Register. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides, and pests, Reporting and recordkeeping requirements.

Dated: November 22, 2024.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter 1 as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.601, add a heading to the table in paragraph (a) and revise and republish the table to read as follows:

§ 180.601 Cyazofamid; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Brassica, leafy greens, subgroup 4–16B	15
Bulb vegetables, group 3–07	2.0
Carrot, roots	0.09
Chickpea, edible podded	0.5
Chickpea, succulent shelled	0.08
Ginseng	0.3
Herb subgroup 19A	90
Hop dried cones	10.0
Kohlrabi	1.5
Leafy greens subgroup 4–16A	10
Parsnip, roots	0.09
Vegetable, brassica, head and stem, group 5–16	1.5
Vegetable, cucurbit, group 9	0.10
Vegetable, fruiting, group 8–10	0.9
Vegetable, legume, bean, edible podded, subgroup 6–22A	0.5
Vegetable, legume, bean, succulent shelled, subgroup 6–22C	0.08
Vegetable, legume, pulse, bean, dried shelled, except soybean, subgroup 6–22E	0.03
Vegetable, tuberous and corm, subgroup 1C	0.02

* * * * *

[FR Doc. 2024–28467 Filed 12–4–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

RIN 0970–AC98

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), U.S. Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This rule finalizes revisions to the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations proposed on February 23, 2024. This final rule requires state title IV–E agencies to collect and report to ACF additional data related to the Indian Child Welfare Act of 1978 (ICWA) for children in the AFCARS Out-of-Home Care Reporting Population.

DATES: This rule is effective on February 3, 2025 except for the amendments to § 1355.44 (amendatory instruction 3), which are effective as of October 1, 2028.

FOR FURTHER INFORMATION CONTACT: Joe Bock, Children's Bureau, (202) 205–8618. Telecommunications Relay users may dial 711 first. Email inquiries to *cbcomments@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

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I. Statutory Authority To Issue Final Rule

This final rule is published under the authority granted to the Secretary of Health and Human Services (HHS) by Section 1102 of the Social Security Act (the Act) (42 U.S.C. 1302), which authorizes HHS to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions for which HHS is responsible under the Act and Section 479 of the Act (42 U.S.C. 679), which mandates that HHS regulate a data collection system for national adoption and foster care data. Section 474(f) of the Act (42 U.S.C. 674(f)) requires HHS to impose penalties for non-compliant adoption and foster care data.

II. Overview of 2024 Notice of Proposed Rulemaking Comments and Background on the Final Rule

AFCARS is authorized by section 479 of the Act (42 U.S.C. 679), which mandates that HHS regulate a data collection system for national adoption and foster care data. The regulation at 45 CFR 1356.60(d) and the statute at 42 U.S.C. 674(a)(3) detail cost-sharing requirements for the Federal and non-Federal share of data collection system initiation, implementation, and operation. A title IV–E agency may

claim Federal Financial Participation (FFP) at the rate of 50 percent for costs of a data collection system specified by section 479 of the Act (42 U.S.C. 679).

AFCARS data is used for a variety of requirements, including but not limited to, providing national statistics on the child welfare population, budgeting, providing reports to Congress, and monitoring compliance with the title IV–B and IV–E requirements. Title IV–E agencies must submit data files on a semi-annual basis to ACF. AFCARS regulations were first published in 1993 and states began submitting data in fiscal year (FY) 1995. The regulations governing operation of AFCARS are codified at 45 CFR 1355.41 through 1355.47.

Recent Regulatory History

ACF published a final rule revising the AFCARS regulations on December 14, 2016 (81 FR 90524, hereafter referred to as the ''2016 final rule''). The rule reflected child welfare legislative changes that occurred since 1993 and included many new data elements, including information related to ICWA, and implemented statutory fiscal penalties for non-compliant AFCARS data. This rule was never implemented. Before the 2016 final rule became effective, ACF published a new rule delaying its implementation timeframe (83 FR 42225, August 21, 2018). On May 12, 2020, ACF published a final rule to again amend the AFCARS regulations (85 FR 28410, hereafter referred to as the ''2020 final rule''). The 2020 final rule eliminated some of the data elements that were promulgated in the 2016 final rule and reduced the level of detail in others. The Executive Orders and actions leading to the 2020 final rule are explained in detail in the preambles to the following issuances: Advance Notice of Proposed Rulemaking (ANPRM) issued March 15, 2018 (83 FR 11449); NPRM issued April 19, 2019 (84 FR 16572); and the 2020 final rule, issued May 12, 2020 (85 FR 28410). Some of the data elements that were eliminated or altered in the 2020 final rule related to reporting on the details of ICWA's procedural protections (see also discussion at 84 FR 16573, 16575, 16577, and 85 FR 28411, and 28412). The 2020 final rule was implemented on October 1, 2022, and title IV–E agencies are now required to report AFCARS data as codified in the regulation at 45 CFR 1355.41-.47. Title IV–E agencies were required to submit the first data files with this information to ACF in May 2023. More information is available on the CB website at: *https://www.acf.hhs.gov/cb/data-research/afcars-technical-assistance.*

2024 NPRM Comment Summary and Analysis

The AFCARS NPRM was published on February 23, 2024 (89 FR 13652, hereafter referred to as the ''2024 NPRM'') and it proposed to add or revise approximately 45 data elements related to the procedural protections of ICWA. These data elements are located in the Out-of-Home Care Data File, 45 CFR 1355.44. The NPRM proposed to revise and expand the current ICWA-related data elements in § 1355.44(b) *Child Information* and add a new paragraph § 1355.44(i) *Data Elements Related to ICWA,* for information to be reported on children to whom ICWA applies. As explained in the NPRM (89 FR 13653), ACF is now adding data elements and revising some of the current data elements to require reporting of more detailed information related to ICWA's procedural protections via AFCARS, in order to fulfill the AFCARS statutory mandate to provide comprehensive national information on the demographics of ''adoptive and foster children and their biological and adoptive foster parents,'' ''the status of the foster care population,'' and ''the extent and nature of assistance provided by Federal, state, and local adoption and foster care programs and the characteristics of the children with respect to whom such assistance is provided'' (section 479(c)(3) of the Act). For AI/AN children to whom ICWA applies, it is necessary to understand the extent to which they receive ICWA's protections in order to fully understand their ''status'' and ''characteristics,'' and ''the extent and nature of assistance'' provided to them.

ICWA data collection helps set the stage for more informed, effective, and culturally responsive care for AI/AN children. We know AI/AN children are disproportionately represented in the state child welfare system. There is evidence that AI/AN children in state foster care have experienced a separation and disconnection from their community, culture, and language, giving them a sense of identity loss. Outcomes that AI/AN children face while being in foster care without culturally appropriate services include increased risk for runaway and homelessness, suicidal ideations, and juvenile justice interventions.

The NPRM comment period closed on April 23, 2024. In response, we received 81 comments from: 14 states and 1 county; 25 Tribes; 21 organizations; and 20 individuals/anonymous. Most commenters generally supported collecting ICWA-related information in AFCARS and supported the NPRM as proposed (75 total commenters supported, 3 commenters opposed, and 3 did not express either sentiment). The supportive commenters generally expressed that having data on ICWA's procedural protections ''could inform real solutions to the persistent child welfare challenges American Indian/Alaskan Native (AI/AN) children face.'' They also expressed that the data ''will provide a full picture of the status of AI/AN children and families and the reasons behind the lagging outcomes they experience'' that can lead to ''improved policy development, technical assistance, training, and resource allocation'' from having ''regularly updated and reliable data available.''

Twelve of the 14 states/county expressed support for collecting information on ICWA's protections, saying that it will inform practice. They generally expressed praise for ACF's commitment to ''augmenting national understanding of the experiences'' of AI/AN children in foster care and the extent to which they are receiving the procedural protections required under ICWA. One of these commenters said that ''AFCARS policy limitations over the last 30 years have hindered Tribal and state efforts to address reoccurring and chronic concerns about AI/AN children's well-being'' and that that has contributed to states ''not having a full understanding of their progress in implementing ICWA and difficulty in developing effective and collaborative responses with Tribes.'' They generally expressed that the need for ongoing, reliable, and accessible data has never been greater.

Two states and one individual expressed opposition to the NPRM, saying that most of the data elements proposed in the NPRM are better suited for a case review where ''individual case circumstances as well as court order language could be reviewed and analyzed to paint a more complete picture of the ICWA implementation process.'' They did not believe that all the proposed data elements ''add value that informs quality practice or compliance,'' considering the burden and costs required for reporting and the time that would be taken ''away from direct casework, potentially caus[ing] delays in timely permanency for children.'' One of the two states that opposed the data collection expressed concern that state child welfare agencies have ''no control over whether the legal system notifies Tribes, the timeliness of the notification, or the accuracy of the data'' and that this would lead to the potential for the state to be ''penalized

for any legal system's non-compliance regarding notification and other requirements of ICWA.'' One of the two states opposed to the data collection also expressed the opinion that reporting on ICWA's procedural protections is outside the scope of section 479 of the Act (42 U.S.C. 679).

Nine of the 14 states/county commenters also expressed concern in two areas:

- The burden and costs to update case management systems so close to the 2020 final rule being implemented (which occurred in October 2023), and being in the middle of upgrading their electronic case management systems from a ''legacy system'' to a Comprehensive Child Welfare Information System (CCWIS), and
- Wanting more time to implement a new final rule or delaying penalties for this data.

Seven states said they would need to add data elements to their child welfare information systems to report the NPRM elements because the information is located in case notes or court orders/minutes and not in an extractable data field for AFCARS reporting and said that this information may be compiled differently in different judicial jurisdictions across the state, so increased technical assistance may be needed. Five states, three organizations, and one individual said that states will struggle with implementation and that the burden of updating systems to implement the proposal will vary greatly among states, depending on the population of children in foster care to whom ICWA applies and where they are in the process of upgrading their case management systems. Two states expressed that the value of the data outweighs the burden and costs of updating systems.

In general, all of the Tribal commenters (25) and the vast majority of organizations (20) and individuals/anonymous (17) commenters expressed support for collecting information on ICWA's procedural protections. They expressed similar sentiments as the supportive states, such as that the lack of federal data on ICWA ''has contributed to states not having a full understanding of their progress in implementing ICWA and difficulty in developing effective and collaborative responses with Tribes.'' They felt that the NPRM proposal will fill in knowledge gaps, provide a better picture of the status of AI/AN children and families, their outcomes, and ''create substantial new bodies of evidence for program evaluation and for evaluating the relative compliance with ICWA across jurisdictions.'' They also expressed that the data from the proposal will help inform legislative and regulatory policies, indicate training needs for ICWA practices, and inform where further resources should be allocated. Tribes generally expressed that the ''trust responsibility of the Federal Government justifies this important data collection, and the sad fact is Native American children are still overrepresented in the foster care and adoptive system in state court proceedings today.'' Four Tribes and five organizations also expressed agreement with the interpretation of section 479 of the Act (42 U.S.C. 679) to include the collection and reporting of data related to the implementation of ICWA and expressed that they are pleased to see the current Administration adopt this clarification of authority. One Tribe and two organizations spoke to the information being located in court documents or paper case files by expressing that, in states that use good case management practices, states will have access to court information and while there may be situations where a court issues a judicial determination from the bench or does not provide all the specific information that a state may need in a court order, this does not change the fact that states should be aware of, seek clarification, and document this information in the case file.

Approximately 21 of the Tribal commenters and 15 organizations recommended specific changes to the proposal, such as suggesting wording changes for certain data elements and collecting more information related to Tribes and AI/AN children who are in foster care. These comments are delineated in IV. Section-by-Section Discussion of Regulatory Provisions and Responses to Comments.

Final Rule Development

Based on the overwhelmingly supportive response to the NPRM in general, we made few substantive changes in this final rule. Commenters agreed with the statement in the NPRM preamble (89 FR 13653) that adding data elements and revising the current data elements to report more detailed information related to ICWA's procedural protections in AFCARS will contribute to fulfilling the AFCARS statutory mandate to provide comprehensive national information on the demographics of ''adoptive and foster children and their biological and adoptive foster parents,'' ''the status of the foster care population,'' and ''the extent and nature of assistance provided by Federal, state, and local adoption and foster care programs and the characteristics of the children with respect to whom such assistance is provided'' (section 479(c)(3) of the Act). The supportive commenters agreed with the statements from the NPRM that inconsistent implementation of ICWA and a lack of data on ICWA's procedural protections have led to variation in applying ICWA (89 FR 13653). Thus, ACF anticipates that gathering more ICWA-related data would help ACF, researchers, and other policymakers better understand the status and experiences of AI/AN children and families interacting with the state child welfare systems and better address the continuing overrepresentation in foster care and other poor outcomes that AI/AN children experience. More complete data collection may provide a foundation for improved policy development, targeted technical assistance, and focused resources. This could assist in efforts to mitigate disproportionality for AI/AN children and families, support pathways to timely permanency for these children, and help maintain the integrity of Tribal communities. ICWA data collection offers important benefits by supporting a proactive approach to child welfare. Robust ICWA-related data collection is essential for achieving more informed, effective, and culturally responsive care for AI/AN children. ACF knows AI/AN children are disproportionately represented in the state child welfare system today. There is evidence that AI/AN children in state foster care have experienced a separation and disconnection from their community, culture, and language, giving them a sense of identity loss. Outcomes that AI/AN children have while being in foster care without culturally appropriate services include increased risk for runaway and homelessness, suicidal ideations, and juvenile justice interventions.

Data collection promotes cooperation between Tribes and federal agencies. It encourages transparency and communication, fostering trust and reinforcing the government-to-government relationship between tribes and the federal government in matters of child welfare. ACF expects that the data collection will also reveal trends about Native children in foster care—such as the rates of removal or placement in non-Native homes—indicating where Tribes and federal agencies should prioritize resources. Data can provide evidence to secure funding for services that honor ICWA's intent. Collecting ICWA data will facilitate identifying where federal and state agencies are struggling to appropriately serve AI/AN

children and will provide federal agencies, states, and Tribes with critical information about where there are knowledge gaps or implementation barriers preventing better outcomes for AI/AN children. This critical information will show where more research and/or technical assistance is needed to ensure that the federal and state child welfare systems appropriately serve AI/AN families.

As stated above, most commenters generally supported collecting ICWA-related information in AFCARS and supported the NPRM as proposed, which will aid in these efforts. Commenters also offered that the data may be used to enhance the ability to develop a better understanding of the trends in out-of-home placement and barriers to permanency for AI/AN children and that it will underscore that improved policy development, technical assistance, training, and resource allocation will result from having regularly updated data available. A commenter also offered that the data elements present an opportunity to expand cross-agency collaboration that could inform policy change across federal agencies that have the authority and responsibility to act, in partnership with tribal nations, on behalf of AI/AN children and families. Another commenter offered that the data may be used for efforts to address the chronic harm caused by overrepresentation of AI/AN children in foster care, inform persistent barriers to effective implementation of ICWA and be used to craft effective, data-driven solutions to the unique harms caused to Native communities by overrepresentation in child welfare. Another commenter said that it is important to track key data elements to ensure the foster care population is being represented accurately and this data may give child welfare agencies evidence of the population they are serving and be used to implement innovative change to issues surrounding child welfare.

Under the 2020 final rule, the ICWA-related information currently reported to AFCARS is:

- whether the child, mother, father, foster parents, adoptive parents, and legal guardians are Tribal members,
- whether the state made inquiries whether the child is an Indian child as defined in ICWA,
- the date that the state was notified by the Indian Tribe or state or Tribal court that ICWA applies, and
- whether the Indian child's Tribe(s) was sent legal notice.

While that is helpful, it does not provide sufficient information about the unique factors particular to AI/AN children to meaningfully inform policymaking. Collecting more data elements related to ICWA's procedural protections would enable HHS, other Federal agencies, and the states to target policy development, training, and technical assistance to specific areas of need. Commenters said that the data in AFCARS is critical for advocates, policymakers, and child welfare administrators to eliminate foster care disproportionality and service disparities impacting Native children. A commenter also said that such data may inform reducing the rate at which AI/AN children and youth enter the child welfare system and improving outcomes for AI/AN children and youth that do enter the system and that these data elements may help improve outcomes for AI/AN children by facilitating targeted ICWA trainings, efficient resource allocation, and/or improved policymaking.

In response to the concern from one state about the potential for the state to be penalized for any legal system's non-compliance regarding notification and other requirements of ICWA, ACF wants to be clear that this final rule is not a mechanism for enforcing or policing ICWA. Regardless of what is reported by the state in the data elements, ACF has no jurisdiction to impose consequences under ICWA on the state. The states are responsible for reporting AFCARS data in accordance with 45 CFR 1355.46, which are compliance standards for reporting data that is complete, submitted on time, and is internally consistent. These compliance standards are not related to the ICWA statute or regulations from the Bureau of Indian Affairs (BIA) at the Department of Interior.

In response to the concern from one state that reporting on ICWA's procedural protections is outside the scope of section 479 of the Act, as explained in the NPRM (89 FR 13655), the purpose of this final rule is not to enforce state compliance with ICWA, but to gain a deeper and proper understanding of the challenges facing Tribal children who are in foster care. There is no other comprehensive, national data collection related to ICWA that can inform our understanding of the experiences of Tribal children in the child welfare system. Given the long history of removal of AI/AN children from their families and communities, the unique cultural considerations that apply to Tribes,[1] and Congress's determination that the ICWA procedural protections are essential for AI/AN children and families (25 U.S.C. 1901 and 1902), ACF has determined that collecting robust ICWA-related data concerning AI/AN children in the child welfare system can provide valuable insights for ACF, states, Tribes and policymakers. ACF is the most appropriate agency in the Federal government to collect data from state child welfare agencies. The collection of ICWA-related data may allow ACF and other stakeholders to better understand how the ICWA procedural protections are operating in the context of child welfare, whether implementation of those protections results in improved outcomes for children, and where states are struggling to implement them or in need of additional resources.

In response to the two states that expressed that the value of the data outweighs the burden and costs of updating systems, ACF agrees. The overwhelmingly supportive comments received in response to the 2024 NPRM affirmed the importance of collecting these additional data elements related to ICWA's protections. Collecting these additional data elements would provide critical information about ICWA's procedural protections, protections that were affirmed in the Supreme Court's 2023 *Brackeen* decision upholding ICWA, reaffirming ICWA's importance in addressing the longstanding practices that caused harm to Indian children by unnecessarily separating them from their families and communities. Also, collecting this data may provide insight into potential areas for technical assistance and supports to help improve child welfare outcomes. ICWA has been law for 40 years but there has been little in-depth data collection regarding this law. Collecting ICWA-related data in AFCARS is a step in the right direction to ensure that Indian families are kept together when possible and to provide insight into ICWA's requirements. Having uniform national data regarding ICWA's requirements can assist policymakers in understanding the scope of issues to inform policy changes. ACF also wants to reiterate what was said in the 2024 NPRM (89 FR 13655), that in both 2018 and 2019, there were comments submitted by researchers and non-governmental organizations with relevant expertise that described the important uses for the potential data collection, including underscoring the importance of certain casework activities and showing

[1] EagleWoman (Wambdi A. WasteWin), Sisseton-Wahpeton Dakota Oyate of the Lake Traverse Reservation, Angelique and G. William Rice, United Keetoowah Band of Cherokee Indians in Oklahoma. *American Indian Children and U.S. Policy.* Tribal Law Journal 16, 1 (2016). *https://digitalrepository.unm.edu/tlj/vol16/iss1/2.*

national trends. A commenter also said that this data may allow Tribes to ascertain how many of their children are in the child welfare system, facilitate the Tribe's ability to locate and protect its children, and possibly assist in planning an expansion of their judicial and social services to ensure that Tribal courts have sufficient capacity to hear custody proceedings involving their own children. Having uniform national data regarding ICWA's requirements can assist policymakers in understanding the scope of issues to inform policy changes.

ACF continues to recognize that this rulemaking represents a change in approach from the 2020 final rule, which reduced the number of ICWA data elements to be collected in AFCARS. As ACF explained in the 2024 NPRM, ACF views robust ICWA-related data collection as necessary to fulfill the AFCARS statutory purpose of collecting data ''necessary to . . . assess (on a continuing basis) the incidence, characteristics, and status of adoption and foster care in the United States, and to develop appropriate national policies with respect to adoption and foster care.'' 42 U.S.C. 679c(a)(2). Without more fulsome ICWA-related data, ACF will continue to be limited in its ability to, among other important functions, assess the current state of adoption and foster care programs and relevant trends that affect AI/AN families; address the unique needs of AI/AN children in foster care and their families by clarifying how the ICWA requirements and title IV–E/IV–B requirements interact in practice; improve training and technical assistance to help states comply with titles IV–E and IV–B of the Social Security Act for AI/AN children; develop future national policies concerning AI/AN children served by child welfare programs; and inform and expand partnerships across Federal agencies that invest in Indian families and promote resilient, thriving Tribal communities (89 FR 13654). A renewed understanding of the necessity of better understanding and supporting AI/AN children in foster care motivated ACF to propose the 2024 NPRM and it continues to undergird ACF's decision to collect this additional ICWA-related information in AFCARS.

To address commenters' suggestions to collect even more ICWA-related data, as stated in the 2024 NPRM (89 FR 13656), ACF also based the decision not to add additional ICWA-related data elements in part on concerns about the reliability and consistency of the data (85 FR 28411 and 28419). ACF's current understanding is that caseworkers would have to draw language from court orders and possibly transcripts to be able to report the specific information in these data elements, and that this may be difficult at times. Furthermore, ACF's current-understanding is that information and actions taken to meet ICWA's requirements may be performed by the courts themselves, and therefore the state title IV–E agency currently cannot always guarantee they have the accurate information for reporting the AFCARS data elements and therefore ACF limited the number of data elements that may be more have more relaibility challenges and require more effort by the agency. ACF plans to work with BIA on implementation of an eventual final rule and will work with BIA on implementation of this rule to clarify what information is required to be reviewed and interpreted so that agencies can input and report the proper data for AFCARS. ACF will also work with BIA to address instances where court orders are not clear or if specific information is missing within and how that affects AFCARS reporting. Given the importance of this data and why AFCARS is the right mechanism to collect it, as explained in the preamble, ACF is committed to providing the tailored technical assistance and training needed to help address any data reliability issues that may arise and believes it is sufficiently reliable to be worth collecting.

While ACF does not have any role in enforcing state compliance with ICWA, it is responsible for ensuring that state child welfare systems appropriately serve all children, including AI/AN children, and to set national child welfare policy that takes into account the needs of all foster and adoptive children.[2] There is no other comprehensive, national data collection related to ICWA that can inform our understanding of the experiences of Tribal children in the child welfare system. Given the long history of removal of AI/AN children from their families and communities, the unique cultural considerations and sovereignty issues that apply to Tribes,[3] and Congress's determination that the ICWA procedural protections are essential for AI/AN children and families (25 U.S.C. 1901 and 1902), ACF continues to determine that collecting more ICWA-related data in AFCARS can provide valuable insights for ACF, states, Tribes and policymakers. ACF is the most appropriate agency in the Federal government to collect data from state child welfare agencies. This ICWA-related data will allow ACF and other stakeholders to better understand how the ICWA procedural protections are operating in the context of child welfare, whether implementation of those protections results in improved outcomes for children, and where states are struggling to implement them or in need of additional resources (89 FR 13655).

ACF understands that this final rule will put an additional burden on state child welfare agencies as does any additional data collection requirement. ACF has given this serious consideration in developing this final rule and analyzing the 2024 NPRM comments, both because of concerns expressed by some states for resource issues, systems upgrades, and data entry and because the AFCARS statute requires ACF to ''avoid unnecessary diversion of resources from agencies responsible for adoption and foster care'' when regulating AFCARS (section 479(c)(1) of the Act). ACF is mindful of the cost to state title IV–E agencies of collecting this data, but at the same time, is mindful of the costs to AI/AN children, families, and Tribes, as well as ACF, states, and policymakers, of not collecting the data. While any data collection requirement imposes costs, the key consideration under the statute is whether such costs result in an ''unnecessary diversion of resources'' from agencies. As explained in the 2024 NPRM (89 FR 13657), having more data on ICWA's procedural requirements may lead to improvements in light of the disproportionately negative outcomes generally experienced by AI/AN children, youth, and families[4] and the overrepresentation of AI/AN children in the child welfare system.[5]

[2] The NPRM stated that the Department of Interior Bureau of Indian Affairs plays a role in enforcing state compliance with ICWA (89 FR 13656). Subsequently, BIA informed ACF that it does not have any role in enforcing state compliance with ICWA.

[3] EagleWoman (Wambdi A. WasteWin), Sisseton-Wahpeton Dakota Oyate of the Lake Traverse Reservation, Angelique and G. William Rice, United Keetoowah Band of Cherokee Indians in Oklahoma. *American Indian Children and U.S. Policy.* Tribal Law Journal 16, 1 (2016). *https://digitalrepository.unm.edu/tlj/vol16/iss1/2.*

[4] National Indian Child Welfare Association, *State of American Indian/Alaska Native Children and Families, Part 3: Adverse Childhood Experiences and Historical Trauma,* (2022) *https://www.nicwa.org/wp-content/uploads/2022/11/NICWA-State-of-AIAN-Children-and-Families-Report-PART-3.pdf.*

[5] 4,622 children with a reported race (per 45 CFR 1355.44(b)(7)) of AI/AN entered foster care during FY 2021 (AFCARS Report 29). While that is two percent of the child welfare population, AI/AN children made up one percent of the child population (Child Welfare Information Gateway (2021) *Child Welfare Practice to Address Racial Disproportionality and Disparity, https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/*). We also want to note that the

Continued

ACF realizes that all states have or are in the process of modifying their data systems to collect the new data elements, largely unrelated to ICWA, required by the 2020 final rule. ACF also realizes that adding additional data elements to state data collection systems will present an additional financial and personnel cost and that the data is qualitative in nature, meaning that it likely will be more costly and time-consuming to report because, we understand, that the information is in paper files or case notes, and not already within data fields ready for reporting. However, ACF does not see these as sufficient reasons to not require reporting of ICWA procedural requirements in AFCARS, given the importance of the data.

AFCARS may be modified when needed, for example, to reflect legislative changes and other changing needs for particular kinds of data. In general, AFCARS regulations may be amended at any time to accommodate changes in law, policy, or other matters that are tied to the title IV–B/IV–E programs and accordingly, ACF does not view this final rule as implicating states' reliance interests. With the plan to give states three federal fiscal years to implement this final rule, ACF believes that allows time for states to make the needed modifications.

Thus, in light of the supportive comments received and the importance of the data, on balance, ACF determined that the value of collecting the data outweighs the burden it imposes, and that any cost imposition is not ''unnecessary.'' We address specific comments received on burden and costs in V. Regulatory Impact Analysis.

Executive Orders 13985 and 14091

This rule is consistent with the administration's priority of advancing equity for those historically underserved and adversely affected by persistent poverty and inequality (Executive Order 13985 *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,* Jan. 20, 2021 and 14091 *Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,* Feb. 16, 2023). Research well-documents the overrepresentation of certain groups in foster care relative to their representation in the general population. AI/AN children are at greater risk than other children of being confirmed for maltreatment and placed in out-of-home care.[6] The additional data in this final rule may allow ACF and other stakeholders to better understand opportunities to advance equitable outcomes for AI/AN children.

Summary of Final Rule

Currently, state title IV–E agencies report the following related to ICWA in AFCARS:

- Tribal membership of the child, mother, father, foster parents, adoptive parents, and legal guardians—§ 1355.44(b)(4), (c)(3) and (4), (e)(10) and (15), and (h)(4) and (9).
- Whether the state made inquiries whether the child is an Indian child as defined in ICWA—§ 1355.44(b)(3).
- Whether ICWA applies for the child and the date that the state was notified by the Indian Tribe or state or Tribal court that ICWA applies—§ 1355.44(b)(5).
- Whether the Indian child's Tribe(s) was sent legal notice—§ 1355.44(b)(6).

This final rule revises the current data elements in § 1355.44(b) to report more detailed information on ICWA's procedural protections and, in new § 1355.44(i), adds data elements on certain aspects of ICWA's procedural protections for requests for transfers to Tribal court, termination/modification of parental rights, and foster care, pre-adoptive and adoptive placement preferences. The section-by-section preamble explains in detail how the current CFR will be amended to include the new information for states to report. In summary, state title IV–E agencies must report the following additional information related to ICWA's procedural protections:

- Whether the state inquired with certain individuals as to whether the child is an Indian child as defined in ICWA and when the agency first discovered information indicating that the child is or may be an Indian child as defined in ICWA (§ 1355.44(b)(3) and (4)).
- Whether the child's parent, Tribe, or Indian custodian was sent notice in accordance with ICWA (§ 1355.44(b)(5)).
- Information on whether a court determined that ICWA applies for the child; if yes, the date the court determined ICWA applies, and the Tribe that the court determined is the Indian child's Tribe (§ 1355.44(b)(6)).
- Whether the child's case record indicated a request to transfer to Tribal court and if transfer was denied, the reason for denial (§ 1355.44(i)(1)).
- Information on involuntary and voluntary terminations or modifications of parental rights under ICWA (§ 1355.44(i)(2) and (3)).
- Information on removals under ICWA (§ 1355.44(i)(4)).
- Information on the placement preferences under ICWA for foster care, pre-adoptive, and adoptive placements (§ 1355.44(i)(5)–(8) and (10)–(13)).
- Whether the court determined that the state title IV–E agency made active efforts to prevent the breakup of the Indian family (§ 1355.44(i)(9)).

Confidentiality

ACF stated in the 2024 NPRM (89 FR 13656) that ACF will not release specific information regarding a child's Tribal membership or ICWA applicability except to the Indian Tribe in which the child is or may be a member, in order to protect the child's confidentiality. ACF had reached this decision in light of the need to ensure privacy and confidentiality as several states have very few Indian children in foster care. There is a significant privacy interest in that the information given could reveal a child's identity. Safeguarding information in instances where there is a small number of children in a jurisdiction is consistent with existing practice. The current practice for small populations in jurisdictions is to aggregate the data into larger groups so that those children cannot be identified. This current practice would not change under this final rule. Of the total commenters, two commented on the topic of confidentiality and both expressed support for collecting the data proposed in the 2024 NPRM and ensuring safeguards protect privacy and confidentiality of AI/AN children in foster care.

III. Implementation Timeframe

ACF is providing three (3) full Federal fiscal years for state title IV–E agencies to comply with the revisions to § 1355.44(b) and (i), rather than the two fiscal years proposed, which we believe is sufficient for state title IV–E agencies to implement the changes necessary to comply with this final rule. This decision was informed by the 2024 NPRM comments that we describe below. During the implementation period, state title IV–E agencies must continue to report to ACF the ICWA-related data that is currently required in § 1355.44(b)(3)–(6). It is essential for states to continue to report this information to ACF without interruption because AFCARS data is used for various reports, national

reported race of AI/AN is the closest we have to understanding whether a child is an ''Indian child'' as defined in ICWA at 25 U.S.C. 1903, as of FY 2021.

[6] Child Welfare Information Gateway, 2021, *Child welfare practice to address racial disproportionality and disparity,* U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. *https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/.*

statistics, planning, and monitoring. This means that the first report period when state title IV–E agencies must begin collecting the information required in this final rule begins October 1, 2028, and the first data files containing this information will be due to ACF by May 15, 2029.

2024 NPRM Comments: Of the nine states that made comments relevant to the implementation timeframe, four states asked for a three-fiscal year timeframe and four states expressed wanting ''sufficient time,'' saying that this is due to their resource issues with implementing the 2020 final rule and making systems updates. Only two of the nine states supported a two-fiscal year implementation timeframe. ACF recognizes that while currently, most states have submitted compliant data files for the 2020 final rule requirements, it took a majority of the states over four fiscal years to fully implement the 2020 final rule. The first data files submitted by most states in May 2023 were noncompliant, meaning that the data files either did not report historical information for those data elements that required it or states instead submitted data as per the now-superseded 1993 regulations. Regarding specifically the ICWA-related data elements from the 2020 final rule, approximately 12–14 states did not accurately report the information, meaning, for example, that seven states reported ''no'' to making any inquiries as to whether the child may be an Indian child (§ 1355.44(b)(3)) and 14 states reported that they had no children where ICWA applied (§ 1355.44(b)(5)), but we know that some of these states have federally recognized Tribes. ACF understands that the data in this final rule is important, however, ACF feels strongly that the data can only be useful and reliable if we have full, compliant data from all states. Thus, ACF considered the progress states made in implementing the 2020 final rule over the last four years, the length of time it took them to do so, and the increase in data points that we are regulating in this final rule (49) and decided to provide states with a three-fiscal year timeframe to implement this final rule.

Additionally, ACF is specifying that states must report the new/revised ICWA-related data elements required in this final rule for children who *enter* the Out-of-Home Care Reporting Population *on or after* the implementation date of the final rule (October 1, 2028). For children who enter and exit the Out-of-Home Care Reporting Population *before* the implementation date, only the 2020 final rule's ICWA-related data elements will be reported. For children who enter the Out-of-Home Care Reporting Population *before* the implementation date and exit *on or after* implementation date, the state title IV–E agency must report the information only for paragraphs (b)(4)(i) and (ii) and (b)(6)(i) from this final rule. These data elements ask: whether the child is a member of or eligible for membership in a federally recognized Indian Tribe; all federally recognized Indian Tribe(s) that may potentially be the Indian child's Tribe(s); and whether a court determined that ICWA applies or that the court is applying ICWA because it knows or has reason to know a child is an Indian child as defined in ICWA in accordance with 25 CFR 23.107(b)(2). Similar information on the child's Tribal membership, the names of Tribes, and whether ICWA applies for the child are information that states are currently reporting under the 2020 final rule. This is described in the preamble and regulation text for § 1355.43 below.

One commenter recommended that ACF not apply all of the ICWA-related data elements from this final rule for children who are in the Out-of-Home Care Reporting Population before the implementation date and exit on or after the implementation date because it would be ''overly burdensome'' to require states to retroactively seek out data in older case files or court records, particularly for children who were in foster care for many years. This would significantly reduce the reliability and usefulness of the data reported. ACF agrees with this recommendation based on implementing the 2020 final rule, where we had required title IV–E agencies to report each date of removal, exit, and exit reason for each child who had an out-of-home care episode prior to October 1, 2020. This meant that title IV–E agencies did not need to report complete historical and current information for every data element that required it in the 2020 final rule for these children. States had issues reporting historical information for those three data elements for children who were in foster care for many years, even though we understood at the time that this information would be in their case records. Now, ACF understands from the 2024 NPRM commenters that the information that will be used to report the ICWA-related data elements in this final rule are located in case notes or court documents/court orders and not currently in extractable data fields. This means that for children in foster care prior to the implementation date, ACF anticipates that states will struggle to locate and report the details on ICWA's procedural protections especially for children who have been in foster care for many years because this information may be years old. In considering the comments received in response to the 2024 NPRM and the lessons learned from implementing the 2020 final rule, ACF decided to require the new/revised ICWA-related data elements in this final rule to be reported only for children who enter the Out-of-Home Care Reporting Population on or after the implementation date of the final rule.

IV. Section-by-Section Discussion of Regulatory Provisions

References throughout this proposed rule to ''child'' or ''children'' are inclusive of youth and young adults aged 18 or older who are served by the title IV–E and IV–B programs. ACF uses these terms in the regulatory text and section-by-section preamble discussion because these are used throughout the title IV–E and IV–B statute and regulations.

Severability

For the reasons described above, ACF's authority to implement each of the provisions in this the regulation is well-supported and should be upheld in any legal challenge. ACF also believes that its exercise of its authority reflects sound policy. However, in the event that any portion of the rule is declared invalid, ACF intends that the other provisions be severable because they could still function sensibly. For example, ACF expects that if a court were to invalidate any paragraph under new § 1355.44(i), the other paragraphs should remain in effect because the data elements are independent of each other (with the exception that an invalidation of § 1355.44(i)(7) would necessitate an invalidation of § 1355.44(i)(8), and an invalidation of § 1355.44(i)(12) would necessitate an invalidation of § 1355.44(i)(13), because each of those pairs is linked). Additionally, if a court were to invalidate any of the specific data elements within any paragraph of § 1355.44(b) or (i), ACF intends that the collection of the other data elements within that subparagraph remain in effect to the maximum extent practicable because the vast majority of the data elements are independent of each other, and thus could still be collected and would still be meaningful to collect even if particular data elements were invalidated.

Section 1355.43 Data Reporting Requirements

This section contains data reporting requirements for AFCARS, such as report periods and deadlines for

submitting data files, and descriptions of data quality errors. The 2024 NPRM proposed only technical edits to amend paragraphs (b)(1) and (2) to correct cross references to data elements in § 1355.44 and remove paragraph (b)(3) to eliminate obsolete dates. No comments were received on these amendments. However, ACF made changes to the proposal to reflect the implementation directions for reporting information on children who are in the Out-of-Home Care Reporting Population before the implementation date and exit on or after the implementation date. Thus, in this final rule, ACF made technical edits to paragraphs (b)(1) and (2) to correct cross references to data elements in § 1355.44 and in amended paragraph (b)(3) to require state title IV–E agencies to report information only for the data elements in § 1355.44(b)(4)(i) and (ii), and (6)(i) for children who are in the Out-of-Home Care Reporting Population before the implementation date and exit on or after the implementation date. As explained in section III *Implementation Timeframe,* ACF understands from the 2024 NPRM commenters and our experience implementing the 2020 final rule that reporting the details on ICWA's procedural protections for all data elements in this final rule will be difficult in the case of children who have been in foster care for many years. ACF understand that this is because the case information may be years old (for example, whether there was testimony from a qualified expert witness) and would be difficult to report for these children. However, state title IV–E agencies must report all information in this final rule for children who enter the Out-of-Home Care Reporting Population on or after the implementation date.

Section 1355.44 Out-of-Home Care Data File Elements

This section contains the data element descriptions for the Out-of-Home Care Data File.

Section 1355.44(b) Child Information

Paragraph (b) contains specific information for the identified child who is in the Out-of-Home Care Reporting Population.

Researching reason to know a child is an ''Indian Child'' as defined in ICWA. In paragraphs (b)(3)(i) through (vii), the state title IV–E agency must report whether it researched whether there is reason to know that the child is an Indian child as defined in ICWA, which is whether it inquired with the following entities: the child; the child's biological or adoptive mother and father; the child's Indian custodian; the child's legal guardian; and the child's extended family (as defined in ICWA). The state title IV–E agency must also indicate whether the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village. This data element replaces and expands the current data element in § 1355.44(b)(3) that asks whether the state title IV–E agency made inquiries as to whether the child is an Indian child as defined in ICWA, with a yes/no response option.

Comment: One commenter recommended adding a data element on inquiring with a legal guardian because ''not all legal guardians would be considered Indian custodians.''

Response: ACF agrees and added a data element in paragraph (b)(3)(vii) to require the state to report whether it inquired with the child's legal guardian for the reason cited by the commenter.

Comment: Three commenters recommended revising the response options in paragraph (b)(3)(v) to add a response option for ''child not of sufficient age and capacity.'' They suggested this revision because ''it would be difficult to understand why a state agency might not inquire with the child.''

Response: ACF did not revise this data element for several reasons. The data required to be reported in paragraph (b)(3) asks whether the state inquired with the child, among others, with yes/no response options. Whether a child was not of ''sufficient age and capacity'' would require us to seek public comment to define what that means. Additionally, there are no requirements in the ICWA statute, BIA regulations, or titles IV–B or IV–E that guide recording, measuring, or ACF collecting this information. Additionally, the child's age is collected in paragraph (b)(1).

Comment: One commenter recommended adding a data element for the state to report at what point in the case the child was identified as qualifying under ICWA.

Response: We did not add a data element on this because researching whether a child is an ''Indian Child'' as defined in ICWA is already being reported for paragraphs (b)(3)(i)–(vii) and the date that the state first discovered the information indicating the child is or may be an Indian child is already being reported for paragraph (b)(4)(iv).

Comment: One commenter recommended adding data elements for the state to report on the involvement of the child's parents in the case, such as how often the parents attended hearings and the quality of their attendance.

Response: We did not add data elements on parents' involvement in the case because it is impossible to report to AFCARS narrative information and aggregate this information into national statistics. Additionally, ACF does not believe that this information is a particularly unique policy concern related to AI/AN Indian children that warrants reporting to AFCARS, it was not part of the proposed rule, and it would be difficult to interpret without substantially more contextual information. Lastly, there are no requirements in the ICWA statute, BIA regulations, or titles IV–B or IV–E that guide recording or measuring such information.

Comment: One commenter asked for clarification on who are the ''certain individuals'' states must inquire with as to whether the child is an Indian child.

Response: The regulation text in paragraphs (b)(3)(i) through (vii) specifies those individuals. They are the child, the child's biological or adoptive mother/father, Indian custodian, extended family, and legal guardian. State title IV–E agencies must also report whether the domicile or residence of the child/parent/Indian custodian is on a reservation or in an Alaska Native village.

Comment: One commenter suggested adding data elements for the state to inquire with ''other adult relatives'' and whether they are members of an Indian Tribe saying that it will assist in determining if the child is an Indian child as defined under ICWA.

Response: We did not add data elements for the state to collect information on other adult relatives because inquiring with an ''extended family member'' is already being reported in paragraph (b)(3)(iv) and ''extended family members'' is defined in ICWA at 25 U.S.C. 1903(2).

Comment: Two commenters suggested adding elements related to Tribal ancestry for the child, parents, grandparents, and family for state recognized or non-federally recognized Tribes, specifics about the Tribe's federal recognitions status, and Tribal enrollment documents.

Response: We did not add data elements on family ancestry, the status of a Tribe's federal recognition, or Tribal enrollment because ICWA only applies to children who are members of or eligible for membership in federally recognized Tribes (25 U.S.C. 1903(8). Additionally, it is not feasible to collect information on Tribal enrollment documents and ancestry in AFCARS because this information is very detailed and would not yield any set of aggregated national information.

Child's Tribal membership and reason to know. In paragraphs (b)(4)(i) and (ii), the state title IV–E agency must continue to report whether the child is a member of or eligible for membership in a Federally recognized Indian Tribe, and if ''yes,'' the state title IV–E agency must indicate all Federally recognized Indian Tribe(s) that may potentially be the Indian child's Tribe(s). This information is currently reported in § 1355.44(b)(4)(i) and (ii) and is used to help identify children in the out-of-home care reporting population who are or may be Tribal members. In paragraphs (b)(4)(iii) and (iv), the state title IV–E agency must indicate whether it knows or has reason to know that the child is an Indian child as defined in ICWA, and if ''yes,'' then the state title IV–E agency must indicate the date that it first discovered the information indicating the child is or may be an Indian child as defined in ICWA. The information reported for paragraphs (b)(4)(iii) and (iv) and (b)(6) (discussed below) would replace the current data element in § 1355.44(b)(5), which required the state IV–E agency to report only whether ICWA applies and if so, the date the state title IV–E agency was notified, because these changes require more details related to ICWA's procedural requirements on ''reason to know''. No comments were received on these amendments and ACF does not have a reason to make further revisions, so no changes were made to the proposal.

Notification. In paragraphs (b)(5)(i) and (ii), the state title IV–E agency must report whether the Indian child's Tribe(s) was sent legal notice in accordance with 25 U.S.C. 1912(a) (which is currently required in § 1355.44(b)(6)) and we newly require that if ''yes,'' the state title IV–E agency must report the Indian Tribe(s) that were sent notice. In paragraph (b)(5)(iii), the state title IV–E agency must report whether the Indian child's parent or Indian custodian was sent legal notice prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a). These data elements replace and expand on the information reported for the current data element in § 1355.44(b)(6) that asks whether the Indian child's Tribe(s) was sent legal notice with yes/no response options.

Comment: Nine commenters requested that the data element include language of whether the notice ''was sent 10 days prior'' to the first custody hearing.

Response: We did not add the language of ''10 days prior'' to the data elements because it is already built into the requirement for reporting this data element in that the state must report that it notified in accordance with ICWA at 25 U.S.C. 1912(a). The statute at 25 U.S.C. 1912(a) contains the specification that the notice must be received by the parent/custodian more than 10 days prior to the first child custody proceeding.

Comment: One commenter requested adding more data elements on: how notice was transmitted, and if it was properly addressed, notice sent to the BIA or the Tribe's designated ICWA agents listed on the BIA website, and notice sent to the **Federal Register**.

Response: We did not add these suggested data elements because we believe they are too detailed for national data collection, and we do not have a reason to collect this information. Lastly, adding more data elements for this type of information is outside the scope of the NPRM's proposal for this data element, unnecessarily burdensome and would increase state and federal costs to collect.

Comment: One commenter requested adding data elements on whether the Tribe was notified of *voluntary* foster care placements that are not covered under the ICWA notice requirements of 25 U.S.C. 1912(a) because they felt it will enable policy makers to identify gaps in ICWA in terms of countering practices that contribute to the disproportionate removal of Indian children.

Response: We did not add this data element because there are no requirements in the ICWA statute, BIA regulations, or titles IV–B or IV–E that guide recording or measuring such information. Thus, adding a data element on this would be requiring states to report on actions they are not otherwise required to undertake. Lastly, this information is outside the scope of the NPRM's proposal for this data element, unnecessarily burdensome and would increase state and federal costs to collect.

Comment: A few commenters requested adding data elements on the date of the notice, the date the notice was received by the parent, Indian custodian, and Tribe, and the date the petition was filed. Commenters indicated it is ''easily located and are not qualitative or too detailed in nature and provides important additional information regarding whether notice was timely.''

Response: We did not add any data elements requiring the state to report the dates of notices or petitions because there is no need to have aggregated national statistics on this information. First, the ICWA statute at 25 U.S.C. 1912(a) contains the specification that the notice must be received at least 10 days before the proceeding, thus a response from a state of ''yes'' in paragraphs (b)(5)(i) and (iii) indicates that the timeframes are met. We did not add any data elements on petition dates because information must to be reported to AFCARS only when a child enters the Out-of-Home Care Reporting Population. Per § 1355.42, a child must be in ''foster care'' as defined in § 1355.20 and in § 1355.44(d)(1) the state reports the removal date when a child enters the placement and care responsibility of the title IV–E agency. Thus, children with only a removal petition filed and who are not in the placement and care responsibility of the state are not included in the Out-of-Home Care Reporting Population.

Comment: One commenter requested adding data elements on notice to other adult relatives, non-Indian relatives, and kin because this should align with ''the Fostering Connections to Success and Increasing Adoptions Act of 2006 require[ment] that adult grandparents and other adult relatives of the child be identified and notified within 30 days of when a child is removed from his or her home.''

Response: We did not add data elements on this because there are no requirements in the ICWA statute or BIA regulations for notice to other adult relatives, non-Indian relatives, or kin. The commenter is not referring to a requirement in ICWA. The commenter is referencing a required notice to relatives under section 471(a)(29) of the Act (42 U.S.C. 671(a)(29)) that is much more expansive and applies to all children in foster care, including children to whom ICWA applies. State compliance with the notice to relatives requirement is monitored through the Child and Family Services Review (see item 10C of the on-site review instrument).

Comment: One commenter requested adding data elements on: when in the case the Tribe was notified; how the Tribe was notified; when in the case the Tribe intervened; what was the Tribe's level of participation; was the Tribe a ''party'' to the case; a definition of ''proper notice'' to the Tribe; and Tribal affiliation information.

Response: We did not add data elements as suggested because they are too detailed for aggregated national statistics, and ACF does not have a reason to know this information. Regarding the suggestion for adding ''when in the case the Tribe was notified,'' ACF does not have a need for states to report the dates of when a Tribe was notified because a response of ''yes'' in paragraphs (b)(5)(i) and (iii)

would indicate that the Indian child's Tribe, parent or Indian custodian were given proper legal notice of the child custody proceeding more than 10 days prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a). Regarding adding ''how the Tribe was notified,'' the ICWA statute and BIA regulations define what constitutes notice and specifies the methods of how notice must be sent, so we do not see a need to collect this information since the procedure is already contained within the statutory and regulatory requirements at 25 CFR 23.111 and § 1912(a). Regarding adding ''when in the case that the Tribe intervened,'' ''the Tribe's level of participation'' in a case, and whether the Tribe was a ''party'' to a case, those proposed data elements are impossible to report to AFCARS because narrative information cannot be reported to AFCARS and aggregated into national statistics due to the wide variation in what could be written. Reporting ''when in the case that the Tribe intervened,'' ''the Tribe's level of participation'' in a case, and whether the Tribe was a ''party'' to a case would not yield any insight when this final rule is requiring reporting of requests to transfer cases to Tribal court in paragraph (i)(1). Additionally, there are no requirements in the ICWA statute, BIA regulations or titles IV–B or IV–E that guide recording or measuring such information. Tribal affiliation is reported in paragraph (b)(4) on child's Tribal membership.

Application of ICWA. In paragraph (b)(6), ACF requires the state title IV–E agency to report information related to ICWA's application. In paragraph (b)(6)(i), the state title IV–E agency must report whether a court determined that ICWA applies or that the court is applying ICWA because it knows or has reason to know a child is an Indian child as defined in ICWA in accordance with 25 CFR 23.107(b)(2). If the state title IV–E agency indicates ''yes, ICWA applies,'' then it must complete paragraphs (b)(6)(ii) and (iii) and new paragraph (i) of this section. In paragraphs (b)(6)(ii) and (iii), the state title IV–E agency must report the date that the court determined that ICWA applies and the Indian Tribe that the court determined is the Indian child's Tribe for ICWA purposes. Of the total commenters, seven commented on this element and all of them expressed support. ACF did not receive comments for changes to our proposal for this paragraph, thus we finalize this data element as proposed.

Section 1355.44(i) Data Elements Related to ICWA

In new paragraph (i), we propose to obtain information on certain requirements related to ICWA. This paragraph applies only to state title IV–E agencies that reported ''yes, ICWA applies'' in paragraph (b)(6)(i); otherwise, the state title IV–E agency must leave paragraph (i) blank. Tribal title IV–E agencies do not report information in paragraph (i). This section is new and is an expansion of the ICWA-related information state title IV–E agencies are currently required to report under § 1355.44. The information proposed to be reported relates to transfers to Tribal court, involuntary and voluntary terminations/modifications of parental rights, active efforts, and placement preferences under ICWA.

Request to transfer to Tribal court. In paragraph (i)(1), the state title IV–E agency must report information on requests to transfer to Tribal court. In paragraph (i)(1)(i), the state title IV–E agency must report whether there was a request to transfer to Tribal court for each removal date reported in § 1355.44(d)(1). If the state title IV–E agency indicates ''yes,'' it must report whether there was a denial of the request to transfer to Tribal court in paragraph (i)(1)(ii). If the state title IV–E agency indicated ''yes'' in paragraph (i)(1)(ii), then it must complete paragraph (i)(1)(iii) indicating whether each reason for denial in paragraphs (i)(1)(iii)(A) through (C) ''applies'' or ''does not apply.'' The reasons are: Either of the parents objected to transferring the case to the Tribal court; the Tribal court declined the transfer to the Tribal court; The state court determined good cause exists for denying the transfer to the Tribal court.

Comment: Twenty-four commenters requested adding a data element asking for the ''reason for the denial of transfer,'' if the state reports ''yes'' for paragraph (i)(1)(ii) and 20 commenters requested adding an element on the reason for the good cause that exists for denying the transfer to Tribal court. Commenters stated that this additional data might ''uncover unfair state practices'' and would provide information on ''what state courts consider good cause to deny transfers,'' which could indicate a need for state and Tribal courts to collaborate to provide alternative forums, such as video conferencing.

Response: ACF agrees with commenters that the data element on ''reason for denial of transfer'' should be added and is adding a data element asking for the reason for denial of the request to transfer to Tribal court. We included this reporting at new paragraph (i)(1)(iii) and the language used is modeled after the data element that was in the 2016 final rule (81 FR 90571). ACF added this for the reasons expressed by the commenters, as well as that this information may improve understanding of case transfers for continued quality improvement and could deepen an understanding of ICWA, specifically where state courts and Tribal courts interact. However, ACF did not add another data element asking for the ''reason for good cause'' to deny transfers because ACF does not have any indication of what potential reasons could be without more input from public comment and the data element would be of limited use without additional detail on what those potential reasons could be.

Comment: Two commenters requested that we remove the language of ''case record indicated'' from paragraphs (i)(1)(i) and (ii) because these are the only elements that ask whether the case record indicated a specific fact, but all elements in this NPRM could be indicated by the case record.

Response: We removed the language ''the child's case record indicated'' as recommended by the commenters, which will allow for consistency in the final rule.

Involuntary termination/modification of parental rights under ICWA. In paragraph (i)(2), ACF requires that the title IV–E agency report information on involuntary terminations or modifications of parental rights under ICWA. If the title IV–E agency indicated ''involuntary'' in paragraph (c)(5) they must complete this paragraph, if applicable. In paragraph (i)(2)(i), the title IV–E agency must report whether the state court found beyond a reasonable doubt that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(f). In paragraph (i)(2)(ii), the state title IV–E agency must report whether the court decision to involuntarily terminate parental rights included the testimony of one or more qualified expert witnesses in accordance with 25 U.S.C. 1912(f). In paragraph (i)(2)(iii), the state title IV–E agency must report whether, prior to terminating parental rights, the court concluded that active efforts had been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d).

ACF did not receive comments suggesting changes to our proposal for this paragraph, thus we finalize this data element as proposed. Three commenters expressed support for this data element and one commenter supported the element but said their state will need to make changes to their electronic case management system to capture information to report for paragraph (i)(2)(ii) because currently it is located only in court minute entries and not in an extractable data field. Another commenter opposed this data element, saying these elements ''are process oriented elements that lend more to in-depth individual case review than to quantitative reporting,'' that they are not captured in their existing data system and ''would need to be identified through time consuming case-by-case review of individual court orders.'' The commenter further said that ''this type of data analysis would more effectively be accomplished through case review processes.'' ACF continues to believe that this data element reflects a key protection of ICWA (89 FR 13653) and that including this data element contributes to fulfilling the statutory requirements of the AFCARS mandate by providing comprehensive national information on the demographics and status of adoptive and foster children and their biological and adoptive or foster parents in the foster care program. This data will enable policymakers and researchers to develop more effective polices and support mechanisms tailored to the needs of AI/AN children and their families.

Voluntary termination/modification of parental rights under ICWA. In paragraph (i)(3), we require the state title IV–E agency to report information on voluntary terminations or modifications of parental rights under ICWA. The state title IV–E agency must complete the information in this paragraph if it indicated the termination of parental rights was ''voluntary'' in § 1355.44(c)(5). In paragraph (i)(3)(i) through (iii), in accordance with 25 CFR 23.125, the state title IV–E agency must indicate whether the consent to termination of parental or Indian custodian rights was:

- Executed in writing.
- Recorded before a court of competent jurisdiction.
- Accompanied with a certification by the court that the terms and consequences of consent were explained on the record in detail and were fully understood by the parent or Indian custodian in accordance with 25 CFR 23.125(a) and (c).

ACF did not receive comments suggesting changes to the proposal for this paragraph, thus we finalize this data element as proposed. In general, five commenters expressed support for this element. Another commenter opposed this data element saying the data elements proposed to be collected were ''process oriented,'' lend themselves more to in-depth individual case review than to quantitative reporting,'' are not captured in their existing data system, ''would need to be identified through time consuming case-by-case review of individual court orders,'' and that ''this type of data analysis would more effectively be accomplished through case review processes.'' ACF continues to believe that this data element is a key protection of ICWA (89 FR 13653) and aims to fulfill the statutory requirements of the AFCARS mandate by providing comprehensive national information on the status of adoptive and foster children and their biological and adoptive or foster parents in the foster care program. It also seeks to address the lack of data on AI/AN children. This data may enable policymakers and researchers to develop more effective polices and support mechanisms tailored to the needs of AI/AN children and their families.of data on AI/AN children. This data may enable policymakers and researchers to develop more effective polices and support mechanisms tailored to the needs of AI/AN children and their families.

Removals under ICWA. In paragraph (i)(4), the state title IV–E agency must report information on removals under ICWA, for each removal date that is reported in paragraph (d)(1). In paragraph (i)(4)(i), the state title IV–E agency must indicate whether the court order for foster care placement was made as a result of clear and convincing evidence that continued custody of the Indian child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(e) and 25 CFR 23.121(a). In paragraph (i)(4)(ii), the state title IV–E agency must indicate whether the evidence presented for foster care placement, as reported in paragraph (i)(4)(i), included the testimony of a qualified expert witness in accordance with 25 U.S.C. 1912(e) and 25 CFR 23.121(a). In paragraph (i)(4)(iii), the state title IV–E agency must indicate whether the evidence presented for foster care placement, as reported in paragraph (i)(4)(i), indicates that prior to each removal date reported in paragraph (d)(1) of this section, active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d).

Comment: Twenty commenters requested adding data elements on ''voluntary removals under ICWA,'' stating that collecting this information would ''help remedy a statutory hole within ICWA.'' Further, they stated that 25 U.S.C. 1913 ''does not offer the same procedural due process protections found under the involuntary proceedings as 25 U.S.C. 1912 does.'' They said that in practice, ''very few voluntary foster care placements, such as those done via a safety plan with the state agency or under the Families First Prevention Services Act in Title IV–E,'' meet the requirements of 25 U.S.C. 1913, thus collecting this data would ''help with education on this issue and to ensure federal coordination between enforcement of Title IV–E funding goals and ICWA's protections.'' However, commenters did not provide further details to inform such an additional data collection.

Response: ACF did not add a data element on ''voluntary foster care removals under ICWA.'' The NPRM did not indicate that we were considering collecting data on such removals, and therefore, we will not finalize a new data element without public input and Tribal consultation on issues such as what constitutes a voluntary foster placement under ICWA and which requirements in 25 U.S.C. 1913 are most important to collect in AFCARS.

Comment: One commenter recommended adding a data element on when states enter into voluntary service agreements with parents prior to a child custody proceeding.

Response: We did not add a data element on this for several reasons. ICWA statute and BIA regulations do not require the state to provide a notice to Tribes when they engage in pre-removal voluntary agreements with a child's parents. AFCARS does not capture information about services provided to the family prior to the child entering foster care, thus it would not be feasible to have states report this information. The state is not required to report information in AFCARS until a child enters the Out-of-Home Care Reporting Population. Lastly, the NPRM did not indicate that we were considering collecting data on pre-removal voluntary services agreements and we would want further public input and Tribal consultation before adding this as a new data element.

Comment: One commenter asked for a measurable or clear definition of ''active

efforts'' and recommended adding data elements on whether an active efforts finding was made to preserve and reunify the family and the timing in the case of such finding.

Response: We did not add a data element on this because reporting whether active efforts were made to preserve and reunify the family are reported in paragraph (i)(4)(iii). We did not add data elements to report the timing of active efforts decisions because there is no need for this information to be reported to ACF to be aggregated at the national level. A definition of ''active efforts'' is not needed or appropriate in AFCARS because BIA regulations already define ''active efforts'' (25 CFR 23.2).

Available ICWA foster care and pre-adoptive placement preferences. In paragraph (i)(5), the state title IV–E agency must report which foster care or pre-adoptive placements (reported in § 1355.44(e)(1)) that meet the placement preferences of ICWA in 25 U.S.C. 1915(b) and (c) were willing to accept placement for the child, from a list of five options. The following five options in paragraph (i)(5)(i) through (v) are: A member of the Indian child's extended family (as defined in ICWA); a foster home licensed, approved, or specified by the Indian child's Tribe; an Indian foster home licensed or approved by an authorized non-Indian licensing authority; an institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs; and a placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's Tribe. The state title IV–E agency must indicate in each paragraph (i)(5)(i) through (v) ''yes,'' or ''no,'' or ''not applicable.'' If the Indian child's Tribe established a different order of preference by resolution in accordance with 25 U.S.C. 1915(c), the state title IV–E agency must complete paragraph (i)(5)(v) and leave paragraph (i)(5)(i) through (iv) blank.

ACF did not receive comments for changes to our proposal for this paragraph, thus we finalize this data element as proposed. In general, five commenters expressed support for this data element and one commenter supported the element and said they will need to make changes to their electronic case management system to capture information to report this data element. Two commenters opposed this data element, stating that information on placement histories is already reported to AFCARS and this data element does not add ''sufficient value'' compared to the effort to report it. ACF believes that this data element is a key protection of ICWA (89 FR 13653) and aims to fulfill the statutory requirements of the AFCARS mandate by providing comprehensive national information on the status of adoptive and foster children and their biological and adoptive or foster parents in the foster care program. It also seeks to address the lack of data on AI/AN children. We believe that this data may enable policymakers and researchers to develop more effective polices and support the needs of AI/AN children and their families. Additionally, a commenter stated that the collection of this data may show where resources, training and recruitment efforts might be needed to increase the number of available preferred placement options. Another commenter said that the placement preferences are crucial to keeping families together, and this data may aid in understanding the needs of AI/AN children and tribal communities, and respecting the intent of ICWA. Establishing this requirement will not be duplicative because while placement information is reported in AFCARS at § 1355.44(e), that information is not specifically asking about available placements.

Foster care and pre-adoptive placement preferences under ICWA. In paragraph (i)(6), the state title IV–E agency must report whether each of the Indian child's foster care or pre-adoptive placements (reported in § 1355.44(e)(1)) meet the placement preferences of ICWA at 25 U.S.C. 1915(b) and (c) by indicating with whom the Indian child is placed from a list of six response options: a member of the Indian child's extended family; a foster home licensed, approved, or specified by the Indian child's Tribe; an Indian foster home licensed or approved by an authorized non-Indian licensing authority; an institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs; placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's Tribe; or placement does not meet ICWA placement preferences.

ACF did not receive comments suggesting changes to our proposal for this paragraph, thus we finalize this data element as proposed. Five commenters expressed support for this data element and one commenter supported the element and said they will need to make changes to their electronic case management system to capture information to report this data element. Two commenters opposed this data element, stating that reporting data related to ICWA placement preference without additional context is not useful when developing policy or program changes and there are multiple factors that determine whether a child is placed within ICWA placement preference or not. ACF believes that this data element is a key protection of ICWA (89 FR 13653) and aims to fulfill the statutory requirements of the AFCARS mandate by providing comprehensive national information on the status of adoptive and foster children and their biological and adoptive foster parents in the foster care program. It also seeks to address the lack of data on AI/AN children. We believe that this data may enable policymakers and researchers to develop more effective polices and support the needs of AI/AN children and their families. A commenter said that collecting information on placement preferences may help ensure that children grow up in culturally appropriate environments that maintain their connections with their families, Tribes, and heritage, provide an understanding around placement preferences, and identify areas for improvement in serving AI/AN children and families, including cross-system collaborations between local and state child welfare agencies and Tribes.

Good cause under ICWA and Basis for good cause, foster care. For placements that do not meet the ICWA placement preferences (reported in paragraph (i)(6)), the state title IV–E agency must report in paragraph (i)(7) whether the court determined by clear and convincing evidence, on the record or in writing, a good cause to depart from the ICWA placement preferences in accordance with 25 U.S.C. 1915(b) or to depart from the placement preferences of the Indian child's Tribe in accordance with 25 U.S.C. 1915(c). If the response is ''yes,'' then the state title IV–E agency must complete paragraph (i)(8), in which we propose to require that the state title IV–E agency report the state court's basis for determining good cause to depart from the ICWA placement preferences. The state title IV–E agency must indicate ''yes'' or ''no'' in each paragraph (i)(8)(i) through (v):

- Request of one or both of the Indian child's parents.
- Request of the Indian child.
- The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the placement preferences in ICWA at 25 U.S.C. 1915, but none has been located.

• The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.

• The presence of a sibling attachment that can be maintained only through a particular placement.

Comment: In general, five commenters expressed support for this data element and one commenter supported the element and said they will need to make changes to their electronic case management system to capture information to report this data element. Two commenters opposed this data element, stating that reporting data related to ICWA placement preference without additional context is not useful when developing policy or program changes and there are multiple factors that determine whether a child is placed within ICWA placement preference or not.

Response: We believe that this data element is a key protection of ICWA (89 FR 13653) and aims to fulfill the statutory requirements of the AFCARS mandate by providing comprehensive national information on the status of adoptive and foster children and their biological and adoptive foster parents in the foster care program. It also seeks to address the lack of data on AI/AN children. We believe that this data may enable policymakers and researchers to develop more effective polices and support mechanisms tailored to the needs of AI/AN children and their families. A commenter said that gathering data on which of the possible good cause exceptions was relied upon may help states, Tribes, and advocates get a better sense of where they need to focus their efforts to increase the number of preferred placement options.

Comment: One commenter suggested adding data elements on whether a good cause finding was made to deviate from ICWA's placement preferences, the basis of the good cause finding, and how good cause was reached.

Response: We did not add any of the suggested data elements because whether a good cause finding was made and the basis for good cause will already be collected in paragraph (i)(7)–(8) and (12)–(13) of this final rule. In reference to collecting good cause information using a qualitative method of collection, we did not add data elements on that because it is impossible to collect narrative information in AFCARS and for ACF to aggregate such information into national statistics.

Active Efforts. In paragraph (i)(9), the state title IV–E agency must report whether it made active efforts to prevent the breakup of the Indian family in accordance with 25 U.S.C. 1912(d) and 25 CFR 23.2.

Comment: One commenter suggested adding data elements on the details on active efforts, such as whether they were culturally appropriate services and the standard to measure culturally appropriate services.

Response: We did not add these data elements for several reasons as it represents a data collection outside the scope of the NPRM. We understand that it is important to provide culturally appropriate services, however, adding more details for active efforts without much more context would be difficult to interpret and burdensome. Additionally, there is no need or use for this information to be reported to ACF to be aggregated at the national level. This data element only collects information on whether the state provided active efforts (yes or no) and not the types of efforts provided. Therefore, it is not possible to ascertain whether services were culturally responsive or how they were measured because we do not have any measurements for this type of information. Lastly, there is no definition of ''culturally appropriate'' services outlined in statute or regulations and therefore, no guidelines on how to report such information.

Comment: One commenter suggested adding a definition of active efforts to AFCARS.

Response: We did not make any changes to the final rule. A definition is not needed or necessary because the element cross-references to the citation in the BIA regulations for the definition of ''active efforts'' (25 CFR 23.2).

Comment: One commenter suggested adding data elements to collect data on the steps that the state title IV–E agency took to make active efforts ''using a qualitative method instead of a quantitative method.''

Response: We did not add data elements on this because adding more details for active efforts without much more context would be difficult to interpret and burdensome. Also, it is impossible for AFCARS to collect in AFCARS narrative information and for ACF to aggregate this information into national statistics due to the wide variation in what could be written.

Available ICWA adoptive placements. If the state title IV–E agency indicated the child exited to adoption in § 1355.44(g)(3) *Exit reason,* the state title IV–E agency must report in paragraph (i)(10) which adoptive placements from a list of four were willing to accept placement of the child. The following four options in paragraphs (i)(10)(i) through (iv) are: a member of the Indian child's extended family; other members of the Indian child's Tribe; other Indian families; a placement that complies with the order of preference placements established by an Indian child's Tribe. If the Indian child's Tribe established a different order of preference by resolution in accordance with 25 U.S.C. 1915(c), the state title IV–E agency must complete paragraph (i)(10)(iv) and leave paragraph (i)(10)(i) through (iii) blank.

ACF did not receive comments suggesting changes to our proposal for this paragraph, thus we finalize this data element as proposed. In general, five commenters expressed support for this data element and one commenter supported the element and said they will need to make changes to their electronic case management system to capture information to report this data element. Two commenters opposed this data element, stating that reporting data related to ICWA placement preference without additional context is not useful when developing policy or program changes and there are multiple factors that determine whether a child is placed within ICWA placement preference or not.

ACF believes that this data element is a key protection of ICWA (89 FR 13653) and aims to fulfill the statutory requirements of the AFCARS mandate by providing comprehensive national information on the status of adoptive and foster children and their biological and adoptive foster parents in the foster care program. It also seeks to address the lack of data on AI/AN children. We believe that this data may enable policymakers and researchers to develop more effective polices and support mechanisms tailored to the needs of AI/AN children and their families. A commenter said that collecting information on placement preferences may help ensure that children grow up in culturally appropriate environments that maintain their connections with their families, Tribes, and heritage, provide an understanding around placement preferences, and identify areas for improvement in serving AI/AN children and families, including cross-system collaborations between local and state child welfare agencies and Tribes.

Adoption placement preferences under ICWA. If the state title IV–E agency indicated the child exited to adoption in § 1355.44(g)(3) *Exit reason,* the state title IV–E agency must report in paragraph (i)(11) whether the child's adoptive placement meets the adoptive placement preferences of ICWA in 25 U.S.C. 1915(a) or (c) by indicating with whom the Indian child is placed from a list of the following five options: a

member of the Indian child's extended family; other members of the Indian child's Tribe; other Indian families; placement that complies with the order of preference for adoptive placements established by an Indian child's Tribe; or placement does not meet ICWA placement preferences.

Comment: In general, five commenters expressed support for this data element and one commenter supported the element and said they will need to make changes to their electronic case management system to capture information to report this data element. Two commenters opposed this data element, stating that information on placement histories is already reported to AFCARS and this data element does not add ''sufficient value'' compared to the effort to report it.

Response: We believe that this data element is a key protection of ICWA (89 FR 13653) and aims to fulfill the statutory requirements of the AFCARS mandate by providing comprehensive national information on the status of adoptive and foster children and their biological and adoptive foster parents in the foster care program. It also seeks to address the underrepresentation of data on AI/AN children. We believe that this data may enable policymakers and researchers to develop more effective polices and support mechanisms tailored to the needs of AI/AN children and their families. A commenter said that collecting information on placement preferences may help ensure that children grow up in culturally appropriate environments that maintain their connections with their families, Tribes, and heritage, provide an understanding around placement preferences, and identify areas for improvement in serving AI/AN children and families, including cross-system collaborations between local and state child welfare agencies and Tribes.

Comment: One commenter suggested adding data elements on: whether a guardianship or adoption of a child was with a Tribal member, the child's Tribe, other; whether the placement preferences were provided; and whether placement preferences were accommodated.

Response: We did not add any data elements because AFCARS already collects whether the adoptive parent or guardian is a member of an Indian Tribe in § 1355.44(h)(4) and (9). We do not collect the name of a Tribe when a child exits to adoption or guardianship because we do not have a need for this information aggregated at the national level. The data elements on placement preferences in this final rule will provide information on whether the preferences were followed and whether the child was placed for adoption with ''a member of the Indian child's extended family,'' ''other members of the Indian child's Tribe,'' or ''other Indian families.

Good cause under ICWA and Basis for good cause, adoption. For placements that do not meet the ICWA placement preferences (as reported in paragraph (i)(11)), ACF proposes to require that the state title IV–E agency indicate in paragraph (i)(12) whether the court determined by clear and convincing evidence, on the record or in writing, a good cause to depart from the ICWA placement preferences under 25 U.S.C. 1915(a) or to depart from the placement preferences of the Indian child's Tribe under 25 U.S.C. 1915(c). If the response for paragraph (i)(12) is ''yes,'' then the state title IV–E agency must complete paragraph (i)(13), in which we propose to require that the state title IV–E agency report the state court's basis for determining good cause to depart from the ICWA placement preferences. The state title IV–E agency must indicate ''yes'' or ''no'' in each paragraph (i)(13)(i) through (v):

- Request of one or both of the child's parents.
- Request of the Indian child.
- The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the adoptive placement preferences in ICWA at 25 U.S.C. 1915, but none has been located.
- The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the adoptive placement preferences live.
- The presence of a sibling attachment that can be maintained only through a particular adoptive placement.

Comment: In general, five commenters expressed support for this data element and one commenter supported the element and said they will need to make changes to their electronic case management system to capture information to report this data element. Two commenters opposed this data element, stating that reporting data related to ICWA placement preference without additional context is not useful when developing policy or program changes and there are multiple factors that determine whether a child is placed within ICWA placement preference or not.

Response: We believe that this data element is a key protection of ICWA (89 FR 13653) and aims to fulfill the statutory requirements of the AFCARS mandate by providing comprehensive national information on the status of adoptive and foster children and their biological and adoptive foster parents in the foster care program. It also seeks to address the underrepresentation of data on AI/AN children. We believe that this data may enable policymakers and researchers to develop more effective polices and support mechanisms tailored to the needs of AI/AN children and their families. A commenter said that collecting information on placement preferences may help ensure that children grow up in culturally appropriate environments that maintain their connections with their families, Tribes, and heritage, provide an understanding around placement preferences, and identify areas for improvement in serving AI/AN children and families, including cross-system collaborations between local and state child welfare agencies and Tribes.

Comment: One commenter suggested adding data elements on: whether a good cause finding was made to deviate from ICWA's placement preferences; the basis of the good cause finding; and how good cause was reached using a qualitative data collection method to obtain data that is informative and serves as a foundation for training and support needs, regarding ICWA.

Response: We did not add any data elements because whether a good cause finding was made and the basis for good cause will already be collected in paragraph (i)(7)–(8) and (12)–(13) of this final rule. In reference to collecting good cause information using a qualitative method of collection, ACF did not add data elements as suggested because it is impossible for AFCARS to collect narrative information and for ACF to aggregate this information into national statistics.

V. Regulatory Impact Analysis

Congressional Review Act

The Congressional Review Act (CRA) allows Congress to review major rules issued by Federal agencies before the rules take effect (see 5 U.S.C. 801(a)(1)(A)). The CRA defines a ''major rule'' as one that has resulted, or is likely to result, in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic and export markets (see 5 U.S.C. chapter 8). OMB's Office of Information and Regulatory Affairs has determined that this rule does not meet the criteria set forth in 5 U.S.C. 804(2).

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires) requires Federal agencies to determine, to the extent feasible, a rule's impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term ''small entities,'' as defined in the RFA, comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a three percent impact on revenue on at least 5 percent of small entities. However, the Secretary certifies, under 5 U.S.C. 605(b), as enacted by the RFA (Pub. L. 96–354), that this rulemaking will not result in a significant impact on a substantial number of small entities. This rule does not affect small entities because it is applicable only to state title IV–E agencies. Therefore, an initial regulatory flexibility analysis is not required for this rule.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) was enacted to avoid imposing unfunded Federal mandates on state, local, and Tribal governments, or on the private sector. Section 202 of UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. In 2024, that threshold is approximately $183 million. This rule does not contain mandates that will impose spending costs on state, local, or Tribal governments in the aggregate, or on the private sector, in excess of the threshold.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. ACF concluded it is not necessary to prepare a family policymaking assessment (see Pub. L. 105–277) because this rule would not have any impact on the autonomy or integrity of the family as an institution.

Executive Order 13132

Executive Order 13132 on Federalism requires that Federal agencies consult with state and local government officials in the development of regulatory policies with Federalism implications. Consistent with Executive Order 13132, ACF solicited comments from state and local government officials on the 2024 NPRM and considered them in finalizing this rule. See sections II through IV of the preamble, where we address the elements of the federalism summary impact statement: the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met.

Regulatory Planning and Review Executive Orders 12866, 13563, and 14094

Executive Orders 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to, and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Section 3(f) of Executive Order 12866 defines ''a significant regulatory action'' and was amended by Executive Order 14094 to mean ''any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $200 million or more . . . or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in the Executive Order, as specifically authorized in a timely manner by the Administrator of OIRA in each case''. A regulatory impact analysis must be prepared for rules determined to be significant regulatory actions within the scope of section 3(f)(1) of Executive Order 12866. ACF consulted OMB and determined that this rule meets the criteria for a significant regulatory action under Executive Order 12866 and was subject to OMB review.

Costs and Benefits

AFCARS is the only comprehensive case-level data set on the incidence and experiences of children who are in out-of-home care under the placement and care of the title IV–E agency or who are under a title IV–E adoption or guardianship assistance agreement. The statute requires that AFCARS provide comprehensive national information with respect to these children. Collecting robust ICWA-related data will provide the major benefit of allowing ACF to better understand the underlying reasons for the disproportionality of AI/AN child involvement in the child welfare system.

Federal reimbursement under title IV–E will be available for a portion of the costs that state title IV–E agencies will incur as a result of the revisions in this rule, depending on each state title IV–E agency's cost allocation plan, information system, and other factors. Estimated costs to the Federal Government are provided below in the Burden estimate section. ACF estimates the Federal portion of the overall information collection costs to be approximately $2,486,304 annually.

Alternatives Considered

Federal agencies must justify the need for regulatory action and consider a range of policy alternatives. We speak to two alternatives that were considered and rejected.

- ACF considered not seeking to expand the ICWA related data elements in AFCARS. An alternative course of action would be to do nothing and leave the requirements at 45 CFR 1355.44 in place because they were streamlined in the 2020 final rule in response to comments solicited at that time. ACF rejected this option because of the

reasons described earlier in the final rule. Under this alternative, state title IV–E agencies would continue to report the ICWA-related data required through the 2020 final rule. However, this information would not be robust enough to provide the data on AI/AN children needed to understand their experiences in the foster care system.

• ACF also considered the alternative of implementing a process to monitor ICWA's procedural protections through a case review outside of AFCARS. ACF decided against that approach because we believe that requiring state title IV–E agencies to collect and report information related to the more detailed aspects of ICWA's procedural protections via AFCARS is preferable because it will result in comprehensive national data (§ 479(c)(2) and (3) of the Act (42 U.S.C. 679(c)(2) and (3))). The fact that the statutory penalties for noncompliant AFCARS submissions apply to data under this final rule may incentivize agencies to provide timely and complete data submissions (§ 474(f) of the Act (42 U.S.C. 674)). (Note that agencies are afforded an opportunity to correct and resubmit noncompliant data files, as outlined in 45 CFR 1355.46).

Paperwork Reduction Act

This rule contains information collection requirements (ICRs) that are subject to review by OMB under the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. The PRA sought to minimize government-imposed burdens from information collections on the public. In keeping with the notion that government information is an asset, it also is intended to improve the practical utility, quality, and clarity of information collected, maintained, and disclosed. The PRA defines ''information'' as any statement or estimate of fact or opinion, regardless of form or format, whether numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic, or other media (5 CFR 1320.3(h)). A description of the PRA provisions is given in the following paragraphs with an estimate of the annual burden. To fairly evaluate whether an information collection should be approved by OMB, the Department solicits comment on the following issues:

• The need for the information collection and its usefulness in carrying out the proper functions of our agency.

• The accuracy of our estimate of the information collection burden.

• The quality, utility, and clarity of the information to be collected.

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Information collection for AFCARS is currently authorized under OMB number 0980–0267. This rule contains information collection requirements in § 1355.44 the Out-Of-Home Care Data File that the Department has submitted to OMB for its review. This final rule requires state title IV–E agencies to report ICWA-related information for children who are in the Out-of-Home Care Reporting Population (§ 1355.42(a)) for the data elements in § 1355.44(b) and (i).

2024 NPRM Comments

There were few comments made on the burden and costs of the 2024 NPRM and fewer provided estimated burden hours and cost amounts. ACF did not make changes to the burden estimates in this final rule based on this information because there was not enough detailed information to draw any different conclusions than we did in calculating the burden estimates for the 2024 NPRM. OMB did not receive comments in response to the 2024 NPRM. Thus, what follows is a burden estimate for this final rule, using the 2024 NPRM burden estimate since we did not make substantive changes in this final rule. Changes in the final rule estimate are attributed to updated input numbers, such as labor rate, number of children in foster care, and adding several additional data points to be reported.

Eleven commenters (including states, organizations, and one individual) expressed a concern that states will struggle with implementing this final rule, even if they have a CCWIS, and that burden will vary greatly among states depending on the number of ICWA-eligible children in their reporting population, *e.g.,* it is possible that states with large populations may have data collection methods already in place and can more easily adapt to the requirements. Five states said the 2024 NPRM will impose ''significant'' fiscal, staffing, system changes, and time burden on states. An individual said that the proposal is ''an unnecessary recordkeeping . . . cost'' to the state. One organization and two states said that child welfare workers are already ''overburdened,'' and that ''data entry . . . would take time away from direct casework.'' One state added that while reimbursement may be available under title IV–E to support the activities required for implementation, ''ICWA is not a funding source and no additional funding appears to be made available'' for implementation and so the proposal is a ''burden on state funds to cover state match and for costs associated with foster children that do not meet IV–E eligibility requirements.''

Two states, one Tribe, and one organization expressed support for the 2024 NPRM, saying that the value of the data proposed outweighs the burden and cost of updating systems. Two states said that the additional data is necessary and fulfills unmet data needs. One Tribe and one organization countered arguments for state burdens by saying that if states are practicing ''good case management,'' then they will have access to court documents. One Tribe added that ''although there will be additional efforts and resources required to collect this new data, for over 30 years since the establishment of the AFCARS in 1993, there has been little effort to close this gap in data collection for AI/AN children and families until recently.'' One organization also said that due to the ''data deficit . . . Native children and families have carried the burden of overrepresentation in child welfare systems, negatively impacting their wellbeing, without data-driven approaches to address the families' needs or to prevent system involvement.''

Three of the nine commenters who expressed concern about burden provided estimates for burden hours and cost amounts and we summarize their input below:

• One commenter said they have eight children receiving foster care services to whom ICWA applies, which is less than 0.13% of their Out-of-Home Care Reporting Population. They estimated total costs for developing and implementing the proposed modifications from the 2024 NPRM to their existing legacy system would be approximately $491,556.30. They explained that this would comprise one-time costs of $419,400.52 and $15,504.08 to verify and adjust existing procedures to comply with the requirements each year after the changes are implemented. They also estimated a cost of $56,651.70 for the tasks associated with staff training and administrative tasks to deploy system updates state-wide. They estimated that it will take approximately 10,396 hours to complete the initial work and 344 hours for ongoing work after the changes are implemented.

• One commenter estimated total initial project costs, including implementation and training, to be $201,751. This comprised 1,200 hours of technical staff time and a cost of $188,400 for development and implementation of CCWIS and AFCARS changes. They estimated total hours for staff for development, testing, implementation, and training is 450

hours for a total cost of $13,351. They estimated ongoing costs for data quality oversight to be $2,967 based on previous projects. Regarding staff time to enter the additional data elements, they estimated burden hours to be 12,952 per year, for a total annual cost of $367,577. They included some estimates for staff labor rates being $26.84 per hour for a Family Services Specialist and $33.00 per hour for a Family Services Specialist Supervisor.

- Another commenter only provided an estimated burden hour amount of cumulatively 687 hours annually collecting and entering the proposed data.

While ACF considered the information provided by these three commenters, information from these few entities cannot be used to change average burden hours/cost across all states, as the burden calculations in this rule follow. However, we used this limited information to see whether the generalized estimates that follow (which are spread across all states and do not account for states of very different sizes and of which, some may have larger populations of children served than others) may be in line with what some states may experience in implementing this final rule. Since these are rough estimates based on the information available to ACF, we believe they are consistent.

Burden Estimate

Discussion: The following are estimates. ACF estimates the burden and costs associated with this final rule using the estimates from the 2024 NPRM, which used the 2020 final rule as a base by which to estimate the burden of adding the ICWA-related data elements. The 2020 final rule estimates can be seen beginning at 85 FR 28421. This final rule has a narrow focus in that ACF is adding data elements related to ICWA's procedural protections applicable only to state title IV–E agencies. Because ICWA does not apply to Tribal title IV–E agencies, they do not have to report the data elements in this final rule, thus they are not included in this burden estimate.

Respondents: The respondents comprise 52 state title IV–E agencies.

Recordkeeping Burden: Searching data sources, gathering information, and entering the information into the system, developing or modifying procedures and systems to collect, validate, and verify the information and adjusting existing ways to comply with AFCARS requirements (including testing), administrative tasks associated with training personnel on the AFCARS requirements (*e.g.,* reviewing instructions, developing the training and manuals), and training personnel on AFCARS requirements. ACF understands that actual burden hours and costs will vary due to sophistication and capacity of information systems and availability of staff and financial resources, thus this is an average across states. ACF wants to note that regardless of the size of the state's population of children in out-of-home care to whom ICWA applies, recordkeeping tasks such as training and modifications to case management systems and electronic case files will still need to occur because the state must be prepared to report the applicable AFCARS data elements should a child enter the reporting population.

Reporting burden: Extracting the information for AFCARS reporting and transmitting the information to ACF, which includes modifying, or developing a new data file for reporting.

Assumptions for Estimates

ACF made several assumptions when calculating the burden and costs. First, we will describe the 2024 NPRM estimates and then describe how the estimates changed for this final rule.

- *2024 NPRM Estimated Burden Hours:* The 2024 NPRM burden estimates were used by calculating the increase in data elements proposed over the 2020 final rule.
  - *2024 NPRM Recordkeeping Burden Hours:* The 2024 NPRM estimated the total recordkeeping burden to be 48,183 hours annually.
    - The 2024 NPRM estimated an average 44,875 hours annually for searching data sources, gathering information, and entering the information into the case management system for children who enter foster care. This comprised of 0.20 hours annually for each child who entered foster care for the data elements in § 1355.44(b)(3) through (6) (a 5 percent increase in data points to report for all children who enter foster care) and 0.76 hours annually for the data elements in § 1355.44(i) (a 19 percent increase in data points to report for children to whom ICWA applies). ACF is again using a child's reported race as AI/AN as a proxy for a child to whom ICWA applies. These percentage increases were derived from the increase in reporting over the 2020 final rule, which was 4.02 hours annually for each child who entered foster care for all 2020 final rule data points and 206,812 children who had entered foster care in FY 2022.
    - The 2024 NPRM estimated 1,608 hours annually for developing or modifying standard operating procedures and IT systems to collect, validate, and verify the information and adjust existing ways to comply with the AFCARS requirements, and testing. This comprises 335 hours annually for the data elements in § 1355.44(b)(3) through (6) (a 5 percent increase in data points to report for all children who enter foster care) and 1,273 hours annually for the data elements in § 1355.44(i) (a 19 percent increase in data points to report for children to whom ICWA applies). The 2020 final rule estimated 6,700 hours for these tasks for all 2020 final rule data points.
    - The 2024 NPRM estimated 1,621 annual burden hours for modifying IT systems and adjust existing ways to comply with the proposal. This comprises 354 hours annually for the data elements in § 1355.44(b)(3) through (6) (a 5 percent increase in data points to report for all children who enter foster care) and 1,346 hours annually for the data elements in § 1355.44(i) (a 19 percent increase in data points to report for children to whom ICWA applies). Administrative tasks associated with training personnel on the requirements include reviewing instructions and developing training and manuals. ACF understands that training hours will vary depending on the size of the agency's workforce needing training and the current training conducted regarding ICWA, therefore ACF assumes that implementing the data elements here will be incorporated in ongoing training efforts. The 2020 final rule estimated 7,086 hours for all 2020 final rule data points.
  - *2024 NPRM Reporting Burden Hours:* The 2024 NPRM estimated the total reporting burden to be 8 hours annually. This comprises 2 hours annually for each child who entered foster care for the data elements in § 1355.44(b)(3) through (6) (a 5 percent increase in data points to report for all children who enter foster care) and 6 hours annually for the data elements in § 1355.44(i) (a 19 percent increase in data points to report for children to whom ICWA applies). Reporting burden is compiling the data file and transmitting to ACF. The 2020 final rule estimated reporting would take 34 hours annually extracting and reporting information for all 2020 final rule data points.
- *Number of children in out-of-home care:* To determine the number of children for which state title IV–E agencies will have to report the expanded ICWA-related data in the Out-of-Home Care Data File on average, ACF used the most recent FY 2022 AFCARS data available (report #30): 186,602 children entered in foster care during FY 2022. Of those, 4,276 children were

reported to have a race of AI/AN. ACF used the number of children who entered foster care rather than the entire population of children in foster care because states will not have to collect and report all data elements on all children in foster care.

• *Additional and Revised Data Elements for State Title IV–E Agencies:* The current Out-of-Home Care Data File contains 186 data points (see Appendix A of Technical Bulletin #20). ACF proposes to revise or add in the Out-Of-Home Care Data File approximately 49 data points related to state title IV–E agencies reporting the new/revised ICWA-related information. The reason why the number of data points increased is because ACF added a data element in § 1355.44(b)(3)(vii) and added 3 data elements in § 1355.44(i)(1)(iii)(A)–(C). Thus, the percentage increase in reporting over the 2020 final rule represents revisions to the current ICWA-related data elements to expand the information to be reported in § 1355.44(b)(3)–(6), which represents a six percent increase in data points for state title IV–E agencies to report for all children who enter foster care over the 2020 final rule (11 new data points/186 current data points = 0.06). New data points to be added in § 1355.44(i) represents a 20 percent increase in data points for state title IV–E agencies to report for children to whom ICWA applies (38 new data points/186 current data points = 0.20). These percent increases in data points will be used in calculating the reporting and recordkeeping burden for state title IV–E agencies as a result of this final rule. ACF understands from states during the implementation period of the 2020 final rule and comments to the 2024 NPRM that to report the revised/new information related to ICWA, much work will need to be accomplished to examine paper or electronic case notes, court records, court orders, and other documents to locate the needed information and enter it into the case management system. ACF also understands that the burden will vary across jurisdictions, depending on how robust the agency's electronic case management system is and the availability of documents.

• *Systems changes:* As of May 2023, 46 state title IV–E agencies have declared that they are implementing or intend to implement a Comprehensive Child Welfare Information Systems (CCWIS) (see 45 CFR 1355.50 *et seq.* for requirements). ACF recognizes that state title IV–E agencies will require revisions to electronic case management systems to meet the requirements proposed in this final rule, regardless of CCWIS status. As more states build CCWIS, ACF anticipates it will lead to more efficiency in reporting. However, ACF understands from the 2024 NPRM that the bulk of the information that would be used to respond to the expanded ICWA-related data collection is located in paper files or court documents.

• *Labor rate:* ACF assumes that there will be a mix of the following positions working to meet both the one-time and annual requirements of this rule. ACF understands that approximately half of the state title IV–E agencies will utilize a contract to implement IT/case management systems changes to comply with an eventual final rule based on state advance planning documents approved by ACF. To inform this estimate, ACF also reviewed 2023 Bureau of Labor Statistics data for job roles in categories of information technology (IT) and computer programming, administrative, management, caseworkers, subject matter experts, and legal staff and used the average hourly wage for each job role. ACF used the job roles for social services and legal staff who may be employed by the child welfare agency and systems/engineer staff who may be employed by the agency or retained by a contract to build or revise case management systems. The wages are described below.

○ Office and Administrative Support Occupations (43–0000) (*e.g.,* Administrative Assistants, Data Entry, Legal Secretaries, Government Program Eligibility Interviewers, Information and Record Clerks) at $23.05, Social and Community Service Managers (11–9151) at $40.10, Community and Social Service Operations (21–0000) (*e.g.,* Social Workers, Child and Family Social Workers, Counselors, Social Service Specialists) at $28.36, Social Workers (21–1020) at $30.23, Child, Family, and School Social Workers (21–2021) at $29.68, and Paralegals and Legal Assistants (23–2011) at $31.95, Computer Information and Systems Managers (11–3021) at $86.88, Computer and Mathematical Occupations (15–0000) (*e.g.,* computer and information analysts, computer programmers, and database and systems administrators) at $54.39, Information Security Analysts (15–1212) at $59.97, Computer Hardware Engineers (17–2061) at $71.04, Database Administrators (15–1242) at $50.39, Database Architects (15–1243) at $65.88, and Computer Programmers (15–1251) at $51.80. The rounded average labor rate for these wages is $48 and to account for associated overhead costs, ACF doubled this rate, which is $96.

Calculations for Estimates

Recordkeeping Burden Estimate for State Title IV–E Agencies: Adding the burden hours estimated in the bullets below produced a total of 51,789 recordkeeping hours annually, as summarized below. As stated earlier in the ''Assumptions for Estimates'' discussion, the bullet on ''Additional and Revised Data Elements for State Title IV–E Agencies'' above, ACF estimates that this final rule has an increase in reporting of 6 percent in data points for state title IV–E agencies to report for all children who enter foster care in § 1355.44(b)(3) through (6) (11 new data points/186 current data points = 0.06); and 19 percent in new data points in § 1355.44(i) for state title IV–E agencies to report for children to whom ICWA applies (38 new data points/186 current data points = 0.20).

• ACF estimates that searching data sources, gathering information, and entering the information into the case management system for children who enter foster care would take on average 48,205 hours annually. The 2020 final rule estimated these tasks to be 4.02 hours annually for each child who entered foster care for all 2020 final rule data points. For this final rule, the expanded ICWA-related information to be added in:

○ Section 1355.44(b)(3) through (6) is a 6 percent increase in data points to report for all children who enter foster care ($4.02 \times 0.06 = 0.24$ hours). These data points apply to all children who enter foster care (0.24 hours × 186,602 children = 44,784 hours).

○ Section 1355.44(i) is a 20 percent increase in data points to report for children to whom ICWA applies ($4.02 \times 0.20 = 0.80$ hours). ACF again used a child's reported race as AI/AN as a proxy for a child to whom ICWA applies (0.80 hours × 4,276 children = 3,421 hours).

○ The total estimate of searching/gathering/entering information into the case management system is 48,205 annual burden hours (44,784 + 3,421 = 48,205).

• Developing or modifying standard operating procedures and IT systems to collect, validate, and verify the information and adjust existing ways to comply with the AFCARS requirements, and testing ACF estimates would take 1,742 hours annually. The 2020 final rule estimated 6,700 hours for these tasks for all 2020 final rule data points. For this final rule, the expanded ICWA-related information to be added in:

○ Section 1355.44(b)(3) through (6) is a 6 percent increase in data points to

report for all children who enter foster care (6,700 × 0.06 = 402 hours).

○ Section 1355.44(i) is a 20 percent increase in data points to report for children to whom ICWA applies (6,700 × 0.20 = 1,340 annual hours).

○ The total estimate of developing or modifying standard operating procedures and IT systems is 48,205 annual burden hours (402 + 1,340 = 1,742).

• Administrative tasks associated with training personnel on the requirements include reviewing instructions, developing training and manuals and training personnel on the requirements and ACF estimates it will take on average 1,842 annual burden hours. ACF understands that training hours will vary depending on the size of the agency's workforce needing training and the current training conducted regarding ICWA, therefore ACF assumes that implementing the data elements here will be incorporated in ongoing training efforts. The 2020 final rule estimated 7,086 hours for all 2020 final rule data points. For this final rule, the information to be added in:

○ Section 1355.44(b)(3) through (6) is a 6 percent increase in data points to report for all children who enter foster care (7,086 × 0.06 = 425 hours).

○ Section 1355.44(i) is a 20 percent increase in data points to report for children to whom ICWA applies (7,086 × 0.20 = 1,417 hours).

○ The total estimate of administrative tasks associated with training personnel to comply with the final rule is 1,842 annual burden hours (425 + 1,417 = 1,842).

Thus, the total recordkeeping burden estimate is 48,205 hours searching and gathering information + 1,742 hours developing or modifying IT systems + 1,842 hours administrative tasks = 51,789 hours.

Reporting Burden Estimate for State Title IV–E Agencies: ACF estimates that extracting the additional ICWA-related information for AFCARS reporting and transmitting the information to ACF would take on average 9 hours annually for all states. The 2020 final rule estimated reporting would take 34 hours annually extracting and reporting information for all 2020 final rule data points. For this final rule, the expanded ICWA-related information to be added in:

• Section 1355.44(b)(3) through (6) is a 6 percent increase in data points to report for all children who enter foster care (34 × 0.06 = 2 hours).

• Section 1355.44(i) is a 20 percent increase in data points to report for children to whom ICWA applies (34 × 0.20 = 7 hours).

The total estimate of reporting the expanded ICWA related information to comply with the final rule is 9 annual burden hours (2 + 7 = 9).

Collection-AFCARS for State Title IV–E agencies	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours for NPRM
Recordkeeping	52	2	497.97	51,789
Reporting	52	2	0.09	9
Total				51,798

Annualized Cost to the Federal Government

Federal reimbursement under title IV–E will be available for a portion of the costs that state title IV–E agencies will incur because of the revisions in this final rule and actual costs will vary, depending on each agency's cost allocation, information system, and other factors. ACF estimates that it would cost the Federal government approximately $2,486,304 for reimbursement. For this estimate, ACF used the 50 percent Federal financial participation (FFP) rate thus, we estimate the costs for Federal and non-Federal to be the same.

Collection-AFCARS for State Title IV–E agencies	Total annual burden hours	Average hourly labor rate	Total cost	Estimate federal costs (50% FFP)
Recordkeeping	51,789	$96	$4,971,744	$2,485,872
Reporting	9	96	864	432
Total			4,972,608	2,486,304

In the above estimates, ACF acknowledges the following: (1) ACF has used average figures for state title IV–E agencies of very different sizes and of which, some may have larger populations of children served than other agencies, and (2) these are rough estimates of burden and costs based on the information available to ACF.

OMB is required to make a decision concerning the collection of information contained in this regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments to OMB or the information collection should be sent directly to the following: Office of Management and Budget, either by fax to 202–395–6974 or by email to *OIRA_submission@omb.eop.gov.* Please mark faxes and emails to the attention of the desk officer for ACF.

VI. Tribal Consultation Statement

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments,* requires agencies to consult with Indian Tribes when regulations have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Similarly, ACF's Tribal Consultation Policy notes that consultation is triggered for a new rule adoption that significantly affects Tribes, meaning the new rule adoption has substantial direct effects on one or more Indian Tribes, on the amount or duration of ACF program funding, on the delivery of ACF programs or services to one or more Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This final rule does not meet either

standard for consultation. Executive Order 13175 does not apply to this final rule because it does not impose any burden or cost on Tribal title IV–E agencies, nor does it impact the relationship or distribution of power between the Federal Government and Indian Tribes. ICWA does not apply to Tribal title IV–E agencies, and therefore, they do not have to report the data elements in this final rule. However, while E.O. 13175 and ACF's Tribal Consultation Policy do not formally apply to this final rule, ACF still sought Tribal input on the 2024 NPRM during the comment period via Tribal consultation.

ACF announced the Tribal consultation in writing via a ''Dear Tribal Leader Letter'' (DTLL) on March 6, 2024 noting the date, purpose, virtual location, and registration process for consultation. The DTLL was also shared in the publication ''News from CB,'' via the Children's Bureau (CB), the Resource Center for Tribes, and through CB's program offices and community partners. Tribal Consultation was held via a Zoom webinar on April 3, 2024, at 3:30 p.m. Eastern and there were 55 attendees. During the webinar, CB provided a background and history of regulation development and an overview of the NPRM. ACF invited general comments on the NPRM and comments on the potential benefits and disadvantages of including this data in AFCARS. In general, participants expressed support for the proposal and said that Tribes have advocated for including these data elements for a long time. One participant expressed their view that states do not have a sufficient understanding of the importance of ICWA and as a result, do not work well with Tribes on these issues. The participant felt that the proposed elements will give Tribes data that they can use to communicate with states regarding ICWA and Tribal children who are in the placement and care responsibility of states. A few participants did not provide a specific comment but instead asked questions related to interpreting ICWA's requirements, which are outside the scope of this final rule.

Additionally, prior to publication of the NPRM, the Department addressed collecting ICWA-related information in AFCARS at the Secretary's Tribal Advisory Council (STAC), which is a group of tribal leaders that advises the Secretary on Tribal affairs, meetings in 2022. In September 2022, ACF updated the STAC of ACF's intention to seek revision of AFCARS to propose ICWA-related data elements similar to what was in the 2016 final rule. The members of the STAC have consistently expressed support for restoring ICWA-related data elements to AFCARS.

Meg Sullivan, Principal Deputy Assistant Secretary for the Administration for Children and Families, performing the delegable duties of the Assistant Secretary for Children and Families

List of Subjects in 45 CFR Part 1355

Administrative costs, Adoption Assistance, Child welfare, Fiscal requirements (title IV–E), Grant programs—social programs, Statewide information systems.

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services—State Grants).

Dated: November 25, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, ACF proposes to amend 45 CFR part 1355 as follows:

PART 1355—GENERAL

■ 1. The authority citation for part 1355 continues to read as follows:

Authority: 42 U.S.C. 620 *et seq.,* 42 U.S.C. 670 *et seq.;* 42 U.S.C. 1302.

■ 2. Amend § 1355.43 by revising paragraph (b) to read as follows:

§ 1355.43 Data reporting requirements.

* * * * *

(b) *Out-of-home care data file.* A title IV–E agency must report the information required in § 1355.44 pertaining to each child in the out-of-home care reporting population, in accordance with the following:

(1) The title IV–E agency must report the most recent information for the applicable data elements in § 1355.44(a), (b), and (c).

(2) The title IV–E agency must report the most recent information and all historical information for the applicable data elements in § 1355.44(d) through (i).

(3) For state title IV–E agencies only, regarding only the ICWA-related data elements in § 1355.44(b)(3) through (6) and (i): For a child who entered the out-of-home care reporting population as defined in § 1355.42(a) prior to October 1, 2028 and exits the out-of-home care reporting population on or after October 1, 2028, the state title IV–E agency must report information for the data described in § 1355.44(b)(4)(i) and (ii) and (6)(i) only.

* * * * *

■ 3. Effective Oct. 1, 2028, amend § 1355.44 by revising paragraphs (b)(3) through (6), and adding paragraph (i) to read as follows:

§ 1355.44 Out-of-home care data file elements.

* * * * *

(b) * * *

(3) *Researching reason to know a child is an ''Indian Child'' as defined in the Indian Child Welfare Act (ICWA).* For state title IV–E agencies only: Indicate whether the state title IV–E agency researched whether there is reason to know that the child is an Indian child as defined in ICWA. Complete each paragraph (b)(3)(i) through (vii) of this section.

(i) Indicate whether the state title IV–E agency inquired with the child's biological or adoptive mother. Indicate ''yes,'' ''no,'' or ''the biological or adoptive mother is deceased.''

(ii) Indicate whether the state title IV–E agency inquired with the child's biological or adoptive father. Indicate ''yes,'' ''no,'' or ''the biological or adoptive father is deceased.''

(iii) Indicate whether the state title IV–E agency inquired with the child's Indian custodian if the child has one. Indicate ''yes,'' ''no,'' or ''child does not have an Indian custodian.''

(iv) Indicate whether the state title IV–E agency inquired with the child's extended family. Indicate ''yes'' or ''no.''

(v) Indicate whether the state title IV–E agency inquired with the child. Indicate ''yes'' or ''no.''

(vi) Indicate whether the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village. Indicate ''yes'' or ''no.''

(vii) Indicate whether the state title IV–E agency inquired with the child's legal guardian if the child has one. Indicate ''yes,'' ''no,'' or ''child does not have a legal guardian.''

(4) *Child's Tribal membership and reason to know.* For state title IV–E agencies only:

(i) Indicate whether the child is a member of or eligible for membership in a federally recognized Indian Tribe. Indicate ''yes,'' ''no,'' or ''unknown''.

(ii) If the state title IV–E agency indicated ''yes'' in paragraph (b)(4)(i) of this section, indicate all federally recognized Indian Tribe(s) that may potentially be the Indian child's Tribe(s).

(iii) Indicate whether the state title IV–E agency knows or has reason to know, that the child is an Indian child as defined in ICWA. Indicate ''yes'' or ''no.'' If the state title IV–E agency indicates ''yes,'' then it must complete

paragraph (b)(4)(iv) of this section. If the state title IV–E agency indicates ''no,'' then it must leave paragraph (b)(4)(iv) of this section blank.

(iv) Indicate the date that the state title IV–E agency first discovered the information indicating the child is or may be an Indian child as defined in ICWA.

(5) *Notification.* For state title IV–E agencies only:

(i) Indicate whether the Indian child's Tribe(s) was sent legal notice prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a). Indicate ''yes'' or ''no.'' If the state title IV–E agency indicates ''yes,'' then it must complete paragraph (b)(5)(ii) of this section. If the state title IV–E agency indicates ''no,'' then it must leave paragraph (b)(5)(ii) of this section blank.

(ii) Indicate the Indian Tribe(s) that were sent notice as required in ICWA at 25 U.S.C. 1912(a).

(iii) Indicate whether the Indian child's parent or Indian custodian was sent legal notice prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a). Indicate ''yes'' or ''no.''

(6) *Application of ICWA.* (i) Indicate whether a court determined that ICWA applies or that the court is applying ICWA because it knows or has reason to know a child is an Indian child as defined in ICWA in accordance with 25 CFR 23.107(b)(2). Indicate ''yes, ICWA applies,'' ''no, ICWA does not apply,'' or ''no court determination.'' If the state title IV–E agency indicates ''yes, ICWA applies,'' then it must complete paragraphs (b)(6)(ii) and (iii) and paragraph (i) of this section; otherwise leave blank.

(ii) Indicate the date that the court determined that ICWA applies or determined to apply ICWA in accordance with 25 CFR 23.107(b)(2).

(iii) Indicate the Indian Tribe that the court determined is the Indian child's Tribe for ICWA purposes.

* * * * *

(i) *Data elements related to ICWA.* Reporting information in paragraph (i) is for state title IV–E agencies only. Report information in this paragraph (i) only if the state title IV–E agency indicated ''yes, ICWA applies'' in paragraph (b)(6)(i) of this section. Otherwise, the state title IV–E agency must leave paragraph (i) of this section blank.

(1) *Request to transfer to Tribal court.* (i) Indicate whether there was a request to transfer to Tribal court for each removal date reported in paragraph (d)(1) of this section. Indicate ''yes'' or ''no.'' If the state title IV–E agency indicates ''yes,'' the state title IV–E agency must complete paragraph (i)(1)(ii) of this section. If the state title IV–E agency indicates ''no,'' the state title IV–E agency must leave paragraph (i)(1)(ii) of this section blank.

(ii) Indicate whether there was a denial of the request to transfer to Tribal court. Indicate ''yes'' or ''no.'' If the state title IV–E agency indicated ''yes,'' then the state title IV–E agency must complete paragraph (i)(1)(iii) of this section. If the state title IV–E agency indicated ''no,'' the state title IV–E agency must leave paragraph (i)(1)(iii) of this section blank.

(iii) Indicate whether each reason for denial in paragraph (i)(1)(iii)(A) through (C) of this section ''applies'' or ''does not apply.''

(A) Either of the parents objected to transferring the case to the Tribal court.

(B) The Tribal court declined the transfer to the Tribal court.

(C) The state court determined good cause exists for denying the transfer to the Tribal court.

(2) *Involuntary termination/modification of parental rights under ICWA.* If the state title IV–E agency indicated ''involuntary'' in paragraph (c)(5) of this section, the state title IV–E agency must complete paragraphs (i)(2)(i) through (iii) of this section. Otherwise, the state title IV–E agency must leave paragraphs (i)(2)(i) through (iii) of this section blank.

(i) Indicate whether the state court found beyond a reasonable doubt that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(f). Indicate ''yes'' or ''no.''

(ii) Indicate whether the court decision to involuntarily terminate parental rights included the testimony of one or more qualified expert witnesses in accordance with 25 U.S.C. 1912(f). Indicate ''yes'' or ''no.''

(iii) Indicate whether, prior to terminating parental rights, the court concluded that active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d). Indicate ''yes'' or ''no.''

(3) *Voluntary termination/modification of parental rights under ICWA.* If the state title IV–E agency indicated ''voluntary'' in paragraph (c)(5) of this section, indicate whether the consent to termination of parental or Indian custodian rights was:

(i) Executed in writing. Indicate ''yes'' or ''no.''

(ii) Recorded before a court of competent jurisdiction. Indicate ''yes'' or ''no.''

(iii) Accompanied with a certification by the court that the terms and consequences of consent were explained on the record in detail and were fully understood by the parent or Indian custodian in accordance with 25 CFR 23.125(a) and (c). Indicate ''yes'' or ''no.''

(4) *Removals under ICWA.* For each removal date reported in paragraph (d)(1) of this section:

(i) Indicate whether the court order for foster care placement was made as a result of clear and convincing evidence that continued custody of the Indian child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(e) and 25 CFR 23.121(a). Indicate ''yes'' or ''no.''

(ii) Indicate whether the evidence presented for foster care placement as indicated in paragraph (i)(4)(i) of this section included the testimony of a qualified expert witness in accordance with 25 U.S.C. 1912(e) and 25 CFR 23.121(a). Indicate ''yes'' or ''no.''

(iii) Indicate whether the evidence presented for foster care placement as indicated in paragraph (i)(4)(i) of this section indicates that prior to each removal reported in paragraph (d)(1) of this section that active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d). Indicate ''yes'' or ''no.''

(5) *Available ICWA foster care and pre-adoptive placement preferences.* Indicate which foster care or pre-adoptive placements, (which are reported in paragraph (e)(1) of this section and meet the placement preferences of ICWA in 25 U.S.C. 1915(b) and (c)) were willing to accept placement for the child. Indicate in each paragraph (i)(5)(i) through (v) of this section ''yes,'' ''no,'' or ''not applicable.'' If the Indian child's Tribe established a different order of preference by resolution in accordance with 25 U.S.C. 1915(c), the state title IV–E agency must complete paragraph (i)(5)(v) of this section and leave paragraph (i)(5)(i) through (iv) blank.

(i) A member of the Indian child's extended family.

(ii) A foster home licensed, approved, or specified by the Indian child's Tribe.

(iii) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.

(iv) An institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(v) A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's Tribe.

(6) *Foster care and pre-adoptive placement preferences under ICWA.* Indicate which foster care or pre-adoptive placements, reported in paragraph (e)(1) of this section, meet the placement preferences of ICWA in 25 U.S.C. 1915(b) and (c) by indicating with whom the Indian child is placed. Indicate ''a member of the Indian child's extended family,'' ''a foster home licensed, approved, or specified by the Indian child's Tribe,'' ''an Indian foster home licensed or approved by an authorized non-Indian licensing authority,'' ''an institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs,'' ''a placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's Tribe'' or ''placement does not meet ICWA placement preferences.'' If the state IV–E agency indicated ''placement does not meet ICWA placement preferences,'' then the state IV–E agency must complete paragraph (i)(7) of this section. Otherwise, the state title IV–E agency must leave paragraph (i)(7) of this section blank.

(7) *Good cause under ICWA, foster care.* Indicate whether the court determined by clear and convincing evidence, on the record or in writing, a good cause to depart from the ICWA placement preferences in accordance with 25 U.S.C. 1915(b) or to depart from the placement preferences of the Indian child's Tribe in accordance with 25 U.S.C. 1915(c). Indicate ''yes'' or ''no.'' If the state title IV–E agency indicated ''yes,'' then the state title IV–E agency must indicate the basis for good cause in paragraph (i)(8) of this section. If the state title IV–E agency indicated ''no,'' then the state title IV–E agency must leave paragraph (i)(8) of this section blank.

(8) *Basis for good cause, foster care.* If the state title IV–E agency indicated ''yes'' to paragraph (i)(7) of this section, indicate the state court's basis for determining good cause to depart from ICWA placement preferences by indicating ''yes'' or ''no'' in each paragraph (i)(8)(i) through (v) of this section:

(i) Request of one or both of the Indian child's parents.

(ii) Request of the Indian child.

(iii) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the placement preferences in ICWA at 25 U.S.C. 1915 but none has been located.

(iv) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.

(v) The presence of a sibling attachment that can be maintained only through a particular placement.

(9) *Active efforts.* Indicate whether the state title IV–E agency made active efforts to prevent the breakup of the Indian family in accordance with 25 U.S.C 1912(d) and 25 CFR 23.2. Indicate ''yes'' or ''no.''

(10) *Available ICWA adoptive placements.* If the state title IV–E agency indicated the child exited to adoption in paragraph (g)(3) of this section, indicate which adoptive placements that meet the placement preferences in ICWA at 25 U.S.C. 1915(a) and (c) were willing to accept placement. Indicate in each paragraph (i)(10)(i) through (iv) of this section ''yes,'' ''no,'' or ''not applicable.'' If the Indian child's Tribe established a different order of preference by resolution in accordance with 25 U.S.C. 1915(c), the state title IV–E agency must complete paragraph (i)(10)(iv) of this section and leave paragraph (i)(10)(i) through (iii) of this section blank.

(i) A member of the Indian child's extended family.

(ii) Other members of the Indian child's Tribe.

(iii) Other Indian families.

(iv) A placement that complies with the order of preference placements established by an Indian child's Tribe.

(11) *Adoption placement preferences under ICWA.* If the state title IV–E agency indicated the child exited to adoption in paragraph (g)(3) of this section, indicate whether the adoptive placement meets the adoptive placement preferences of ICWA in 25 U.S.C. 1915(a) and (c) by indicating with whom the Indian child is placed. Indicate ''a member of the Indian child's extended family,'' ''other members of the Indian child's Tribe,'' ''other Indian families,'' ''a placement that complies with the order of preference for adoptive placements established by an Indian child's Tribe,'' or ''placement does not meet ICWA placement preferences.'' If the state IV–E agency indicated ''placement does not meet ICWA placement preferences,'' then the state IV–E agency must complete paragraph (i)(12) of this section; otherwise, leave paragraph (i)(12) of this section blank.

(12) *Good cause under ICWA, adoption.* If the state title IV–E agency indicated ''placement does not meet ICWA placement preferences'' in paragraph (i)(11) of this section, indicate whether the court determined by clear and convincing evidence, on the record or in writing, a good cause to depart from the ICWA adoptive placement preferences under 25 U.S.C. 1915(a) or to depart from the adoptive placement preferences of the Indian child's Tribe under 25 U.S.C. 1915(c). Indicate ''yes'' or ''no.'' If the state title IV–E agency indicated ''yes,'' then the state title IV–E agency must indicate the basis for good cause in paragraph (i)(13) of this section. If the state title IV–E agency indicated ''no,'' then the state title IV–E agency must leave paragraph (i)(13) of this section blank.

(13) *Basis for good cause, adoption.* If the state title IV–E agency indicated ''yes'' in paragraph (i)(16), indicate the state court's basis for determining good cause to depart from ICWA adoptive placement preferences by indicating ''yes'' or ''no'' in each paragraph (i)(13)(i) through (v) of this section.

(i) Request of one or both of the child's parents.

(ii) Request of the Indian child.

(iii) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the adoptive placement preferences in ICWA at 25 U.S.C. 1915 but none has been located.

(iv) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the adoptive placement preferences live.

(v) The presence of a sibling attachment that can be maintained only through a particular adoptive placement.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket No. 22–273; FCC 24–97; FR ID 260367]

NGSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3–17.8 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) adopts rules to permit use