAL ASSISTANCE)

1. The authority citation for part 95, subpart F continues to read as follows:

Authority: Secs. 402(a)(5), 452(a)(1), 1102, and 1902(a)(4) of the Social Security Act, 42 U.S.C. 602(a)(5), 652(a)(1), 1302, 1396a(a)(4); 5 U.S.C. 301 and 8 U.S.C. 1521.

2. Section 95.611 is amended by revising paragraphs (a)(1), (a)(2), (b)(1)(iii), (b)(1)(iv), (c)(1)(i), (c)(1)(ii) (A) and (d) and by removing paragraph (a)(3) and redesignating paragraphs (a)(4) through (a)(7) as (a)(3) through (a)(6) and revising newly redesignated paragraphs (a)(3) and (a)(4) to read as follows:

§ 95.611 Prior approval conditions.

(a) * * * (1) A State shall obtain prior written approval from the Department as specified in paragraph (b) of this section, when the State plans to acquire APD equipment or services with proposed FFP at the regular matching rate that it anticipates will have total acquisition costs of \$5,000,000 or more in Federal and State funds.

(2) A State shall obtain prior written approval from the Department as specified in paragraph (b) of this