

enclosed by a curb a minimum of 6 inches high that extends at least 2 feet beyond the perimeter of the container.

25. Amend § 165.90 by revising paragraphs (a)(2), (b)(1), (b)(2), and (b)(3) to read as follows:

**§ 165.90 Operational, inspection and maintenance requirements for all new and existing containment structures.**

(a) \* \* \*

(2) Ensure that pesticide spills and leaks on or in any containment structure are collected and recovered in a manner that ensures protection of human health and the environment (including surface water and groundwater) and maximum practicable recovery of the pesticide spilled or leaked. Cleanup must occur no later than the end of the day on which pesticides have been spilled or leaked except in circumstances where a reasonable delay would significantly reduce the likelihood or severity of adverse effects to human health or the environment.

\* \* \* \* \*

(b) \* \* \*

(1) Inspect each stationary pesticide container and its appurtenances and each containment structure at least monthly during periods when pesticides are being stored or dispensed on the containment structure. Your inspection must look for visible signs of wetting, discoloration, blistering, bulging, corrosion, cracks or other signs of damage or leakage.

(2) Initiate repair to any areas showing visible signs of damage and seal any cracks and gaps in the containment structure or appurtenances with material compatible with the pesticide being stored or dispensed no later than the end of the day on which damage is noticed and complete repairs within a time frame that is reasonable, taking into account the availability of cleanup materials, trained staff, and equipment.

(3) Not store any additional pesticide on a containment structure if the structure fails to meet the requirements of this subpart until suitable repairs have been made.

26. Amend § 165.97 by revising paragraph (b)(1) to read as follows:

**§ 165.97 States with existing containment programs.**

\* \* \* \* \*

(b) \* \* \*

(1) The State must submit a letter and any supporting documentation to EPA. Supporting documentation must demonstrate that the State's program is providing environmental protection equivalent to or more protective than

that expected to be provided by the Federal regulations in this subpart.

\* \* \* \* \*

[FR Doc. E8-12843 Filed 6-10-08; 8:45 am]

BILLING CODE 6560-50-S

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of Child Support Enforcement**

**45 CFR Parts 309 and 310**

**RIN 0970-AC32**

**Computerized Tribal IV-D Systems and Office Automation**

**AGENCY:** Office of Child Support Enforcement (OCSE), Administration for Children and Families, Department of Health and Human Services (HHS).

**ACTION:** Notice of proposed rule making (NPRM).

**SUMMARY:** This proposed rule would enable Tribes and Tribal organizations currently operating a comprehensive Tribal Child Support Enforcement program under Title IV-D of the Social Security Act (the Act) to apply for and receive direct Federal funding for the costs of automated data processing. This proposed rule addresses the Secretary's commitment to provide instructions and guidance to Tribes and Tribal organizations on requirements for applying for, and upon approval, securing Federal Financial Participation (FFP) in the costs of installing, operating, maintaining, and enhancing automated data processing systems.

**DATES:** Consideration will be given to written comments received by August 11, 2008.

**ADDRESSES:** Written comments should be submitted to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447, Attention: Director, Division of Policy, Mail Stop: OCSE/DP.

A copy of this regulation may be downloaded from <http://www.regulations.gov>. You may also transmit written comments electronically via the Internet. To transmit comments electronically access <https://www.regulations.acf.hhs.gov> and follow the instructions provided. You may also submit comments by telefaxing to (202) 260-5980. This is not a toll-free number.

Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m. on the 4th floor of the

Department's offices at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Essey Workie, OCSE Division of Policy, (202) 401-9386. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. Eastern Time.

**SUPPLEMENTARY INFORMATION:**

**Statutory Authority**

This notice of proposed rulemaking is published under the authority granted to the Secretary (the Secretary) of the Department of Health and Human Services (the Department) by section 1102 of the Social Security Act (the Act), 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, which may be necessary for the efficient administration of the Title IV-D program.

This proposed rule also is published in accordance with section 455(f) of the Act. Section 455(f) of the Act requires the Secretary to issue regulations governing grants to Tribes and Tribal organizations operating child support enforcement programs.

**Background**

Prior to enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA; Pub. L. 104-193), Title IV-D of the Act placed authority to administer the delivery of IV-D services solely with States. PRWORA authorized the Secretary to provide direct funding to Tribes and Tribal organizations to operate child support enforcement programs under Title IV-D and to promulgate implementing regulations.

On August 21, 2000 the Tribal Child Support Enforcement Program notice of proposed rulemaking (NPRM) was published in the **Federal Register** (65 FR 50800). In 1998, the Federal Office of Child Support Enforcement (the Office) conducted a series of six Nation-to-Nation consultations with Indian Tribes, Tribal organizations and other interested parties with the goal of obtaining Tribal input prior to publishing the NPRM. The consultations were designed to solicit Tribal input prior to drafting the Federal regulations. The government-to-government consultations were very useful in identifying key issues and evaluating policy options. The issues raised most frequently included Tribal sovereignty, jurisdiction, full faith and credit, access to automated Federal locate and enforcement processes and

automated systems, paternity establishment and funding.

While the Office was familiar with the functionality contained in State systems and the degree of sophistication of those systems, it had no similar experience with the need for or availability of automation at the Tribal level. We received numerous comments on the NRPM indicating that automation was necessary and that without automation, it would be impossible for Tribes to accurately and efficiently process child support collections and that the costs for development of automated programs should be allowable for Federal Financial Participation (FFP) for Tribal IV-D programs. While we agree that automated data processing systems are helpful for recordkeeping, monitoring and high speed processing in child support enforcement cases, the final rule allows FFP only for limited automated systems and Office Automation expenditures. See 45 CFR 309.145(h). We stated in our response to comments to the final rule (65 FR at 16652) that we had begun consideration with stakeholders of appropriate minimum Tribal systems automation specifications in anticipation of Tribal IV-D programs moving toward high-speed automated data processing. A Federal/Tribal workgroup was convened and considered such automation issues as compatibility, scale, functionality and costs, with a goal of developing a Model Tribal System, designed by the Office to allow comprehensive Tribal IV-D agencies to effectively and efficiently automate Tribal child support enforcement operations.

This proposed rule sets forth requirements for comprehensive Tribal IV-D programs that must be met in order for Tribes and Tribal organizations to receive direct funding under section 455(f) of the Act for automated data processing systems.

#### Scope of Rulemaking

Current regulations at 45 CFR part 309 establish the requirements that Tribes and Tribal organizations must meet to demonstrate the capacity to operate a child support enforcement program which meets the objectives of section 455(f) of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents.

We propose to amend the Federal child support regulations at 45 CFR Part 310, Comprehensive Tribal Child Support Enforcement (CSE) Programs which are obsolete, to address Computerized Tribal IV-D Systems and Office Automation. As proposed, 45

CFR Part 310 would establish a basic regulatory structure for installation, operation, maintenance, and enhancement of Computerized Tribal IV-D Systems and Office Automation. This NPRM also proposes to revise § 309.145(h) which governs allowable costs for automated data processing computer systems and Office Automation associated with the Tribal IV-D program. This NPRM applies only to Tribes and Tribal organizations that operate comprehensive CSE programs under § 309.65(a); this NPRM does not apply to Tribal CSE programs that are currently in the start-up phase of development.

#### Discussion of Regulatory Provisions

The following is a discussion of all the regulatory provisions included in this NPRM. The discussion follows the order of regulatory text, addressing each subpart and section in turn.

##### *Part 309—Tribal Child Support Enforcement (IV-D) Program*

Section 309.145 What costs are allowable for Tribal IV-D programs carried out under § 309.65(a) of this Part?

Currently, § 309.145(h) addresses authorized, limited costs related to Tribal IV-D programs' automation. We propose to amend § 309.145(h) to expand allowable activities and costs incurred by comprehensive Tribal IV-D programs to include the installation, operation, maintenance and enhancement of Model Tribal Systems and Office Automation.

Proposed paragraph (h)(1) is almost identical to the language in current paragraph (h)(1) under which Federal funding at the applicable matching rate under § 309.130(c) is available for the costs of planning efforts in the identification, evaluation, and selection of an automated data processing computer system solution meeting the program requirements defined in a Tribal IV-D plan and the automated systems requirements in Part 310. The applicable matching rate as defined in § 309.130(c) would be ninety percent for comprehensive Tribal IV-D programs that are operating within the first three-year period of Federal funding; the applicable matching rate for comprehensive Tribal IV-D programs operating in all periods following the first three-year period would be eighty percent.) We have only added a reference to the proposed Part 310 which addresses automated systems requirements.

Paragraph (h)(2) would allow FFP for costs of installation, operation,

maintenance, and enhancement of a Model Tribal System as defined in and meeting the requirements of Part 310. The Model Tribal System was developed by the Office in collaboration with comprehensive Tribal IV-D programs to encompass those aspects of the Tribal child support program administration and case processing for which automation is deemed to be essential. Paragraph (h)(2) would authorize FFP for costs related to Model Systems installed by Tribal IV-D systems. Current paragraph (h) does not address funding for costs associated with the Model Tribal System. We discuss the Model Tribal System concept and requirements in detail under the explanation of Part 310. The decision to develop a Model Tribal System was based on the need for a cost-effective, efficient means of delivering automation to greatest number of Tribal IV-D programs in the most timely manner possible.

Proposed paragraph (h)(3) is identical to current paragraph (h)(3) under which FFP is available for the costs associated with procurement, installation, operation and maintenance of essential Office Automation capability.

Paragraph (h)(4) is almost identical to the current paragraph (h)(4) except for the addition of reference to Reasonable Costs at the end of the paragraph. The term Reasonable Cost is addressed later in this preamble and would mean a cost that, in nature and amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. Therefore, under proposed paragraph (h)(4), FFP would be available for costs associated with the establishment of Intergovernmental Service Agreements with a State and another comprehensive Tribal IV-D agency for access to the State or other Tribe's existing automated data processing computer system to support Tribal IV-D program operations, and Reasonable Costs associated with use of such a system. The decision provides Tribal IV-D programs greater flexibility in their acquisition of automation to support their administrative and case processing requirements.

We have added a new paragraph (h)(5) that would allow FFP in the costs of operation and maintenance of an existing Tribal automated data processing system designed, developed, installed or enhanced entirely with Tribal funds if the software ownership rights and license requirements in proposed § 310.25(c) are met. As proposed under Part 310, comprehensive Tribal IV-D programs

are free to develop automated systems entirely funded by the Tribe. Under proposed paragraph (h)(5), we would allow FFP for operation and maintenance costs of such systems under one condition: The Tribe or Tribal organization must have the software ownership rights and must meet license requirements in proposed § 310.25(c). This condition is necessary because proprietary software, when purchased from vendors, typically remains the sole possession of the vendor. Any modifications or upgrades that are necessitated by changes in regulation or statute would require a financial outlay if the program were only leasing the software. It is important that a Tribal IV-D program be in a position to make changes to software without the need for going through a vendor, and that any such software, funded in whole or part with FFP, be freely available to the Federal government to use and authorize others to use for government purposes.

Existing paragraph (h)(5) would be renumbered (h)(6) and FFP would continue to be authorized for the costs of other automation and automated data processing computer system costs in accordance with instructions and guidance issued by the Secretary.

#### *Part 310—Computerized Tribal IV-D Systems and Office Automation*

The proposed regulation revises Part 310 to address the specific requirements for comprehensive Tribal IV-D program automated systems. The Part begins with a Table of Contents and consists of the following subparts:

- Subpart A—General Provisions
- Subpart B—Requirements for Computerized Tribal IV-D Systems and Office Automation
- Subpart C—Funding for Computerized Tribal IV-D Systems and Office Automation
- Subpart D—Accountability and Monitoring of Computerized Tribal IV-D Systems

##### *Subpart A—General Provisions*

Section 310.0 What does this Part cover?

This section summarizes the conditions for Federal funding of and requirements governing Computerized Tribal IV-D Systems and Office Automation. These include the automated systems options for comprehensive Tribal IV-D programs; the functional requirements for the Model Tribal Systems; the security and privacy requirements for Computerized Tribal IV-D Systems and Office Automation; the conditions for funding

the installation, operation, maintenance, and enhancement of Computerized Tribal IV-D Systems and Office Automation; the conditions that apply to acquisitions of Computerized Tribal IV-D Systems; and the accountability and monitoring of Computerized Tribal IV-D Systems.

Section 310.1 What definitions apply to this Part?

Paragraph (a) of this section of the proposed rule includes definitions of terms used in Part 310. In drafting this section, we have defined those terms used in the proposed rule that must be understood consistently by all who use these rules.

The first definition in this proposed rule is *Automated Data Processing Services (ADP Services)* which means services for installation, maintenance, operation, and enhancement of ADP equipment and software performed by a comprehensive Tribal IV-D agency or for that agency through a Service Agreement or other contractual relationship with a State, another Tribe or private sector entity. This definition is derived from 45 CFR 95.605 where requirements for FFP in the costs of Automatic Data Processing Equipment and services are addressed. The definition for the term *ADP Services* is essential to the proposed Part 310 because it modifies the definition provided in 45 CFR 95.605 to include comprehensive Tribal IV-D programs as eligible to perform or receive such *ADP services*.

*Comprehensive Tribal IV-D agency* is the second definition in the proposed rule. *Comprehensive Tribal IV-D agency* means the organizational unit in the Tribe or Tribal organization that has the authority for administering or supervising a comprehensive Tribal IV-D program under section 455(f) of the Act and implementing regulations in Part 309. This is an agency meeting all requirements of § 309.65(a) which is not in the start-up phase under § 309.65(b). This definition is derived from § 309.05 which provides definitions relating to the Tribal Child Support Enforcement program, such as the phrase *Tribal IV-D agency*. The term *Comprehensive* was added to the phrase *Tribal IV-D agency* to further define those Tribal IV-D agencies that operate a IV-D program that meets all the requirements in § 309.65(a). The development of automated systems is not an authorized activity for start-up grantees.

*Computerized Tribal IV-D System*, the third definition in this proposed rule, means a comprehensive Tribal IV-D program's system of data processing that is performed by electronic or electrical

machines so interconnected and interacting as to minimize the need for human assistance or intervention. A Computerized Tribal IV-D System would be:

- (i) The Model Tribal System; or
- (ii) Access to and use of a State or another comprehensive Tribal IV-D agency's existing automated data processing computer system through an Intergovernmental Service Agreement, as allowable under this proposed rule.

By definition, the term *Computerized Tribal IV-D System* would be limited to the above two system designs and would not include any alternative system of Automatic Data Processing. We determined that the term *Computerized Tribal IV-D System* would include only the Model Tribal System or access to an existing IV-D automated data processing computer system based on historical experience with the high cost and complexity of the development of multiple State systems and the challenges that emerge from operating systems with divergent designs.

The Model Tribal System, defined and discussed later in this preamble, was designed to meet the expressed needs of comprehensive Tribal IV-D agencies in the most effective and cost efficient manner. In developing the Model Tribal System, the Office consulted with comprehensive Tribal IV-D agencies and other governmental stakeholders to determine appropriate minimum systems specifications that would facilitate high-speed automated data processing capabilities in comprehensive Tribal IV-D operations. The Model Tribal System is the basis for a computerized Tribal automated data processing system, but comprehensive Tribal IV-D agencies may enhance the Model Tribal System to meet program-specific needs. Enhancement of the Model Tribal System is discussed later in this preamble.

Since some comprehensive Tribal IV-D programs have been successfully using State systems, the definition of *Computerized Tribal IV-D Systems* would include access to an automated data processing computer system through an Intergovernmental Service Agreement with a State or another comprehensive Tribal IV-D agency. Comprehensive Tribal IV-D agencies that have been successfully using a State system may continue to do so under an Intergovernmental Service Agreement. Tribal IV-D agencies that have never used another State or comprehensive Tribal IV-D agency's system may enter into an Intergovernmental Service Agreement authorizing access to that State or comprehensive Tribal IV-D

agency's automated data processing system.

The fourth definition in this proposed rule is *Installation*, which means the act of putting into service ADP equipment and software, performing data conversion, conducting training, and turnover to operation status. This definition is derived from 45 CFR 95.605, which addresses the requirements for FFP in the costs of Automatic Data Processing Equipment and services, and has been revised to be applicable to this proposed rule. This definition of *Installation* is relevant because of the need to further clarify those activities, as described herein, that encompass *installation* for purposes of this regulation.

The fifth definition in this proposed rule is *Maintenance*, which means the totality of activities required to provide cost-effective support to an operational ADP system. Maintenance is generally routine in nature and can include activities such as: Upgrading ADP hardware, revising/creating new reports, making limited data element/database changes, minor data presentation changes, and other software corrections. Because maintenance is an allowable cost, the definition is necessary. This definition is derived from and is consistent with policy guidance provided by the Office to States in Action Transmittal 06-03, which is dated August 11, 2006, and entitled *Policy Clarifications Relating to Planning, Design, Development, Installation, and Operation of Automated Systems in the Title IV-D Child Support Enforcement Program* (available at <http://www.acf.hhs.gov/programs/cse/pol/AT/2006/at-06-03.htm>).

*Model Tribal System*, the sixth definition in this proposed rule, means an ADP system designed and developed by the Office for comprehensive Tribal IV-D programs, to include system specifications and requirements as specified in Part 310. The Model Tribal System effectively and efficiently allows a comprehensive Tribal IV-D agency to monitor, account for, and control all child support enforcement services and activities pursuant to Part 309. This definition is derived from stakeholder input solicited by the Office on the matter of systems configuration for comprehensive Tribal IV-D programs.

*Office Automation*, which is the seventh definition in this proposed rule, means a generic adjunct component of a computer system that supports the routine administrative functions in an organization (e.g., electronic mail, word processing, Internet access), as well as similar functions performed as part of

an automated data processing system. Office Automation is not specifically designed to meet the programmatic and business needs of an organization. The term *Office Automation* is an industry-standard nomenclature, and though Office Automation is similar to an automated data processing system, in that it contains multiple components (e.g., operating system software, hardware, and networking), it is not an ADP system. This definition of *Office Automation* is taken from OCSE Action Transmittal 05-02, *Systems and Financial Policy Questions and Responses to Miscellaneous Issues regarding Provision of 45 CFR Part 309, the Tribal Child Support Enforcement Program Final Rule* (available at <http://www.acf.hhs.gov/programs/cse/pol/AT/2005/at-05-02.htm>).

*Reasonable Cost*, the eighth definition in this proposed rule, means a cost that, in nature and amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness with regard to ADP systems cost, consideration would be given to:

- (i) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of a comprehensive Tribal IV-D agency;
- (ii) The restraints or requirements imposed by such factors as: sound business practices; arms-length bargaining; Federal and Tribal laws and regulations; and terms and conditions of any direct federal funding;
- (iii) Whether the individual concerned acted with prudence in the circumstances considering his or her responsibilities to the comprehensive Tribal IV-D agency, its employees, the public at large, and the Federal Government;
- (iv) Market prices for comparable goods or services;
- (v) Significant deviations from the established practices of the comprehensive Tribal IV-D agency which may unjustifiably increase the cost; and
- (vi) Whether a project's Total Acquisition Cost as defined in § 95.605 is in excess of the comprehensive Tribal IV-D agency's total Tribal IV-D program grant award for the year in which the request is made.

The Office has a fiduciary responsibility to ensure that the costs associated with Computerized Tribal IV-D Systems are reasonable and necessary. This definition of Reasonable Cost is derived from OMB Circular A-87 and the Office's historical analysis and experience with automation efforts

in State IV-D programs. That analysis and experience recognizes that installation of either of the two options eligible for FFP that are available to Tribes under these regulations, namely the use of the Model Tribal System or the use of another State or Tribal IV-D agency's existing automated data processing computer system through an Intergovernmental Service Agreement, should not reasonably exceed a comprehensive Tribal IV-D agency's total Tribal IV-D program grant award for the year in which the request is made.

The ninth definition of this proposed rule is *Service Agreement*, which means a document signed by the Tribe or Tribal organization operating a comprehensive Tribal IV-D program under § 309.65(a) and the State or other comprehensive Tribal IV-D program whenever the latter provides data processing services to the former and identifies those ADP services that the State or other comprehensive Tribal IV-D program will provide to the Tribe or Tribal organization. Additionally, a Service Agreement as defined in this proposed rule would include the following details:

- Schedule of charges for each identified ADP service and a certification that these charges apply equally to all users;
- Description of the method(s) of accounting for the services rendered under the agreement and computing services charges;
- Assurances that services provided will be timely and satisfactory;
- Assurances that information in the computer system as well as access, use and disposal of ADP data will be safeguarded in accordance with proposed § 310.15;
- Beginning and ending dates of the period of time covered by the Service Agreement; and
- Schedule of expected total charges for the period of the Service Agreement.

This definition is taken from 45 CFR 95.605 and is revised to specifically apply to the needs of comprehensive Tribal IV-D programs. The definition of a *Service Agreement* is a critical component of this proposed rule, as it represents one of the two options for a Computerized Tribal IV-D System.

The tenth definition of this proposed rule is *Simplified Acquisition Threshold*, which for ADP systems, equipment, and service acquisitions means a Tribe or Tribal organization's monetary threshold for determining whether competitive acquisition rules are required for a given procurement or \$100,000, whichever is less. The term *Simplified Acquisition Threshold* is

used in 45 CFR 92.36(d), which references *small purchase procedures* as a procurement method for securing items of cost not exceeding the Simplified Acquisition Threshold fixed at 41 U.S.C. 403(11) (currently \$100,000). This is appropriately adapted for this rule because of the need to ensure full and open competition in acquisitions in accordance with 45 CFR 92.36(c), and to ensure consistency with regulations at 45 CFR 95.611(b) governing State ADP acquisitions funded at enhanced FFP rates of reimbursement.

Under proposed paragraph (b) of § 310.1, the following terms apply to Part 310 and are defined in 45 CFR 95.605: Acquisition; Advanced Planning Document (APD); Automatic Data Processing (ADP); Design or System Design; Development; Enhancement; Federal Financial Participation (FFP); Operation; Project; Software; and Total Acquisition Cost. Not all sections of Part 95 are applicable to Tribal IV-D programs. These terms are the terms in Part 95 that are appropriately applicable to Tribal IV-D programs. The above terms are relevant to the content of this proposed rule because in applying these definitions from 45 CFR 95.605, a reasonably consistent approach will be maintained among State, Local and Tribal grantees with regard to ADP systems acquisitions, while still maintaining flexibility for Tribes and Tribal organizations to determine their own best solution to automating their comprehensive Tribal IV-D program. We intend to issue a technical assistance document that contains all relevant systems requirements and definitions to ensure Tribal programs have in one document all relevant definitions.

Paragraph (c) of § 310.1 of the proposed rule cross-references all definitions of terms that apply to Tribal IV-D programs as detailed in § 309.05 because these terms are also applicable in Part 310. These definitions would also be included in our technical assistance document as mentioned above.

#### *Subpart B—Requirements for Computerized Tribal IV-D Systems and Office Automation*

**Section 310.5** What options are available for Computerized Tribal IV-D Systems and Office Automation?

This section of the proposed rule sets forth options available to comprehensive Tribal IV-D agencies for the purpose of automating Tribal IV-D activities. We recognize the importance and benefits of integrating automation

in the daily operations of comprehensive Tribal IV-D programs. To that end, proposed paragraph (a) of this section allows a comprehensive Tribal IV-D agency to have in effect an operational computerized support enforcement system that meets Federal requirements under Part 310.

Paragraph (b) of this section proposes that a Computerized Tribal IV-D System must be one of the design options discussed below. Under paragraph (b)(1), a comprehensive Tribal IV-D program may automate its case processing and record-keeping processes through installation, operation, maintenance, or enhancement of the Model Tribal System designed by the Office to address the program requirements defined in a Tribal IV-D plan in accordance with § 309.65(a) and the functional requirements in proposed § 310.10. As discussed earlier in the preamble, we propose automation of comprehensive Tribal IV-D activities through the Model Tribal System based on recommendations of a workgroup consisting of Federal and Tribal program representatives that considered factors such as scale, functionality, cost, and compatibility with State systems, in the development of the Model Tribal System. Participants in the various meetings included representatives from each of the nine comprehensive Tribal IV-D agencies. The system specifications and minimum essential functions of the Model Tribal System correspond with the feedback we received from comprehensive Tribal IV-D programs and other governmental stakeholders.

Under paragraph (b)(2), we propose that a comprehensive Tribal IV-D program may elect to automate its case processing and record-keeping processes through the establishment of Intergovernmental Service Agreements with a State or another comprehensive Tribal IV-D agency for access to that agency's existing automated data processing computer system to support comprehensive Tribal IV-D program operations.

A Computerized Tribal IV-D System implemented under a Service Agreement as defined in proposed § 310.1 would be in line with the existing allowable activities permitted in § 309.145(h)(4). We recognize that some comprehensive Tribal IV-D programs have been successfully using State systems prior to this proposed rule and we consider it important to allow continuation of those efforts, as well as establishment of similar Intergovernmental Service Agreements by comprehensive Tribal IV-D programs

that do not currently access another State or comprehensive Tribal IV-D agency's existing automated data processing computer system. In addition, this option of automating comprehensive Tribal IV-D activities through the establishment of Intergovernmental agreements provides for the flexibility recommended by workgroup participants.

In proposed paragraph (c) of this section, a comprehensive Tribal IV-D agency may opt to conduct automated data processing and recordkeeping activities through Office Automation. Allowable activities under this section include procurement, installation, operation and maintenance of essential Office Automation capability as defined in § 310.1. We deem it important to offer Office Automation as an alternative or in addition to Computerized Tribal IV-D Systems, as defined in paragraph (b) above, to ensure that comprehensive Tribal IV-D programs have the flexibility to operate at the level of automation that best suits their particular needs. Office Automation may include the word processing capabilities needed to produce summonses and petitions. Office Automation may also describe the creation of certain reports or accounting spreadsheets that serve to streamline an otherwise wholly manual business function through the use of macros to merge data and text into a usable management productivity tool. Office Automation components may include some or all of the following elements: Personal computers and workstations; networking and application servers; telecommunications and network wiring to connect the computers in a unified network environment; Network Operating System (NOS) and workstation and personal computer operating system software, such as Microsoft Windows XP® or Red Hat Linux®; office productivity software, such as Microsoft Office®, Microsoft Project® or WordPerfect®; and electronic mail and Internet access services, such as T-1, DSL, or 56K dial-up (e.g., AOL® and EarthLink®).

In full recognition of Tribal sovereignty, proposed paragraph (d) of § 310.5 affirms that a comprehensive Tribal IV-D agency may design, develop, procure, or enhance an automated data processing system funded entirely with Tribal funds. An automated data processing system funded entirely with Tribal funds would not be obligated to meet the requirements detailed in this proposed rule, although a comprehensive Tribal IV-D agency may determine to adopt all or some of the system specifications

laid-out in this proposed rule in order to facilitate as much consistency in State and comprehensive Tribal IV–D automated data processing systems as possible.

**Section 310.10** What are the functional requirements for the Model Tribal IV–D system?

In this proposed section, we identify the minimum functional requirements which a comprehensive Tribal IV–D agency must meet in the operation of a Model Tribal IV–D System. Comprehensive Tribal IV–D agencies that have elected to automate case processing and record-keeping activities through a manner other than the Model Tribal System, as defined in § 310.1 of this Part, would not be subject to the requirements presented in this section of the proposed rule.

The system requirements discussed in this proposed section are based on the functional requirements for computerized support enforcement systems regulated in §§ 307.10 and 307.11 for State IV–D programs. Determination of which proposed functional requirements should be mandatory in a Model Tribal IV–D system is based on careful examination of State automated systems, Tribal IV–D program regulations, and cost-effectiveness analyses, as well as strong consideration of which comprehensive Tribal IV–D activities would benefit most from automation, given the varying sizes of eligible Tribes and Tribal organizations. Additionally, the proposed functional requirements specified in this section reflect deference for Tribal Sovereignty.

Paragraph (a) of § 310.10 proposes that a Model Tribal IV–D system must accept, maintain and process the actions in the child support collection and paternity determination processes under the Tribal IV–D plan, including the following:

- (1) *Identifying information* such as Social Security numbers, names, dates of birth, home addresses and mailing addresses (including postal zip codes) on individuals against whom paternity and support obligations are sought to be established or enforced and on individuals to whom support obligations are owed, and other data as required by the Office;
- (2) *Verifying information* on individuals referred to in § 310.10(a)(1) with Tribal, Federal, State and local agencies, both intra-tribal and intergovernmental;
- (3) *Maintaining information* pertaining to applications and referrals for Tribal IV–D services (including case records, referrals to the appropriate

processing unit such as locate or paternity establishment units, caseworker notifications, Case Identification Numbers; and Participant Identification Numbers), delinquency and enforcement activities, intra-tribal, intergovernmental, and Federal location of the putative father and noncustodial parents, the establishment of paternity, the establishment of support obligations, and the payment and status of current support obligations and arrearage accounts; and

- (4) *Maintaining data* on case actions administered by both the initiating and responding jurisdictions in intergovernmental cases.

The actions described above are essential elements of automated case processing which are necessary to meet the fundamental objectives of the Tribal Child Support Enforcement program, including establishing paternity, establishing and enforcing support orders, and collecting child support payments.

Under paragraph (b), we propose that a Model Tribal IV–D system must update, maintain and manage all IV–D cases under the Tribal IV–D plan from initial application or referral through collection and enforcement including any events, transactions, or actions taken therein. This requirement is especially critical in relation to proposed Subpart D, § 310.40 which addresses accountability and monitoring procedures for Computerized Tribal IV–D Systems.

We propose under paragraph (c) of this section to require a Model Tribal IV–D system to record and report any fees collected, either directly or by interfacing with State or Tribal financial management and expenditure information. The Model Tribal IV–D system, as proposed in this section, must have the capacity to record and report costs of any fees collected to help ensure accurate and complete accounting of expenditures under a Tribal IV–D program that are funded in part with Federal funds.

Proposed paragraph (d) of this section requires that a Model Tribal IV–D system must have minimum system specifications which allow for the distribution of current support and arrearage collections in accordance with Federal regulations at § 309.115 and Tribal laws. We consider distribution of collected child support payments to be one of the comprehensive Tribal IV–D activities that would benefit most from automation. Automated distribution of collections would ensure families receive the support owed to them and minimize the need for manual processing of child support payments,

which can be a time-consuming and burdensome task for comprehensive Tribal IV–D programs. Additionally, automated distribution of collections would facilitate more efficient and cost-effective communications in intra-tribal and intergovernmental case processing.

In paragraph (e)(1) we propose that the Model Tribal IV–D system must maintain, process and monitor accounts receivable on all amounts owed, collected, and distributed with regard to detailed payment histories that include the amount of each payment, date of each collection, method of payment, distribution of payments and date of each disbursement. Under proposed paragraph (e)(2), the Model Tribal IV–D system must have the capacity to perform automated income withholding activities such as recording and maintaining any date the noncustodial parent defaults on payment of the support obligation in an amount equal to the support payable for one month, generating the Standard Federal Income Withholding Form and allocating amounts received by income withholding according to §§ 309.110 and 309.115, which respectively cover procedures governing income withholding and distribution of child support collections as specified in each Tribal IV–D plan. These proposed functional requirements would provide comprehensive Tribal IV–D agencies with an accurate and complete record of all accounts receivable and income withholding activities concerning amounts owed, collected, and distributed in connection with child support payments.

Proposed paragraph (f) of § 310.10 requires that a Model Tribal IV–D system maintain and automatically generate data necessary to meet Federal reporting requirements on a timely basis as prescribed by the Office. At a minimum this would include (1) yearly notices on support collected, which are itemized by month of collection and provided to families receiving services under the comprehensive Tribal IV–D program as required in § 309.75(c), to all case participants regarding support collections; and (2) reports submitted to the Office for program monitoring and program performance as required in § 309.170. Without the proposed Model Tribal IV–D system, comprehensive Tribal IV–D agencies would rely on manual systems or Office Automation to manage the Federal reporting requirements and payment records which require meticulous attention to detail. Reliance on manual accounting systems risks human error that can harm families and jeopardize Federal funding. This proposed functional requirement is

in response to comments reported in the Final Rule of the Tribal Child Support Enforcement Program published on March 30, 2004 (69 FR 16638), which indicated that Tribes and Tribal organizations would benefit from a sophisticated computer system to track individual accounts and provide required notices of child support collections to families served by the IV-D program.

Under paragraph (g) of this section, we propose that a Model Tribal IV-D system be required to provide automated processes to enable the Office to monitor Tribal IV-D program operations and to assess program performance through the audit of financial and statistical data maintained by the system. This requirement is especially critical in relation to proposed Subpart D, § 310.40 which addresses accountability and monitoring procedures for Computerized Tribal IV-D Systems.

In proposed paragraph (h) of this section, the Model Tribal IV-D system must provide security to prevent unauthorized access to, or use of, the data in the system as detailed in proposed § 310.15 discussed below. This requirement is necessary because comprehensive Tribal IV-D agencies may receive sensitive, personal information from Federal, State, or Tribal locate sources in inter-governmental cases or from parents seeking the Tribal IV-D program's assistance in securing support for children. In the current age of identity theft, electronic record keeping and concerns for personal privacy, Federal, State and Tribal programs are entrusted with personal information critical to accomplish the goals of those programs. It is imperative that governments safeguard personal data to ensure privacy and maintain the public trust. For the aforementioned reasons, the Model Tribal System must meet security and privacy requirements set forth in § 310.15. We also would emphasize that no Federal Tribal IV-D program requirement obligates comprehensive Tribal IV-D agencies to disclose, or otherwise make accessible, their Tribal enrollment records for the purposes of providing child support enforcement services or automating child support enforcement activities.

**Section 310.15** What are the safeguards and processes that comprehensive Tribal IV-D agencies must have in place to ensure the security and privacy of Computerized Tribal IV-D Systems and Office Automation?

This proposed section details the safeguarding requirements that a comprehensive Tribal IV-D agency, which is using a Computerized Tribal IV-D System or Office Automation, must have in place to ensure the security and confidentiality of information accessible through Federal, State, and Tribal sources. This section is taken from § 307.13 which addresses security and confidentiality for State computerized support enforcement systems and is revised to apply to automation for comprehensive Tribal IV-D programs.

Under paragraph (a) of this section, the comprehensive Tribal IV-D agency must safeguard the integrity, accuracy, completeness, access to, and use of data in the Computerized Tribal IV-D System and Office Automation. The Tribal IV-D agency should ensure that the Computerized Tribal IV-D Systems and Office Automation comply with the requirements of the Federal Information Security Management Act and the Privacy Act. These safeguards must include written policies and procedures concerning (1) periodic evaluations of the system for risk of security and privacy breaches; (2) procedures to allow Tribal IV-D personnel controlled access and use of IV-D data (including (i) specifying the data which may be used for particular IV-D program purposes and the personnel permitted access to such data as well as (ii) permitting access to and use of data for the purpose of exchanging information with State and Tribal agencies administering programs under titles IV-A, IV-E and XIX of the Act to the extent necessary to carry out the comprehensive Tribal IV-D agency's responsibilities with respect to such programs); (3) maintenance and control of application software program data; (4) mechanisms to back-up and otherwise protect hardware, software, documents, and other communications; and (5) mechanisms to report (to the Department of Homeland Security) and respond to breaches of personally identifiable information. We recognize the child support enforcement community has a duty to protect the information accessible through IV-D resources. Consequently, we deem the above safeguards to be invaluable strategies in ensuring the security of Computerized Tribal IV-D Systems,

Office Automation, the IV-D program as a whole and the personal data concerning the individuals we serve.

Paragraph (b) of this proposed section requires that the comprehensive Tribal IV-D agency monitor routine access to and use of the Computerized Tribal IV-D System and Office Automation through methods such as audit trails and feedback mechanisms to guard against, and promptly identify unauthorized access or use. This proposed safeguard is consistent with the security and privacy measures required in the State computerized support enforcement systems found in § 307.13 and is an appropriate aspect of information security.

We propose in paragraph (c) of this section that the comprehensive Tribal IV-D agency have procedures to ensure that all personnel, including Tribal IV-D staff and contractors, who may have access to or be required to use confidential program data in the Computerized Tribal IV-D System and Office Automation are adequately trained in security procedures. This proposed safeguard is consistent with the security and privacy measures required in the State computerized support enforcement systems in § 307.13 and is equally critical to Tribal automated systems. Staff members and contractors of comprehensive Tribal IV-D agencies using the Computerized Tribal IV-D System or Office Automation should demonstrate knowledge of strategies that would ensure the security and privacy of sensitive information to meet their responsibility to provide services and store information in the automated systems or Office Automation.

In paragraph (d) of this section, we propose that the comprehensive Tribal IV-D agency have administrative penalties, including dismissal from employment, for unauthorized access to, disclosure or use of confidential information. This aspect of the security and privacy safeguarding requirements reflects our position that security and privacy of child support enforcement-related information is paramount to the integrity of the system and as such must include administrative sanctions.

#### *Subpart C—Funding for Computerized Tribal IV-D Systems and Office Automation*

**Section 310.20** What are the conditions for funding the installation, operation, maintenance and enhancement of Computerized Tribal IV-D Systems and Office Automation?

This section of the proposed rule would establish conditions that must be



met in order for a comprehensive Tribal IV-D agency to obtain Federal funding in the costs of installation, operation, maintenance and enhancement of Computerized Tribal IV-D Systems and Office Automation. This section is derived from §§ 307.15 and 307.20, governing State automated systems, and is appropriately revised to specifically apply to the needs of comprehensive Tribal IV-D programs. Sections 307.15 and 307.20, respectively, address conditions for approval of Advance Planning Documents (APD) and submittal of APDs for State computerized support enforcement systems. Proposed § 310.20 addresses procedures for submittal of an APD to the Department. The Office uses the APD process to help meet its fiduciary responsibility to ensure that the costs associated with all ADP systems acquisitions, including Computerized Tribal IV-D Systems, are reasonable and necessary. Just as the Office requires States to request funding in an APD for acquisition of a computerized child support enforcement system, documenting such factors as project cost, risk, resources, and schedule, those same factors equally apply to the Office's review and approval of the installation, operation, maintenance and enhancement of Computerized Tribal IV-D Systems. For this reason, the APD process is incorporated to this proposed rule as applicable and necessary to acquisitions of such systems in comprehensive Tribal IV-D programs.

The proposed content of paragraph (a) provides instructions for preparing an APD, streamlines the APD application process, and distinguishes between activities that require an APD submission and those that only require submission of annual budgets in accordance with § 309.15(c). Proposed paragraph (a) lays out conditions that must be met for FFP in the costs of installation, operation, maintenance, and enhancement of a Computerized Tribal IV-D System at the applicable matching rate under § 309.130(c). (The applicable matching rate as defined in § 309.130(c) refers to the total amount of approved and allowable expenditures for which a comprehensive Tribal IV-D program would be eligible to receive Federal grant funds in the costs of administering the Tribal IV-D program, including Computerized Tribal IV-D Systems and Office Automation. The applicable matching rate would be ninety percent for comprehensive Tribal IV-D programs that are operating within the first three-year period of Federal funding; the applicable matching rate for comprehensive Tribal IV-D

programs operating in all periods following the first three-year period would be eighty percent.)

Paragraph (a)(1) would state that a comprehensive Tribal IV-D agency must have submitted, and the Office must have approved, an APD for the installation and enhancement of a Computerized Tribal IV-D System. Under paragraph (a)(2), an APD for installation of a Computerized Tribal IV-D System must (i) represent the sole systems effort being undertaken by the comprehensive Tribal IV-D agency under part 310; (ii) describe the projected resource requirements for staff, hardware, software, network connections and other needs and the resources available or expected to be available to meet the requirements; (iii) contain a proposed schedule of project milestones with detail sufficient to describe the tasks, activities, and complexity of the initial implementation project; (iv) contain a proposed budget including a description of expenditures by category and amount for items related to installing, operating, maintaining, and enhancing the Computerized Tribal IV-D System that are eligible for Federal funding at the applicable matching rate under § 309.130(c); and (v) contain a statement that the comprehensive Tribal IV-D agency agrees in writing to use the Computerized Tribal IV-D System for a minimum period of time. This last requirement, to agree in writing to use the Computerized Tribal IV-D System for a minimum period of time, is derived from 45 CFR 95.619. Under § 95.619, ADP systems designed, developed, or installed with FFP shall be used for a period of time specified in the advance planning document, unless the Department determines that a shorter period is justified. The requirement for the APD to contain an agreement by a Tribal IV-D program to use the Computerized Tribal IV-D System for a minimum period of time assures both the Federal and Tribal governments of a reasonable return on investment relative to the Total Acquisition Cost of the Computerized Tribal IV-D System.

In addition to the above requirements, proposed paragraph (a)(3) includes the following conditions which must be met to obtain FFP in the installation costs of access to a State or another comprehensive Tribal IV-D program's ADP system established under an Intergovernmental Service Agreement: The comprehensive Tribal IV-D agency must (i) maintain a copy of each intergovernmental cooperative agreement and Service Agreement in its files for Federal review. Under

subparagraph (ii), the comprehensive Tribal IV-D agency must ensure that (A) the Service Agreement for which FFP is being sought meets the definition of a Service Agreement as defined in proposed § 310.1; (B) claims for FFP conform to the timely claim provisions of 45 CFR Part 95, Subpart A; and (C) the Service Agreement was not previously disapproved by the Department. In deriving from 45 CFR Part 95 Subpart A the requirements to be met to obtain FFP in the cost of access to another State or Tribal IV-D program's ADP system, we are ensuring a common understanding and consistency of approach to securing, documenting and maintaining FFP approval of such intergovernmental cooperative agreements. In addition to the requirements proposed above, under paragraph (a)(4), the following conditions must be met in order for a comprehensive Tribal IV-D agency to obtain FFP in the costs of enhancements to its Computerized Tribal IV-D System: (i) The project's Total Acquisition Cost cannot exceed the comprehensive Tribal IV-D agency's total Tribal IV-D program grant award for the year in which the acquisition request is made; and (ii) the APD budget, schedule and commitment to use the Computerized Tribal IV-D System for a specified minimum period of time must be updated to reflect the enhancement project. These additional APD requirements to obtain FFP in the cost of enhancements to an existing Computerized Tribal IV-D System reflect the need to ensure both continued cost reasonableness and ongoing return on investment given a Computerized Tribal IV-D System's increased Total Acquisition Cost.

Paragraph (a)(5) of § 310.20 proposes that to receive FFP in the costs of the operation and maintenance of a Computerized Tribal IV-D System installed under proposed § 310.20 or developed under proposed § 309.145(h)(5), which refers to a Tribal automated data processing system that is funded entirely with Tribal funds, the comprehensive Tribal IV-D agency must include operation and maintenance costs in its annual Title IV-D program budget submission in accordance with § 309.15(c) wherein requirements for annual budget submissions are detailed.

In addition, paragraph (a)(6) would require that in order to receive FFP in the costs of the installation, operation, and maintenance of essential Office Automation capabilities, the comprehensive Tribal IV-D agency must include such costs in its annual Title IV-D program budget submission in accordance with § 309.15(c). Currently, States maintaining their computerized



IV-D systems in an operations and maintenance-only mode may close their APD and thereafter request FFP for their operation and maintenance costs through specific line-item submissions in their "Quarterly Report of Expenditures and Estimates," (OCSE Form 396A). Given the efficacy of this existing procedure used with States, and the predictability and general reasonableness of such costs, a similar process for Tribes to request FFP for operation and maintenance cost reimbursement is appropriate. Therefore, this rule will allow Tribes to request FFP in the costs of installation, operation, and maintenance of essential Office Automation capabilities, an inherently operational activity, through a comprehensive Tribal IV-D agency's Title IV-D program budget submission, "Financial Status Report," (OCSE Form 296A) in accordance with requirements listed at § 309.15(c).

The graduated variation in conditions that must be met in order to obtain FFP in the costs of the activities under this proposed paragraph (a) are designed to reflect the varying automation levels of comprehensive Tribal IV-D agencies. For example, the conditions that a comprehensive Tribal IV-D agency would be required to meet in order to obtain FFP in the costs of installing Office Automation would be less involved than the conditions required for a comprehensive Tribal IV-D agency that is requesting FFP in the installation costs of accessing a State or another comprehensive Tribal IV-D program's APD system. Proposed § 310.20 provides comprehensive Tribal IV-D agencies with the flexibility to determine which automation approaches and application procedures best suit the program-specific needs of that Tribe or Tribal organization. The provisions in proposed paragraph (a) are consistent with Tribal IV-D program staff input to reduce the burden of the APD application process.

Provisions under § 310.20(b) would describe the required procedures for submittal of an APD. Proposed paragraph (b) states that the comprehensive Tribal IV-D agency must submit an APD for a Computerized Tribal IV-D System to the Commissioner of the Office, Attention: Division of State and Tribal Systems. The APD submitted by the comprehensive Tribal IV-D agency must be approved and signed by the comprehensive Tribal IV-D agency Director and the authorized representative of the Tribe or Tribal organization prior to submission to the Office for approval. The above procedures for submitting an APD

would ensure that the proper authorities representing the Tribe or Tribal organization agree with the details in the APD application documents and that the Program Director and appropriate Tribal officials are aware of responsibilities in acquiring automation for the Tribal IV-D program.

#### Section 310.25 What conditions apply to acquisitions of Computerized Tribal IV-D Systems?

This proposed section details specific conditions that must be met in the acquisition process of Computerized Tribal IV-D Systems. Comprehensive Tribal IV-D agencies that have elected to automate program activities through Office Automation or another alternative to Computerized Tribal IV-D Systems as discussed in proposed § 310.5, would not be subject to the requirements presented in proposed § 310.25. This section is derived from and comparable to § 307.31 and 45 CFR 95.617 which are respectively entitled *FFP at the 80 Percent Rate for Computerized [State] Support Enforcement Systems and Software and Ownership Rights*.

In proposed paragraph (a) of this section entitled *APD Approval*, a comprehensive Tribal IV-D agency must have an approved APD in accordance with the applicable requirements of proposed § 310.20. This paragraph (a) would establish protocol for when a comprehensive Tribal IV-D agency may engage in acquisition procedures in the purchase of a Computerized Tribal IV-D System. The requirement that a comprehensive Tribal IV-D agency must have an approved APD prior to initiating acquisition of a Computerized Tribal IV-D System safeguards all parties involved by ensuring that authorities from the Tribe or Tribal organization and the Department are in agreement about the use, funding, and parameters of each comprehensive Tribal IV-D agency's specific plan for automating case-processing and record-keeping program activities.

Under proposed paragraph (b), which is entitled *Procurements*, Requests for Proposals (RFP) and similar procurement documents, contracts, and contract amendments involving costs eligible for FFP, must be submitted to the Office for approval prior to release of the procurement document, and prior to the execution of the resultant contract when a procurement is anticipated to or will exceed the Simplified Acquisition Threshold. The Simplified Acquisition Threshold for ADP systems, equipment, and service acquisitions is defined in proposed § 310.1(a)(10) as a Tribe or Tribal organization's monetary

threshold for determining whether competitive acquisition rules are required for a given procurement or \$100,000, whichever is less. The Simplified Acquisition Threshold represents the maximum amount of monies that a comprehensive Tribal IV-D agency may expend without submitting the subject solicitation document (RFP, etc.) and resultant contract to the Office for review and written approval prior to its execution. As previously stated in the proposed rule, this threshold is derived from 45 CFR 92.36(d)(1), which references *small purchase procedures* as a procurement method for securing items of cost not exceeding the Simplified Acquisition Threshold fixed at 41 U.S.C. 403(11) (currently \$100,000). This is appropriately adapted for this rule because of the need to ensure full and open competition in acquisitions in accordance with 45 CFR 92.36(c), and to ensure consistency with regulations at 45 CFR 95.611(b) governing State ADP acquisitions funded at enhanced FFP rates of reimbursement.

Beyond just ensuring consistency with regulations governing State acquisitions funded at enhanced FFP rates, in proposing a Simplified Acquisition Threshold at \$100,000 or the threshold set by a Tribe or Tribal organization, whichever is less, we determined that such monies would meet the funding needs of the majority of comprehensive Tribal IV-D agencies which service moderate caseloads. Therefore, under this proposed paragraph (b), only those comprehensive Tribal IV-D agencies with significantly larger caseloads would likely be impacted by the requirement to submit RFP's and contracts to the Office for approval prior to their respective release or execution if they are anticipated to exceed the Simplified Acquisition Threshold.

Proposed paragraph (c)(1) is entitled *Software and Ownership Rights* and requires that all procurement and contract instruments must include a clause that provides that the comprehensive Tribal IV-D agency will have all ownership rights to Computerized Tribal IV-D System software or enhancements thereof and all associated documentation designed, developed, or installed with FFP. Intergovernmental Service Agreements are not subject to this requirement. This exception for Intergovernmental Service Agreements ensures consistent application of current policy among all grantees, State and Tribal, and is derived from current Federal regulations at 45 CFR 95.613(b) that exempt Service Agreements from the procurement

standards applicable to State acquisitions of ADP equipment and services. Additionally, proposed paragraph (c)(2), states that the Office reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications and documentation developed under this part. Under paragraph (c)(3) FFP would not be available for the costs of rental or purchase of proprietary application software developed specifically for a Computerized Tribal IV-D System. Commercial-off-the-shelf (COTS) software packages that are sold or leased to the general public at established catalog or market prices are not subject to the ownership and license provisions of this requirement. The requirements stated in this proposed paragraph (c) are not unique to Child Support Enforcement regulations. Rather, the proposed requirements would be a restatement of current Departmental regulations that have applied to all automated systems acquisitions, and not just those in the IV-D program. Federal policy in this area, as stated in Federal regulations at 45 CFR 92.34 and 95.617, and as restated in child support automation regulations for State IV-D programs at 45 CFR 307.30 and 45 CFR 307.31, is appropriate and best protects the Federal interest in IV-D and other Federal systems development efforts.

In proposed paragraph (d) of this section, a comprehensive Tribal IV-D agency is not required to submit procurement documents, contracts, and contract amendments for acquisitions under the Simplified Acquisition Threshold set by the Tribe or Tribal organization or \$100,000, whichever is less, unless specifically requested to do so in writing by the Office. The Office believes that procurement activities which fall under the Simplified Acquisition Threshold amount would not require submittal of procurement documents, contracts, and contract amendments because such acquisitions already fall under the existing procurement regulations of 45 CFR 92.36 (*Procurement*) and because applying such a threshold ensures a consistency of approach between State and Tribal grantees relative to procurements funded at enhanced rates of FFP.

**Section 310.30** Under what circumstances would FFP be suspended or disallowed in the costs of Computerized Tribal IV-D Systems?

This section of the proposed rule identifies circumstances under which

the Office would suspend or disallow FFP in the costs of Computerized Tribal IV-D Systems. This section does not apply to Office Automation enhancements or another alternative to Computerized Tribal IV-D Systems as discussed in proposed § 310.5. The proposed content of this section is derived from § 307.40 which is entitled *Suspension of Approval of Advance Planning Documents for Computerized Support Enforcement Systems* and addresses suspension and disallowance of FFP in the costs of State computerized child support enforcement systems.

Proposed paragraph (a) of this section entitled *Suspension of APD* approval states that the Office will suspend approval of the APD for a Computerized Tribal IV-D System approved under Part 310 as of the date that the system ceases to comply substantially with the criteria, requirements, and other provisions of the APD. The Office will notify a Tribal IV-D agency in writing of a notice of suspension, with such suspension effective as of the date on which there is no longer substantial compliance. The intent of the Office is to minimize the likelihood of suspension of a comprehensive Tribal IV-D agency's APD by engaging in supportive efforts such as technical assistance, policy guidance, and ongoing communication and collaboration between the comprehensive Tribal IV-D agency and the Office. The Office believes that such preventive efforts would likely facilitate early identification of difficulties associated with a Computerized Tribal IV-D System and the corresponding APD and thereby assist the Office and the comprehensive Tribal IV-D agency in taking appropriate corrective action, before more punitive measures, such as suspension of funding, become necessary.

Notwithstanding the above-stated intent, the Office deems it necessary to include provisions relating to suspension of an APD in this proposed paragraph (a) in order to clearly establish suspension as a possible consequence for a computerized Tribal IV-D support enforcement system that is substantially out of compliance with its APD.

Proposed paragraph (b) of this section entitled *Suspension of FFP* states that if the Office suspends approval of an APD in accordance with proposed Part 310 during the installation, operation, or enhancement of a Computerized Tribal IV-D System, FFP will not be available in any expenditure incurred under the APD after the date of the suspension until the date the Office determines that

the comprehensive Tribal IV-D agency has taken the actions specified in the notice of suspension described in paragraph (a). The Office will notify the comprehensive Tribal IV-D agency in writing upon making such a determination.

We proposed the above provision in paragraph (b) to ensure that Federal funding is managed and distributed in the most productive, efficient and cost-effective manner possible, and to ensure the Office has the means necessary to enforce its fiduciary responsibilities.

**Section 310.35** Under what circumstances would emergency FFP be available for Computerized Tribal IV-D Systems?

In this section we propose that emergency FFP in the costs of computerized Tribal IV-D support enforcement systems and Office Automation would be available for qualifying circumstances. This proposed section is similar to 45 CFR 95.624, which is entitled *Consideration for FFP in Emergency Situations* and which lays out procedures which must be followed in applying for emergency FFP. This proposed section has been appropriately revised from § 95.624 and made applicable to the specific needs of comprehensive Tribal IV-D programs.

Under proposed paragraph (a) of this section, which is entitled *Conditions that must be met for emergency FFP*, the Office will consider waiving the approval requirements for acquisitions in emergency situations, such as natural or man-made disasters, upon receipt of a written request from the comprehensive Tribal IV-D agency. In order for the Office to consider waiving the approval requirements in proposed § 310.25 the comprehensive Tribal IV-D agency must submit a written request to the Office prior to the acquisition of any ADP equipment or services. The written request must be sent by registered mail and include: (i) A brief description of the ADP equipment and/or services to be acquired and an estimate of their costs; (ii) a brief description of the circumstances which resulted in the comprehensive Tribal IV-D agency's need to proceed prior to obtaining approval from the Office; and (iii) a description of the harm that will be caused if the comprehensive Tribal IV-D agency does not acquire immediately the ADP equipment and services.

Under proposed paragraph (a)(2), upon receipt of the information, the Office will, within 14 working days of receipt, take one of the following actions: (i) Inform the comprehensive Tribal IV-D agency in writing that the request has been disapproved and the

reason for disapproval; or (ii) inform the comprehensive Tribal IV–D agency in writing that the Office recognizes that an emergency exists and that within 90 calendar days from the date of the initial written request under paragraph (a)(1) the comprehensive Tribal IV–D agency must submit a formal request for approval which includes the information specified at § 310.25 in order for the ADP equipment or services acquisition to be considered for the Office's approval.

Emergency FFP in the costs of Computerized Tribal IV–D Systems and Office Automation is included in this proposed rule in recognition of past natural and man-made disasters such as the 9/11 terrorist attacks and hurricanes Katrina and Rita, as well as unforeseeable emergency situations that may significantly impact comprehensive Tribal IV–D programs in the future. This authority has proven vital in the past, such as when use of such emergency authority permitted State grantees to procure necessary computer equipment and software to restore program services disrupted by hurricanes Katrina and Rita, and do so without the delay inherent in first submitting the procurement request for Federal review and prior approval. The proposed procedures which require a comprehensive Tribal IV–D agency to submit a written request to the Office and require the Office to take appropriate action within 14 working days ensure speedy and expedient management of child support resources during times of crisis.

Proposed paragraph (b) of this section states that if the Office approves the request submitted under paragraph (a)(2), FFP will be available from the date the comprehensive Tribal IV–D agency acquires the ADP equipment and services. In this section, proposed paragraph (b) would equip comprehensive Tribal IV–D agencies to respond to approved emergency situations with the assurance that the Office would provide added support to ensure continued operations of comprehensive Tribal IV–D program functions.

#### *Subpart D—Accountability and Monitoring Computerized Tribal IV–D Systems*

**Section 310.40** What requirements apply for accessing systems and records for monitoring Computerized Tribal IV–D Systems and Office Automation?

This proposed section identifies requirements that would facilitate accountability and monitoring procedures of Computerized Tribal IV–D Systems and Office Automation, including accessing systems and records. This section of the proposed rule is derived from 45 CFR 95.615 which is entitled *Access to Systems and Records* and addresses the Department's right to access State computerized support enforcement systems for the purposes of monitoring the conditions for approval, as well as the efficiency, economy and effectiveness of the State system.

In accordance with 45 CFR Part 95 of this title, under proposed § 310.40 a comprehensive Tribal IV–D agency must allow the Office access to the system in all of its aspects, including installation, operation, and cost records of contractors and subcontractors, and of Service Agreements at such intervals as are deemed necessary by the Office to determine whether the conditions for FFP approval are being met and to determine the efficiency, effectiveness, reasonableness of the system and its cost. As discussed in the justification for proposed § 310.30 of this proposed rule, on-going access to Computerized Tribal IV–D Systems and Office Automation records would enable the Office to facilitate early identification of difficulties associated with Tribal IV–D automation and to engage in supportive efforts such as technical assistance, policy guidance, and on-going communication and collaboration with comprehensive Tribal IV–D agencies. This technique of identifying and addressing system challenges early on has proven to be an effective management tool as evidenced by the Office's experience in monitoring State computerized support enforcement systems.

#### **Paperwork Reduction Act of 1995**

Under the Paperwork Reduction Act of 1995 (Pub. L. 104–13), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. Interested parties may comment to OMB on these requirements as described below. This NPRM contains reporting requirements at proposed 45 CFR Part 310. The Department has submitted these reporting requirements to OMB for its review.

Proposed Part 310 contains a regulatory requirement that, in order to receive funding for a Computerized Tribal IV–D System, a Tribe or Tribal organization must submit an Advanced Planning Document (APD) which represents the sole systems effort being undertaken by the comprehensive IV–D agency; describes the projected resource requirements for staff, hardware, software, network connections and other needs and resources available and expected to be available; contains a proposed schedule of project milestones; contains a proposed budget; and contains a statement that the Tribal IV–D agency agrees in writing to use the Computerized Tribal IV–D System for a minimum period of time. Tribes and Tribal organizations must respond if they wish to operate a Federally-funded Computerized Tribal IV–D System. The potential respondents to these information collection requirements are approximately 40 Federally-recognized Tribes, and Tribal organizations, during Year 1; 5 additional Federally-recognized Tribes and Tribal organizations during Year 2; and 5 additional Federally-recognized Tribes and Tribal organizations during Year 3; for a three-year total of 50 grantees. This information collection requirement will impose the estimated total annual burden on the Tribes and Tribal organizations described in the table below:

Information collection	Number of respondents	Response per respondent	Average burden per response	Total annual burden
Year 1				
APD .....	40	2	108	8,640
Acquisitions (RFPs, Contracts, etc.) .....	6	2	24	288
Total .....				8,928

Information collection	Number of respondents	Response per respondent	Average burden per response	Total annual burden
<b>Year 2</b>				
APD .....	* 11	2	108	2,376
Acquisitions (RFPs, Contracts, etc.) .....	6	2	24	288
Total .....				2,664
<b>Year 3</b>				
APD .....	* 8	2	108	1,728
Acquisitions (RFPs, Contracts, etc.) .....	3	2	24	102
Total .....				1,848

\* Figures reflect APDs from 5 additional Tribes in Year 2 and Year 3 as well as APD Updates from Tribes included in Year 1 and 2 respectively.

*Total Burden for 3 Years: 13,440.*

*Total Annual Burden Averaged over 3 Years: 4,480 per year.*

The Administration for Children and Families will consider comments by the public on this proposed collection of information in the following areas:

- Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these regulations between 30 and 60 days after their publication in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, either by fax to 202-395-6974 or by e-mail to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Please mark faxes and e-mails to the attention of the desk officer for ACF.

### Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L. 96-354), that these regulations

will not result in a significant impact on a substantial number of small entities because the primary impact of these regulations is on Tribal governments. Tribal governments are not considered small entities under the Act.

### Regulatory Impact Analysis

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. Moreover, we have consulted with the Office of Management and Budget (OMB) and determined that these rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review.

We have determined that the proposed rule is not an economically significant rule and will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year. Therefore, we have not prepared a budgetary impact statement. We anticipate that the costs associated with this rule will be: FY 2009—\$8m; FY 2010—\$4m; FY 2011—\$2m; FY 2012—\$3m; FY 2013—\$3; FY 2013—\$3m.

The proposed regulations are authorized by 42 U.S.C. 655(f) and 42 U.S.C. 1302 and represent the proposed regulations governing direct funding for computerized systems and Office Automation of Tribal CSE agencies that demonstrate the capacity to operate a child support enforcement program, including establishment of paternity; establishment, modification and enforcement of support orders; and location of noncustodial parents.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in

the regulatory process. As described elsewhere in the preamble, ACF consulted with Tribes and Tribal organizations and their representatives to obtain their views prior to the publication of this NPRM.

### Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (Unfunded Mandates Act), requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

As indicated above, we have determined this rule will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year.

### Congressional Review

This proposed rule is not a major rule as defined in 5 U.S.C., Chapter 8.

### Assessment of Federal Regulations and Policies on Family Well-Being

We certify that we have made an assessment of this rule's impact on the well-being of families, as required under Sec. 654 of the Treasury and General Appropriations Act of 1999. This proposed rule gives flexibility to Tribes and Tribal organizations to use technological advancements to meet program objectives that serve this purpose.

### Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local

governments or is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. We do not believe the regulation has federalism impact as defined in the Executive order. However, consistent with Executive Order 13132, the Department specifically solicits comments from State and local government officials on this proposed rule.

### List of Subjects

#### 45 CFR 309

Child Support, Grant programs—  
Social programs, Indians, Native Americans.

#### 45 CFR 310

Child Support, Grant programs—  
Social programs, Indians, Native Americans.

(Catalogue of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: October 19, 2007.

**Daniel C. Schneider**

*Acting Assistant Secretary for Children and Families.*

Approved: March 3, 2008.

**Michael O. Leavitt,**

*Secretary, Department of Health and Human Services.*

For the reasons discussed in the preamble, title 45 chapter III of the Code of Federal Regulations is amended as follows:

### PART 309—TRIBAL CHILD SUPPORT ENFORCEMENT (IV-D) PROGRAM

1. The authority citation for part 309 continues to read as follows:

**Authority:** 42 U.S.C. 655(f), 1302.

2. In § 309.145, revise paragraph (h) to read as follows:

#### § 309.145 What costs are allowable for Tribal IV-D programs carried out under § 309.65(a) of this part?

\* \* \* \* \*

(h) Automated data processing computer systems, including:

(1) Planning efforts in the identification, evaluation, and selection of an automated data processing computer system solution meeting the program requirements defined in a Tribal IV-D plan and the automated systems requirements in part 310 of this chapter;

(2) Installation, operation, maintenance, and enhancement of a Model Tribal System as defined in and meeting the requirements of part 310 of this title;

(3) Procurement, installation, operation and maintenance of essential Office Automation capability;

(4) Establishment of Intergovernmental Service Agreements with a State and another comprehensive Tribal IV-D agency for access to the State or other Tribe's existing automated data processing computer system to support Tribal IV-D program operations, and Reasonable Costs associated with use of such a system;

(5) Operation and maintenance of a Tribal automated data processing system funded entirely with Tribal funds if the software ownership rights and license requirements in § 310.25(c) are met; and

(6) Other automation and automated data processing computer system costs in accordance with instructions and guidance issued by the Secretary.

\* \* \* \* \*

1. Revise part 310 to read as follows:

### PART 310—COMPUTERIZED TRIBAL IV-D SYSTEMS AND OFFICE AUTOMATION

#### Subpart A—General Provisions

Sec.

310.0 What does this part cover?

310.1 What definitions apply to this part?

#### Subpart B—Requirements for Computerized Tribal IV-D Systems and Office Automation

310.5 What options are available for Computerized Tribal IV-D Systems and Office Automation?

310.10 What are the functional requirements for the Model Tribal IV-D System?

310.15 What are the safeguards and processes that comprehensive Tribal IV-D agencies must have in place to ensure the security and privacy of Computerized Tribal IV-D Systems and Office Automation?

#### Subpart C—Funding for Computerized Tribal IV-D Systems and Office Automation

310.20 What are the conditions for funding the installation, operation, maintenance and enhancement of computerized Tribal IV-D systems and Office Automation?

310.25 What conditions apply to acquisitions of Computerized Tribal IV-D Systems?

310.30 Under what circumstances would FFP be suspended or disallowed in the costs of Computerized Tribal IV-D Systems?

310.35 Under what circumstances would emergency FFP be available for Computerized Tribal IV-D Systems?

#### Subpart D—Accountability and Monitoring Procedures for Computerized Tribal IV-D Systems

310.40 What requirements apply for accessing systems and records for monitoring Computerized Tribal IV-D Systems and Office Automation?

**Authority:** 42 U.S.C. 655(f) and 1302.

### Subpart A—General Provisions

#### § 310.0 What does this part cover?

This part addresses conditions for funding and requirements governing Computerized Tribal IV-D Systems and Office Automation including:

(a) The automated systems options for comprehensive Tribal IV-D programs in § 310.5 of this part;

(b) The functional requirements for the Model Tribal Systems in § 310.10 of this part;

(c) The security and privacy requirements for Computerized Tribal IV-D Systems and office automation in § 310.15 of this part;

(d) The conditions for funding the installation, operation, maintenance, and enhancement of Computerized Tribal IV-D Systems and Office Automation in § 310.20 of this part;

(e) The conditions that apply to acquisitions of Computerized Tribal IV-D Systems in § 310.25 of this part; and

(f) The accountability and monitoring of Computerized Tribal IV-D Systems in § 310.40 of this part.

#### § 310.1 What definitions apply to this part?

(a) The following definitions apply to this part:

(1) *Automated Data Processing Services* (ADP Services) means services for installation, maintenance, operation, and enhancement of ADP equipment and software performed by a comprehensive Tribal IV-D agency or for that agency through a services agreement or other contractual relationship with a State, another Tribe or private sector entity.

(2) *Comprehensive Tribal IV-D Agency* means the organizational unit in the Tribe or Tribal organization that has the authority for administering or supervising a comprehensive Tribal IV-D program under section 455(f) of the Act and implementing regulations in part 309 of this chapter. This is an agency meeting all requirements of § 309.65(a) of the chapter which is not in the start-up phase under § 309.65(b) of this chapter.

(3) *Computerized Tribal IV-D System* means a comprehensive Tribal IV-D program's system of data processing that is performed by electronic or electrical machines so interconnected and interacting as to minimize the need for human assistance or intervention. A Computerized Tribal IV-D System is:

(i) The Model Tribal System; or

(ii) Access to a State or comprehensive Tribal IV-D agency's existing automated data processing computer system through an Intergovernmental Service Agreement;

(4) *Installation* means the act of installing ADP equipment and software, performing data conversion, and turnover to operation status.

(5) *Maintenance* is the totality of activities required to provide cost-effective support to an operational ADP system. Maintenance is generally routine in nature and can include activities such as: Upgrading ADP hardware, and revising/creating new reports, making limited data element/data base changes, minor data presentation changes, and other software corrections.

(6) *Model Tribal System* means an ADP system designed and developed by the Office for comprehensive Tribal IV-D programs to include system specifications and requirements as specified in this part. The Model Tribal System effectively and efficiently allows a comprehensive Tribal IV-D agency to monitor, account for, and control all child support enforcement services and activities pursuant to part 309 of this chapter.

(7) *Office Automation* means a generic adjunct component of a computer system that supports the routine administrative functions in an organization (e.g., electronic mail, word processing, internet access), as well as similar functions performed as part of an automated data processing system. Office Automation is not specifically designed to meet the programmatic and business-centric needs of an organization.

(8) *Reasonable Cost* means a cost that is determined to be reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness with regard to ADP systems cost, consideration shall be given to:

(i) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of a comprehensive Tribal IV-D agency;

(ii) The restraints or requirements imposed by such factors as: sound business practices; arms-length bargaining; Federal, Tribal laws and regulations; and terms and conditions of any direct federal funding;

(iii) Whether the individual concerned acted with prudence in the circumstances considering his or her responsibilities to the comprehensive Tribal IV-D agency, its employees, the public at large, and the Federal Government;

(iv) Market prices for comparable goods or services;

(v) Significant deviations from the established practices of the comprehensive Tribal IV-D agency which may unjustifiably increase the cost; and

(vi) Whether a project's Total Acquisition Cost is in excess of the comprehensive Tribal IV-D agency's total Tribal IV-D program grant award for the year in which the request is made.

(9) *Service Agreement* means a document signed by the Tribe or Tribal organization operating a comprehensive Tribal IV-D program under § 309.65(a) and the State or other comprehensive Tribal IV-D program whenever the latter provides data processing services to the former and identifies those ADP services that the State or other comprehensive Tribal IV-D program will provide to the Tribe or Tribal organization. Additionally, a Service Agreement would include the following details:

- Schedule of charges for each identified ADP service and a certification that these charges apply equally to all users;
- Description of the method(s) of accounting for the services rendered under the agreement and computing service charges;
- Assurances that services provided will be timely and satisfactory;
- Assurances that information in the computer system as well as access, use and disposal of ADP data will be safeguarded in accordance with proposed § 310.15;
- Beginning and ending dates of the period of time covered by the Service Agreement; and
- Schedule of expected total charges for the period of the Service Agreement.

(10) *Simplified Acquisition Threshold* for ADP systems, equipment, and service acquisitions means a Tribe or Tribal organization's monetary threshold for determining whether competitive acquisition rules are required for a given procurement or \$100,000, whichever is less.

(b) The following terms apply to this part and are defined in § 95.605 of this title:

- “Acquisition”;
- “Advanced Planning Document (APD)”;
- “Design or System Design”;
- “Development”;
- “Enhancement”;
- “Federal Financial Participation (FFP)”;
- “Operation”;
- “Project”;
- “Software”;
- “Total Acquisition Cost”.

(c) All of the terms defined in § 309.05 of this chapter apply to this part.

## Subpart B: Requirements for Computerized Tribal IV-D Systems

### § 310.5 What options are available for Computerized Tribal IV-D Systems and office automation?

(a) *Allowable computerized support enforcement systems for a Comprehensive Tribal IV-D agency.* A comprehensive Tribal IV-D agency may have in effect an operational computerized support enforcement system that meets Federal requirements under this part.

(b) *Computerized Tribal IV-D Systems.* A Computerized Tribal IV-D System must be one of the design options listed below. A comprehensive Tribal IV-D program may automate its case processing and record-keeping processes through:

(1) Installation, operation, maintenance, or enhancement of the Model Tribal System designed by the Office to address the program requirements defined in a Tribal IV-D plan in accordance with § 309.65(a) of this chapter and the functional requirements in § 310.10 of this part;

(2) Establishment of Intergovernmental Service Agreements with a State or another comprehensive Tribal IV-D agency for access to that agency's existing automated data processing computer system to support comprehensive Tribal IV-D program operations.

(c) *Office Automation.* A comprehensive Tribal IV-D agency may opt to conduct automated data processing and record-keeping activities through Office Automation. Allowable activities under this section include procurement, installation, operation and maintenance of essential Office Automation capability as defined in § 310.1 of this part.

(d) *Alternative to Computerized Tribal IV-D Systems and Office Automation.* A comprehensive Tribal IV-D agency may design, develop, procure, or enhance an automated data processing system funded entirely with Tribal funds.

### § 310.10 What are the functional requirements for the Model Tribal IV-D system?

A Model Tribal IV-D system must:

(a) Accept, maintain and process the actions in the support collection and paternity determination processes under the Tribal IV-D plan, including:

(1) Identifying information such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal zip codes) on individuals against whom paternity and support obligations are sought to be established or enforced and on

individuals to whom support obligations are owed, and other data as may be requested by the Office;

(2) Verifying information on individuals referred to in paragraph (a)(1) of this section with Tribal, Federal, State and local agencies, both intra-tribal and intergovernmental;

(3) Maintaining information pertaining to:

(i) Applications and referrals for Tribal IV–D services, including:

(A) Case record;

(B) Referral to the appropriate processing unit (i.e., locate or paternity establishment);

(C) Caseworker notification;

(D) Case Identification Number; and

(E) Participant Identification Number;

(ii) Delinquency and enforcement activities;

(iii) Intra-tribal, intergovernmental, and Federal location of the putative father and noncustodial parents;

(iv) The establishment of paternity;

(v) The establishment of support obligations;

(vi) The payment and status of current support obligations;

(vii) The payment and status of arrearage accounts;

(4) Maintaining data on case actions administered by both the initiating and responding jurisdictions in intergovernmental cases;

(b) Update, maintain and manage all IV–D cases under the Tribal IV–D plan from initial application or referral through collection and enforcement, including any events, transactions, or actions taken therein;

(c) Record and report any fees collected, either directly or by interfacing with State or Tribal financial management and expenditure information;

(d) Distribute current support and arrearage collections in accordance with Federal regulations at § 309.115 of this chapter and Tribal laws;

(e) Maintain, process and monitor accounts receivable on all amounts owed, collected, and distributed with regard to:

(1) Detailed payment histories that include the following:

(i) Amount of each payment;

(ii) Date of each collection;

(iii) Method of payment;

(iv) Distribution of payments; and

(v) Date of each disbursement;

(2) Automated income withholding activities such as:

(i) Recording and maintaining any date the noncustodial parent defaults on payment of the support obligation in an amount equal to the support payable for one month;

(ii) Generating the Standard Federal Income Withholding Form; and

(iii) Allocating amounts received by income withholding according to §§ 309.110 and 309.115 of this chapter.

(f) Maintain and automatically generate data necessary to meet Federal reporting requirements on a timely basis as prescribed by the Office. At a minimum this must include:

(1) Yearly notices on support collected, which are itemized by month of collection and provided to families receiving services under the comprehensive Tribal IV–D program as required in § 309.75(c) of this chapter, to all case participants regarding support collections; and

(2) Reports submitted to the Office for program monitoring and program performance as required in § 309.170 of this chapter;

(g) Provide automated processes to enable the Office to monitor Tribal IV–D program operations and to assess program performance through the audit of financial and statistical data maintained by the system; and

(h) Provide security to prevent unauthorized access to, or use of, the data in the system as detailed in § 310.15 of this part.

**§ 310.15 What are the safeguards and processes that comprehensive Tribal IV–D agencies must have in place to ensure the security and privacy of Computerized Tribal IV–D Systems and Office Automation?**

(a) *Information integrity and security.* The comprehensive Tribal IV–D agency must have safeguards on the integrity, accuracy, completeness, access to, and use of data in the Computerized Tribal IV–D System and Office Automation. Computerized Tribal IV–D and Office Automation Systems should be compliant with the Federal Information Security Management Act, and the Privacy Act. Some of the required safeguards must include written policies and procedures concerning the following:

(1) Periodic evaluations of the system for risk of security and privacy breaches;

(2) Procedures to allow Tribal IV–D personnel controlled access and use of IV–D data, including:

(i) Specifying the data which may be used for particular IV–D program purposes, and the personnel permitted access to such data;

(ii) Permitting access to and use of data for the purpose of exchanging information with State and Tribal agencies administering programs under titles IV–A, IV–E and XIX of the Act to the extent necessary to carry out the comprehensive Tribal IV–D agency's responsibilities with respect to such programs;

(3) Maintenance and control of application software program data;

(4) Mechanisms to back-up and otherwise protect hardware, software, documents, and other communications; and

(5) Mechanisms to report breaches of personally identifiable information to the Department of Homeland Security, and to respond to those breaches.

(b) *Monitoring of access.* The comprehensive Tribal IV–D agency must monitor routine access to and use of the Computerized Tribal IV–D System and Office Automation through methods such as audit trails and feedback mechanisms to guard against, and promptly identify, unauthorized access or use;

(c) *Training and information.* The comprehensive Tribal IV–D agency must have procedures to ensure that all personnel, including Tribal IV–D staff and contractors, who may have access to or be required to use confidential program data in the Computerized Tribal IV–D System and Office Automation are adequately trained in security procedures.

(d) *Penalties.* The comprehensive Tribal IV–D agency must have administrative penalties, including dismissal from employment, for unauthorized access to, disclosure or use of confidential information.

**Subpart C—Funding for Computerized Tribal IV–D Systems and Office Automation**

**§ 310.20 What are the conditions for funding the installation, operation, maintenance and enhancement of Computerized Tribal IV–D Systems and Office Automation?**

(a) *Conditions that must be met for FFP at the applicable matching in § 309.130(c) of this chapter for Computerized Tribal IV–D Systems.* The following conditions must be met to obtain FFP in the costs of installation, operation, maintenance, and enhancement of a Computerized Tribal IV–D System at the applicable matching rate under § 309.130(c) of this chapter:

(1) A comprehensive Tribal IV–D agency must have submitted, and the Office must have approved, an Advance Planning Document (APD) for the installation and enhancement of a Computerized Tribal IV–D System;

(2) An APD for installation of a Computerized Tribal IV–D System must:

(i) Represent the sole systems effort being undertaken by the comprehensive Tribal IV–D agency under this part;

(ii) Describe the projected resource requirements for staff, hardware, software, network connections and other needs and the resources available or expected to be available to meet the requirements;



(iii) Contain a proposed schedule of project milestones with detail sufficient to describe the tasks, activities, and complexity of the initial implementation project;

(iv) Contain a proposed budget including a description of expenditures by category and amount for items related to installing, operating, maintaining, and enhancing the Computerized Tribal IV-D System that are eligible for Federal funding at the applicable matching rate under § 309.130(c) of this chapter; and

(v) Contain a statement that the comprehensive Tribal IV-D agency agrees in writing to use the Computerized Tribal IV-D System for a minimum period of time;

(3) The following conditions, in addition to those in paragraphs (a)(1) and (a)(2) of this section, must be met to obtain FFP in the installation costs of access to a State or another comprehensive Tribal IV-D program's ADP system established under an Intergovernmental Service Agreement. The comprehensive Tribal IV-D agency must:

(i) Maintain a copy of each intergovernmental cooperative agreement and Service Agreement in its files for Federal review; and

(ii) Ensure that the:

(A) Service Agreement for which FFP is being sought, meets the definition of a Service Agreement as defined in proposed § 310.1 of this title;

(C) Claims for FFP conform to the timely claim provisions of part 95 subpart A of this title; and

(D) Service Agreement was not previously disapproved by the Department.

(4) The following conditions, in addition to those in paragraphs (1) through (3) of this section, must be met in order for a comprehensive Tribal IV-D agency to obtain FFP in the costs of enhancements to their Computerized Tribal IV-D System:

(i) The project's Total Acquisition Cost cannot exceed the comprehensive Tribal IV-D agency's total Tribal IV-D program grant award for the year in which the acquisition request is made; and

(ii) The APD budget, schedule and commitment to use the Computerized Tribal IV-D System for a specified minimum period of time must be updated to reflect the enhancement project.

(5) To receive FFP in the costs of the operation and maintenance of a Computerized Tribal IV-D System installed under proposed 310.20 or developed under § 309.145(h)(5), which refers to a Tribal automated data

processing system that is funded entirely with Tribal funds, the comprehensive Tribal IV-D agency must include operation and maintenance costs in its annual Title IV-D program budget submission in accordance with § 309.15(c) of this chapter;

(6) To receive FFP in the costs of the installation, operation, and maintenance of essential Office Automation capabilities, the comprehensive Tribal IV-D agency must include such costs in its annual Title IV-D program budget submission in accordance with § 309.15(c) of this chapter;

(b) *Procedure for APD Submittal.* The comprehensive Tribal IV-D agency must submit an APD for a Computerized Tribal IV-D System to the Commissioner of OCSE, Attention: Division of State and Tribal Systems. The APD submitted by the comprehensive Tribal IV-D agency must be approved and signed by the comprehensive Tribal IV-D agency Director and the appropriate Tribal officials prior to submission to OCSE for Office approval.

#### **§ 310.25 What conditions apply to acquisitions of Computerized Tribal IV-D Systems?**

(a) *APD Approval.* A comprehensive Tribal IV-D agency must have an approved APD in accordance with the applicable requirements of § 310.20 of this part prior to initiating acquisition of a Computerized Tribal IV-D System.

(b) *Procurements.* Requests for Proposals (RFP) and similar procurement documents, contracts, and contract amendments involving costs eligible for FFP, must be submitted to the Office for approval prior to release of the procurement document, and prior to the execution of the resultant contract when a procurement is anticipated to or will exceed the Simplified Acquisition Threshold.

(c) *Software and ownership rights.* (1) All procurement and contract instruments must include a clause that provides that the comprehensive Tribal IV-D agency will have all ownership rights to Computerized Tribal IV-D System software or enhancements thereof and all associated documentation designed, developed or installed with FFP. Intergovernmental Service Agreements are not subject to this paragraph.

(2) The Office reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications and documentation.

(3) FFP is not available for the costs of rental or purchase of proprietary application software developed specifically for a Computerized Tribal IV-D System. Commercial-off-the-shelf (COTS) software packages that are sold or leased to the general public at established catalog or market prices are not subject to the ownership and license provisions of this requirement.

(d) *Requirements for acquisitions under the threshold amount.* A comprehensive Tribal IV-D agency is not required to submit procurement documents, contracts, and contract amendments for acquisitions under the Simplified Acquisition Threshold unless specifically requested to do so in writing by the Office.

#### **§ 310.30 Under what circumstances would FFP be suspended or disallowed in the costs of Computerized Tribal IV-D Systems?**

(a) *Suspension of APD approval.* The Office will suspend approval of the APD for a Computerized Tribal IV-D System approved under this part as of the date that the system ceases to comply substantially with the criteria, requirements, and other provisions of the APD. The Office will notify a Tribal IV-D agency in writing in a notice of suspension, with such suspension effective as of the date on which there is no longer substantial compliance.

(b) *Suspension of FFP.* If the Office suspends approval of an APD in accordance with this part during the installation, operation, or enhancement of a Computerized Tribal IV-D System, FFP will not be available in any expenditure incurred under the APD after the date of the suspension until the date the Office determines that the comprehensive Tribal IV-D agency has taken the actions specified in the notice of suspension described in paragraph (a) of this section. The Office will notify the comprehensive Tribal IV-D agency in writing upon making such a determination.

#### **§ 310.35 Under what circumstances would emergency FFP be available for Computerized Tribal IV-D Systems?**

(a) *Conditions that must be met for emergency FFP.* The Office will consider waiving the approval requirements for acquisitions in emergency situations, such as natural or man-made disasters, upon receipt of a written request from the comprehensive Tribal IV-D agency. In order for the Office to consider waiving the approval requirements in § 310.25 of this part, the following conditions must be met:

(1) The comprehensive Tribal IV-D agency must submit a written request to the Office prior to the acquisition of any

ADP equipment or services. The written request must be sent by registered mail and include:

(i) A brief description of the ADP equipment and/or services to be acquired and an estimate of their costs;

(ii) A brief description of the circumstances which resulted in the comprehensive Tribal IV–D agency's need to proceed prior to obtaining approval from the Office; and

(iii) A description of the harm that will be caused if the comprehensive Tribal IV–D agency does not acquire immediately the ADP equipment and services.

(2) Upon receipt of the information, the Office will, within 14 working days of receipt, take one of the following actions:

(i) Inform the comprehensive Tribal IV–D agency in writing that the request has been disapproved and the reason for disapproval; or

(ii) Inform the comprehensive Tribal IV–D agency in writing that the Office recognizes that an emergency exists and that within 90 calendar days from the date of the initial written request under paragraph (a)(1) of this section the comprehensive Tribal IV–D agency must submit a formal request for approval which includes the information specified at § 310.25 of this title in order for the ADP equipment or services acquisition to be considered for the Office's approval.

(b) *Effective date of emergency FFP.* If the Office approves the request submitted under paragraph (a)(2) of this section, FFP will be available from the date the comprehensive Tribal IV–D agency acquires the ADP equipment and services.

#### **Subpart D—Accountability and Monitoring Procedures for Computerized Tribal IV–D Systems**

##### **§ 310.40 What requirements apply for accessing systems and records for monitoring Computerized Tribal IV–D Systems and Office Automation?**

In accordance with Part 95 of this title, a comprehensive Tribal IV–D agency must allow the Office access to the system in all of its aspects, including installation, operation, and cost records of contractors and subcontractors, and of Service Agreements at such intervals as are deemed necessary by the Office to determine whether the conditions for FFP approval are being met and to determine the efficiency, effectiveness, reasonableness of the system and its cost.

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