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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

RIN 0970-AC72

Adoption and Foster Care Analysis and Reporting System

AGENCY: Children's Bureau (CB), Administration on Children Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: ACF is seeking public suggestions, in particular from state and tribal title IV-E agencies and Indian tribes and tribal consortiums and other stakeholders, for streamlining the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements and removing any undue burden related to reporting AFCARS.

DATES: Comments on this advance notice of proposed rulemaking must be received by [INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by [docket number and/or RIN number], by one of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.
- Email: CBComments@acf.hhs.gov. Include [docket number and/or RIN number] in subject line of the message.
- Mail: Written comments may be submitted to Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Director, Policy Division, 330 C Street SW., Washington, DC 20024. Please be aware that mail sent in response to this ANPRM may take an additional 3 to 4 days to process due to security screening of mail.

Instructions: When commenting, please identify the topic, data element, or issue to which your comment pertains. All submissions received must include the agency name and docket number or Regulatory Information Number for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Kathleen McHugh, Division of Policy, Children's Bureau at (202) 401-5789.

SUPPLEMENTARY INFORMATION: This advance notice of proposed rulemaking (ANPRM) has two sections: *Background* that describes the authority on which the ANPRM is based and establishes the rationale for its issuance, and *Questions for Comment* wherein we solicit comment on the AFCARS regulations.

I. Background

Section 479 of the Social Security Act (the Act) requires HHS to regulate a data collection system for national adoption and foster care data that provides comprehensive national information on the following:

- Demographic characteristics of adopted and foster children and their biological and adoptive or foster parents;
- Status and characteristics of the foster care population;
- Number and characteristics of children entering and exiting foster care, children adopted or for whom adoptions have been terminated, and children placed in foster care outside of the state which has placement and care responsibility for them;
- Extent and nature of assistance provided by government programs for foster care and adoption and the characteristics of the children that receive the assistance; and
- Number of foster children identified as sex trafficking victims before entering and while in foster care.

Section 474(f) of the Act requires HHS to impose penalties for non-compliant AFCARS data.

Section 1102 of the Act instructs the Secretary to promulgate regulations necessary for the effective administration of the functions for which HHS is responsible under the Act.

We published a final rule to revise the AFCARS regulations on December 14, 2016 (81 FR 90524) and required title IV-E agencies to continue to report AFCARS data in accordance with § 1355.40 and the appendix to part 1355 until September 30, 2019 and provided two fiscal years for title IV-E agencies to comply with §§ 1355.41 through 1355.47 of the final rule. In a notice

of proposed rulemaking published elsewhere in this issue of the Federal Register, we propose to delay the compliance dates in regulations and the effective date of revisions to the AFCARS regulations made in the final rule from October 1, 2019, to October 1, 2021.

The final rule was a culmination of two notices of proposed rulemaking (issued January 11, 2008 (73 FR 2082) and February 9, 2015 (80 FR 7132)) and a supplemental notice of proposed rulemaking (issued April 7, 2016 (81 FR 20283)). The final rule updated the AFCARS regulations to include child welfare legislative changes that occurred since 1993, included data elements related to the Indian Child Welfare Act of 1978 (ICWA), and implemented fiscal penalties for noncompliant AFCARS data.

On February 24, 2017, the President issued Executive Order 13777 on Enforcing the Regulatory Reform Agenda to lower regulatory burdens on the American people. In response to the President's direction that federal agencies establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification, we have identified the AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits. We are specifically soliciting comments on the data elements and their associated burden through this ANPRM.

Public comments to this ANPRM will allow us to assess whether and how we can potentially reduce burden on title IV-E agencies to report AFCARS data while still adhering to the requirements of section 479 of the Act and collecting useful data that will inform efforts to improve the child welfare system. We encourage state and tribal title IV-E agencies that did not

previously comment to do so now. Some state title IV-E agencies provided in their previous comments specific information on compliance cost and burden estimates; however, we received too few estimates to reference for calculating the cost and burden associated with this final rule. We encourage agencies to be as specific as possible when commenting on this ANPRM. We will take comments and estimates into consideration in revising the regulation.

For a full picture of the AFCARS regulation, we invite commenters to review the AFCARS regulation and accompanying information that CB issued on our website, which can be found here: <https://www.acf.hhs.gov/cb/laws-policies/whats-new>.

II. Questions for Comment

1. Identify the data elements, non-ICWA-related, that are overly burdensome for state and tribal title IV-E agencies and explain why. Please be specific in identifying the data elements and provide a rationale for why collecting and reporting this information is overly burdensome. If possible, provide specific cost and burden estimates related to the following areas:
 - a. Recordkeeping hours spent annually:
 - i. Searching data sources, gathering information, and entering the information into the electronic case management system,
 - ii. Developing or modifying procedures and systems to collect, validate, and verify the information and adjusting existing procedures to comply with AFCARS requirements, and

- iii. Training and administrative tasks associated with training personnel on the AFCARS requirements (e.g., reviewing instructions, developing the training and manuals).
 - b. Reporting hours spent annually extracting the information for AFCARS reporting and transmitting the information to ACF.
- 2. Previously, we received comments regarding burden and the system changes needed to report the ICWA-related data elements of the 2016 SNPRM. We would like to receive more detailed comments on the specific limitations we should be aware of that states will encounter in reporting the ICWA-related data elements in the final rule. Please be specific in identifying the data elements and provide a rationale for why this information is overly burdensome. If possible, provide specific cost and burden estimates related to the following areas:
 - a. The number of children in foster care who are considered Indian children as defined in ICWA.
 - b. Recordkeeping hours spent annually:
 - i. Searching data sources, gathering information, and entering the information into the electronic case management system,
 - ii. Developing or modifying procedures and systems to collect, validate, and verify the information and adjusting existing ways to comply with AFCARS requirements, and
 - iii. Training and administrative tasks associated with training personnel on the AFCARS requirements (e.g., reviewing instructions, developing the training and manuals).

- c. Reporting hours spent annually extracting the information for AFCARS reporting and transmitting the information to ACF.
3. Previously, we received comments that particular data elements did not lend themselves to national statistics and were best assessed with qualitative methods such as case review. Please provide specific recommendations on which data elements in the regulation to retain that are important to understanding and assessing the foster care population at the national level. Also, provide a rationale for your suggestion that may include its relevance to monitor compliance with the title IV-B and IV-E programs or another strong justification for using the data at the national level.
4. Previously we received comments noting concerns with variability in some of the data elements across states and within jurisdictions. Please provide specific suggestions to simplify data elements to facilitate the consistent collection and reporting of AFCARS data. Also, provide a rationale for each suggestion and how the simplification would still yield pertinent data.
5. Previously we received comments questioning the utility, reliability, and purpose of certain data elements at the national level. Provide specific recommendations on which data elements in the regulation to remove because they would not yield reliable national information about children involved with the child welfare system or are not needed for monitoring the title IV-B and IV-E programs. Please be specific in identifying the data elements and provide a rationale for why this information would not be reliable or is not necessary.

Dated: February 27, 2018.

Steven Wagner,
Acting Assistant Secretary
for Children and Families.

Approved: March 8, 2018.

Alex M. Azar II,
Secretary.

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