

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

RIN 0970-AC23

Adoption and Foster Care Analysis and Reporting System

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Administration for Children and Families (ACF) is proposing to amend the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations at 45 CFR 1355.40 and the appendices to part 1355 to modify the requirements for States to collect and report data to ACF on children in out-of-home care and in subsidized adoption or guardianship arrangements with the State. This proposed rule also implements the AFCARS penalty requirements of the Adoption Promotion Act of 2003 (Pub. L. 108-145).

DATES: In order to be considered, we must receive written comments on this notice of proposed rulemaking on or before March 11, 2008.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule via regular postal mail to Kathleen McHugh, Director, Division of Policy, Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, 1250 Maryland Avenue, SW., Suite 800, Washington, DC 20024. Please be aware that mail sent to us may take an additional 3-4 days to process due to changes in mail handling resulting from the anthrax crisis of October 2001. If you choose to use an express, overnight, or other special delivery method, please ensure first that they are able to deliver to the above address. You may also transmit comments electronically via e-mail to CBComments@acf.hhs.gov or via the Internet at: <http://www.regulations.gov>. We urge you to submit comments electronically to ensure they are received in a timely manner. Please be sure to include identifying information on any correspondence. To download an electronic version of the rule, you should access <http://www.regulations.gov>. Comments will

be available for public inspection Monday through Friday 8:30 a.m. to 5 p.m. at the above address by contacting Miranda Lynch at (202) 205-8138.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of these comments also may be sent to the Department representative listed above.

FOR FURTHER INFORMATION CONTACT:

Kathleen McHugh, Director of Policy, Children's Bureau, Administration on Children, Youth and Families, (202) 401-5789 or by e-mail at kmchugh@acf.hhs.gov. Do not e-mail comments on the Notice of Proposed Rulemaking to this address.

SUPPLEMENTARY INFORMATION: The preamble to this notice of proposed rulemaking is organized as follows:

- I. Background on Foster Care and Adoption Data Collection
- II. Consultation and Regulation Development
- III. Overview of Major Revisions to AFCARS
- IV. Section-by-Section Discussion of NPRM
- V. Impact Analysis
- VI. List of Subjects

I. Background on Foster Care and Adoption Data Collection

In 1982, the Department, through a grant to the American Public Human Services Association (formerly the American Public Welfare Association), implemented the Voluntary Cooperative Information System (VCIS) to collect aggregate information annually about children in foster care and special needs adoption from State child welfare agencies. While some States reported data to VCIS, by 1986, Congress and other stakeholders recognized that there were a number of weaknesses in VCIS. Namely, VCIS was criticized for intermittent reporting by the States; the use of a variety of reporting periods; a lack of common definitions for data elements; a lack of timeliness of the data, poor data quality, and the collection of aggregate data which had limited analytic utility.

As a result of these and other concerns, the President signed Public Law 99-509 on October 21, 1986, which in part added section 479 to title IV-E of the Social Security Act (the Act). Section 479 of the Act describes the series of steps that the Department of Health and Human Services (DHHS) was required to take to establish a national data collection system for adoption and foster care. We were required to develop a system that avoids unnecessary diversion of resources from agencies responsible for adoption and foster care and assures that the data

collected is reliable and consistent over time and across jurisdictions through the use of uniform definitions and methodologies. Furthermore, the law required the system to provide comprehensive national information on the demographic characteristics of adopted and foster children and their parents (biological, foster and/or adoptive parents); the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care); the number and characteristics of children placed in or removed from foster care; children adopted or with respect to whom adoptions have been terminated; children placed in foster care outside the State which has placement and care responsibility; and, the extent and nature of assistance provided by Federal, State and local adoption and foster care programs and the characteristics of the children to whom such assistance is provided.

The President signed into law the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66) on August 19, 1993. Public Law 103-66 provides States with the opportunity to obtain title IV-E funds to plan, design, develop, and implement a Statewide Automated Child Welfare Information System (SACWIS). On December 22, 1993, ACF published final rules to establish the AFCARS and implement SACWIS.

In the AFCARS final rule we required States to submit certain data to us on a semi-annual basis about children in foster care and adoptions that involve the State agency. The rule required States that chose to develop a SACWIS to ensure that their system could report information to AFCARS. We also set forth data standards that each State must meet to be considered in compliance with the AFCARS requirements.

States were required to report the first AFCARS data to us for FY 1995.

However, it was not until FY 1998, when we implemented AFCARS financial penalties for a State not submitting data or submitting data of poor quality that the data became stable enough for ACF and others to use for a wide variety of purposes.

The President signed the Adoption and Safe Families Act of 1997 (Pub. L. 105-89) in November 1997, which required the use of AFCARS data for two specific activities: The calculation of Adoption Incentive Payments (section 473A of the Act) and the Child Welfare Outcomes Annual Report (section 479A of the Act). Since that

time, data from AFCARS also has been used to provide samples for the Child and Family Services Reviews (CFSR) and title IV–E reviews; to develop outcome and performance measures for the CFSR, the Office of Management and Budget's Program Assessment and Rating Tool (PART) and the Government Performance and Results Act (GPRA); to calculate State allocations for the Chafee Foster Care Independence Program (section 477 of the Act); to generate short- and long-term budget projections; to conduct trend analyses for short- and long-term program planning; and to respond to requests for information from the Congress, other Federal agencies, States, media and the public about children in foster care and children being adopted.

Due to a settlement of several States' appeals of AFCARS penalties, ACF discontinued withholding Federal funds for a State's failure to comply with AFCARS requirements in January 2002 (see ACYF–CB–IM–02–03). However, late in 2003 the President signed the Adoption Promotion Act of 2003 (Pub. L. 108–145), which required ACF to institute specific financial penalties for a State's noncompliance with AFCARS requirements. We notified States in ACYF–CB–IM–04–04 issued on Feb. 17, 2004, that we will not assess penalties until we issue revised final AFCARS regulations, the subject of this proposed rule.

II. Consultation and Regulation Development

In the preamble to the AFCARS final regulation issued in 1993, we indicated that we would revisit the regulations to assess how we may improve AFCARS (58 FR 67917). This proposed rule is the culmination of that process. We undertook an intensive review of every aspect of AFCARS in developing the proposals in this NPRM. We analyzed the types of technical assistance requested by and provided to States, our findings from AFCARS assessment reviews, and reports from the past several years issued by the Government Accounting Office (GAO) and the Department's Office of the Inspector General (OIG) on AFCARS-related issues.

ACF also consulted with the public through a variety of focus groups and a **Federal Register** notice (68 FR 22386, April 28, 2003) seeking comments. More than 80 people participated in the focus groups, and over 40 individuals and groups submitted written comments in response to the **Federal Register** announcement. Thirty-two States, 15 national organizations and 20 interested members of the public provided

comments through one or more of these mechanisms.

During consultation we solicited feedback on:

- The specific strengths of AFCARS;
- The specific weaknesses of AFCARS or suggestions for areas of improvement, including ideas about how the suggested improvement could be made and how the Federal government could facilitate the changes;
- Data elements currently in AFCARS that could be deleted and any elements that should be added;
- Strategies to improve data quality for AFCARS, including the use of incentives; and
- How the AFCARS data files are structured and submitted.

Many stakeholders recognized that AFCARS has considerable strengths that include, but are not limited to: The ability to produce timely reports that estimate the number of children in foster care and those being adopted; the ability to support in-depth analyses of case-level data; and the ability to generate information that had not been anticipated when AFCARS was established.

However, commenters also noted that expansion of the use of AFCARS data has highlighted areas that need improvement. For example, there are substantive gaps in the areas covered by the current data elements such as information about adoption disruptions, the placement experiences of sibling groups, the demographics and assistance provided to children under adoption assistance agreements, where children are placed when they are placed out-of-State, and the identification of the different populations served by child welfare agencies (e.g. children in out-of-home care due primarily to their involvement with juvenile justice or their need for mental health services). In particular, stakeholders point out that data from AFCARS is insufficient to support expanded analysis of data for the CFSRs and other performance measures. Many commenters also believe that we need to refine some of the definitions of AFCARS data elements and their response categories (e.g. expand reasons for exit), and how these and other changes in data elements might be facilitated in the future. In addition to the need for new and refined data elements, stakeholders noted that the data structure of AFCARS may need to be revised to take advantage of advances in information technology and/or to make possible the utilization of a wider variety of analytical techniques.

The section-by-section summary provides more discussion on how

specific comments factored into our proposal.

III. Overview of Major Revisions to AFCARS

In this NPRM we are focusing our improvements on five general areas: Restructuring the data to capture more information over time; expanding the reporting populations; capturing greater detail on children in out-of-home care; improving the quality of data; and eliminating unnecessary data and inefficiencies in the data submission process.

Restructuring Data

We propose that AFCARS data support longitudinal data analysis by capturing more comprehensive information on a child's experiences in a State's foster care system. The existing AFCARS requires that States report some living arrangement, provider, and permanency information relative to the child's most recent experiences in his/her most recent foster care episode only. We propose instead, that States collect and report information on: (1) The timing and circumstances of each of the child's removals from home and placements in out-of-home care, (2) the timing and type of each permanency plan decision (e.g., reunification or adoption) made for a child, (3) the time span and nature of each living arrangement the child experiences while in foster care, (4) details on each foster family home provider, if applicable, and (5) the timing and circumstances of each of the child's exits from out-of-home care.

Expanding Reporting Populations

We propose to expand the foster care reporting population to include, generally, all children who have been placed away from their parents or legal guardians for whom the State title IV–B/IV–E agency has placement and care responsibility. In doing so, we are also renaming the reporting population as the “out-of-home care reporting population.” This reporting population includes children who are in living arrangements that are not traditionally considered foster care under our title IV–B and IV–E program rules. Children who are under the placement and care responsibility of the State agency and are placed in juvenile justice facilities and other living arrangements which are non-reimbursable under title IV–E such as psychiatric treatment facilities are included in the revised AFCARS out-of-home care reporting population. In the existing regulation, children who were in juvenile justice facilities and other facilities not traditionally considered

foster care were included in AFCARS in limited circumstances. We also have expanded our reporting population to include children who are the subject of a guardianship subsidy agreement, whereas these children are not currently reported to AFCARS.

Capturing Greater Detail

We have added and clarified a number of elements so States may provide us with greater detail on the demographics and circumstances of children in out-of-home care. These changes are designed to permit enhanced analysis of the factors that may affect a child's permanency and well-being and include:

- New elements that allow us to identify certain populations of children who are dealing with issues other than child maltreatment, such as children who are involved in the juvenile justice system prior to and during their out-of-home care stay and those who are out of their own homes to obtain mental health services;

- New elements for States to update information on the circumstances affecting the child and family during the child's out-of-home care stay;

- New elements that allow us to identify where more than one family member is in out-of-home care, such as sibling groups and minor parents who have their children with them in out-of-home care;

- New elements to better describe the household composition of the homes from which children are removed and the location and type of living arrangements in which children are placed by the State agency;

- Elements that tell us about a child's well-being including new elements on immunizations and educational performance as well as clarified elements on children's health, behavioral and mental health conditions;

- Revised and new elements that enhance our understanding of domestic and intercountry adoptions, prior adoptions and adoption disruptions, displacements and dissolutions; and,

- Revised and new elements designed to better track State and Federal financial support of foster care, adoption subsidies, adoption nonrecurring costs and guardianships.

Improving Data Quality

We propose to improve AFCARS data quality in several ways. First, we propose to clarify many existing element descriptions that stakeholders informed us were problematic. Second, we propose to strengthen our assessment and identification of errors

within a State's data file. In particular, we are proposing to develop cross-file checks to identify defaults and other faulty programming that result in skewed data across a State's entire data file. Finally, we propose to implement penalties for States that do not meet our file and data quality standards for AFCARS consistent with section 474(f) of the Act.

Eliminating Unnecessary Features

We propose to eliminate a number of features in the AFCARS regulation that are no longer useful to us or the States. We propose to dispose of State reporting of summary adoption and foster care files, merge most currently reported adoption information into the foster care data file and take technical submission requirements out of the regulation.

These major changes to AFCARS along with all other features of the proposed database are detailed in the section-by-section discussion below.

IV. Section-by-Section Discussion of NPRM

The reader should note that the proposed regulations will replace in their entirety the existing AFCARS regulations at 45 CFR 1355.40 and the appendices to part 1355. Although we are retaining certain requirements of the existing AFCARS, such requirements are often set forth in different and new sections or paragraphs in this proposed rule.

1355.40 Scope of the Adoption and Foster Care Analysis and Reporting System

In section 1355.40 we propose a scope statement for AFCARS. The proposed scope statement explains which entities must report data to ACF and the data that those entities must report.

Section 1355.40(a)

In paragraph (a), we propose that all State agencies that administer titles IV-B and IV-E of the Act collect and report information to AFCARS. This is consistent with the existing scope of AFCARS and our legislative authority in section 479 of the Act. Currently, all States, the District of Columbia and Puerto Rico operate title IV-B and IV-E programs.

Section 1355.40(b)

In paragraph (b), we describe the scope of the AFCARS requirements. We propose that a State collect and submit to us, on a semi-annual basis, information on a child's experiences in out-of-home care and information on children under adoption assistance and guardianship subsidy agreements.

The scope of the proposed requirements is broader than the current AFCARS in three significant ways. First, the scope of the AFCARS out-of-home care reporting population, currently known as the "foster care" reporting population has changed to include, generally, all children who are living away from their parents or legal guardians for whom the State agency has placement and care responsibility. Currently, the AFCARS foster care reporting population focuses primarily on children in foster care settings as defined by the title IV-B and IV-E programs only. Second, we are expanding the scope of certain information to include a child's entire historical and current experience in out-of-home care so that we can establish a more comprehensive and longitudinal database. Currently State agencies report to AFCARS limited information on a child's most recent and first foster care episode during the report period. Finally, we propose that States report on children involved in adoption agreements and guardianship subsidy arrangements on an ongoing basis. At the present time, State agencies report to AFCARS information on finalized adoptions in which the State agency was involved at the point of finalization only. In large part, we are expanding the scope of AFCARS data in response to overwhelming support for doing so from stakeholders and to meet our program needs. The full extent of these proposed changes is explained further in subsequent sections on the reporting population and data elements.

A few commenters suggested that ACF also consider expanding the scope of AFCARS to require State agencies to collect and report detailed information on children who receive child welfare services in their own homes. We believe that requiring States to report data on these activities to AFCARS exceeds our existing legislative authority in section 479 of the Act. Even so, we wish to note that AFCARS is not the sole data-related activity in child welfare that ACF manages. Through the National Child Abuse and Neglect Data System (NCANDS), States voluntarily provide us with data on child maltreatment and the extent to which the State child protective services agency provides services. We encourage State agencies to use the same unique person identifiers in AFCARS and NCANDS so that we can understand to what extent children receive prevention services before they must enter out-of-home care. In addition, we have proposed a mandatory reporting system under the Chafee Foster Care Independence

Program (section 477 of the Act) which, in part, will require States to submit detailed information on the independent living services they provide to youth who are in foster care, or who have aged out of foster care (see 71 FR 40346). In that NPRM we propose to require States to use the same unique person identifier (child case or record number) for reporting a child's independent living services as they do for AFCARS. We believe, therefore, that we have adequate provisions for States to report on how they serve our nation's most vulnerable children and families without exceeding our legislative authority for AFCARS.

Section 1355.40(c)

In paragraph (c) we define the scope of out-of-home care for AFCARS purposes which serves as a basis for the out-of-home care reporting population. "Out-of-home care" refers to children who have been placed away from their parents or legal guardians for a period of 24 hours or more and for whom the State title IV-B/IV-E agency has placement and care responsibility, regardless of the child's living arrangement. This is different than our programmatic definition of foster care in 45 CFR 1355.20, and thus the scope of the current AFCARS foster care reporting population (see 45 CFR 1355.40(a)(2) and appendix A to part 1355, section II) in a number of ways. The most significant difference between the two terms is that the proposed AFCARS definition of out-of-home care will include children who are placed away from their parents for whom the State title IV-B/IV-E agency has placement and care authority, irrespective of their living arrangement. This stands in contrast to the foster care definition used for the title IV-B and IV-E programs in 45 CFR 1355.20 and policy in the Child Welfare Policy Manual Section, which incorporates traditional foster care settings only (e.g., foster family homes, child care institution and group homes).

We believe it is essential to develop a definition of out-of-home care for the purpose of data reporting distinct from the definition of foster care for the Federal child welfare programs, to meet their separate goals. The programmatic definition of foster care is for the purposes of describing the population for whom States must meet Federal child welfare requirements for safety, permanency and well-being as described in titles IV-B and IV-E of the Act and 45 CFR 1355, 1356 and 1357. Nothing in this proposal changes to whom the Federal child protection requirements apply. AFCARS, on the

other hand, has as one of its central goals as described in section 479 of the Act, the ability to provide comprehensive national information on the dynamics of children in the foster care system, including "the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care)," and "the number and characteristics of children placed in or removed from foster care." Our experience with AFCARS is that the existing data on the number of children in foster care, the length of placements, and the characteristics of children as they move in and exit foster care is incomplete and often misleading without additional information about when children move from those out-of-home care living arrangements that are within the scope of foster care to detention facilities, psychiatric hospitals, assessment centers, and other facilities that are outside the scope of foster care. Particularly, as we have conducted AFCARS assessment reviews and CFSRs in many States, we have been challenged in pinpointing the scope of each State's foster care system and therefore, whether certain Federal child welfare requirements apply. By defining the AFCARS out-of-home care reporting population broadly, along with more specifically defining the type of living arrangements and circumstances of a child's stay in out-of-home care we believe that we can better track how and why children enter foster care, understand the dynamics of State foster care systems, and distinguish the subpopulation for whom State child welfare agencies are accountable to meet the Federal child protection requirements (section 422(b)(8)(A) of the Act).

We have specified in this proposed regulation that for AFCARS, we are seeking information on children who are under the placement and care of the State agency and away from their parents for 24 hours or more. This timeframe has not changed. However, the timeframe was noted in an appendix to the regulation rather than in the regulation text itself. We see no reason to include children in AFCARS who have been out of their homes for fewer than 24 hours.

The proposed regulatory definition of out-of-home care also clarifies that the term refers to children who are considered minors according to the State's age of majority. This proposal is consistent with existing AFCARS policy (Child Welfare Policy Manual 1.3) and our regulatory definition of children at

45 CFR 1357.10(c) for the programs under title IV-B of the Act. We understand that most States consider young people up to age 18 as children. Several States, however, consider older youth (i.e., up to age 21) who are in their placement and care responsibility as minors.

1355.41 Reporting Populations

We propose to add a new section 1355.41 on reporting populations to this part.

Section 1355.41(a) Out-of-Home Care Reporting Population

In paragraph (a), we propose a new out-of-home care reporting population which identifies children States must include in an AFCARS out-of-home care data file. In general, we propose that State agencies must report information to AFCARS consistent with the AFCARS out-of-home definition; that is, all minor children who have been placed away from their parents or legal guardians for a period of 24 hours or more and for whom the State title IV-B/IV-E agency has placement and care responsibility.

In subparagraphs (a)(1)(i) through (a)(1)(iv), we propose to expound on which children are included in the reporting population. Although some of the children described in these subparagraphs are covered implicitly in the reporting population as generally stated in paragraph (a)(1), the subcategories provide more detail on the scope of the reporting population.

In subparagraph (a)(1)(i), we propose to clarify that the reporting population is inclusive of any child who is under the placement and care responsibility of another public agency that has an agreement under section 472(a)(2)(B) of the Act with the title IV-B/IV-E agency for the payment of foster care maintenance payments on the child's behalf. This provision is consistent with existing AFCARS regulations that define the foster care reporting population (Appendix A to 45 CFR 1355, Section II). Typically, State agencies enter these agreements with Indian tribes, and separate juvenile justice agencies or mental health agencies in order for the State to claim title IV-E on behalf of children who are otherwise eligible for the foster care maintenance payments program. These other public agencies do not submit information on children in the reporting population to ACF separately from the title IV-B/IV-E State agency. Rather, this information must be a part of the title IV-B/IV-E State agency's AFCARS submission.

In subparagraph (a)(1)(ii), we propose to codify existing policy that a State

continue to collect and report information to AFCARS for as long as the State is making title IV–E foster care maintenance payments on the child's behalf, regardless of the State's age of majority (Child Welfare Policy Manual 1.3 #2). Under the title IV–E program, the State is permitted to make foster care maintenance payments for young people who have attained 18 years of age, but not yet 19 years of age, who are full-time students expected to complete their secondary schooling or equivalent training before reaching age 19 (Child Welfare Policy Manual 8.3A.2 #1). We acknowledge that this condition may require the State to report data beyond the State's age of majority as described in 1355.40(c). However, this provision is necessary to allow us to track the extent of assistance and the characteristics of all children for whom State agencies make Federal foster care maintenance payments consistent with section 479(c)(3)(D) of the Act.

In subparagraph (a)(1)(iii), we propose to include in the out-of-home care reporting population a child under the State agency's placement and care responsibility who is in any living arrangement, regardless of whether that living arrangement is a traditional foster care setting. We explain that States are to include children in out-of-home care who are placed in settings such as detention facilities, psychiatric or other hospitals, and jails, but this is not an all-inclusive list. The specified facilities have been raised most frequently in questions by State agencies because some youth may transition in and out of traditional foster care settings and these facilities. We want to clarify explicitly that a child who is in a living arrangement that is not a traditional foster care setting is a part of the AFCARS out-of-home care reporting population if the child is away from his parents or legal guardians while under the State title IV–B/IV–E agency's placement and care, even if the child remains in that setting for the entire report period. We understand that, in practice, most State agencies may not have included these children in the AFCARS foster care population to date, since our current policy does not require this reporting. Our current policy requires only that a State report a child who moves from a traditional foster care placement to a juvenile justice placement, as long as the State intends to return the child to foster care (Child Welfare Policy Manual 1.3 #12).

As discussed previously, we believe that it is beneficial to compel State agencies to collect and report information to us on an ongoing basis when the child is under the State

agency's placement and care responsibility away from his parents or legal guardians, regardless of the setting. We believe that doing so will allow us to follow a child through the various out-of-home placement settings that are connected closely to the foster care system but may not be managed by the State child welfare agency directly. Including these settings will permit States and ACF to complete longitudinal analyses of children's out-of-home care experiences, as advocated by States and others in the field. In addition, we believe that requiring State agencies to submit information on a child's entire experience while under the placement and care responsibility of the State, rather than having to generate information based on identifying select types of settings, will be less burdensome. We welcome comment on this proposal.

The reader should note that although the State will report all children placed away from their parents and legal guardians under its placement and care authority regardless of the child's living arrangements, States and ACF will be able to identify children who are in the narrower definition of foster care as defined by our program rules. This is because we are proposing to better categorize a child's living arrangements in the data elements. We will, therefore, be able to select samples for reviews or other analyses that look at foster care as used in the title IV–B and IV–E programs separately from other living arrangements.

In subparagraph (a)(1)(iv), we require that a State continue reporting a child to AFCARS who is missing or has run away, is attending camp or on vacation, or is visiting with his immediate or extended family. In these situations, the child remains in out-of-home care under the agency's placement and care responsibility. These situations do not represent a State agency's need to move the child.

Finally, in paragraph (a)(2) we propose that the State discontinue reporting a child to AFCARS if the State agency's placement and care authority ends (or is discharged), if the State agency returns the child home to his or her parents or legal guardians, or the child reaches the age of majority unless such a child continues to receive title IV–E foster care maintenance payments. The child has exited the reporting population for AFCARS purposes and has completed an out-of-home care episode in these circumstances. This provision is, in part, a departure from the existing regulation. Many States over the years and during consultation have highlighted the need for more

definitive guidance on when the child should be considered to have exited the AFCARS reporting population. States have pointed out that when a child leaves the AFCARS reporting population is of critical importance in defining consistently the length of time a child stays in foster care, as well as re-entries into foster care, for the CFSRs and other Federal child welfare outcome measures.

We propose to continue State reporting of information until the child is no longer under the agency's placement and care responsibility because we are interested in understanding the child's entire out-of-home experience. Children who are legally discharged from the State agency's placement and care responsibility have always been considered to have exited foster care under the existing AFCARS requirements. This would include children who may remain away from their parents or legal guardians but whose placement and care responsibility are transferred to another agency with no connection to the State agency.

However, we propose for the first time that children who are returned home to their parents or guardians be excluded from the AFCARS reporting population. Previous policy suggested that a State report to AFCARS children who were returned home and supervised by the State agency in an after-care status for a period of six months, unless a court order indicated another time period (Child Welfare Policy Manual 1.2B.7 #7 and 1.3 #11). Because we do not have a specific response option for States to report children in an after-care status in the existing AFCARS, we have instructed States to report the child on a trial home visit. There is, however, a distinction between a child who is *visiting* home, whether to stay connected to his or her family or to try reunification, and a child who the State agency has *returned* home. We agree with the States that contend that even though a State may continue to have some ongoing role in supervising or monitoring the child in his home, the child is no longer in out-of-home care for all practical purposes, but is at home. Furthermore, some State courts do not discharge a State's placement and care responsibility routinely, or in a timely fashion; sometimes this event occurs months after a child is in his or her own home. We concur that children in these situations should not be considered to be part of the AFCARS out-of-home care reporting population so as not to distort a child's length of

stay in care. We welcome comments on this proposal.

We also want to clarify here that the proposed out-of-home care reporting population does not include those children who are under the State agency's "supervision" authority, unlike the current regulation. We found the reference to supervision to be problematic because we never defined the term "supervision" further in AFCARS regulations or policy. Thus States have questioned whether the existing reporting population includes children in a variety of settings for whom the State agency has only a legal duty to supervise with no concurrent placement and care responsibility. We wish to be clear that children who are receiving services only in the homes of their parent or legal guardian(s) and children who may be placed away from their parents or legal guardians but for whom the State title IV-B/IV-E agency has no placement and care responsibility are not a part of the proposed AFCARS out-of-home care reporting population.

Section 1355.41(b) Adoption Assistance and Guardianship Subsidy Reporting Population

In subparagraph (b)(1), we propose that the State include information on all children for whom there is either a title IV-E adoption assistance agreement or a State adoption assistance agreement in effect during the report period. This includes children in a pre-adoptive living arrangement. Children under such adoption agreements are a part of the reporting population regardless of whether a financial subsidy is paid on the child's behalf. We believe that requiring State agencies to collect and report information on these populations is necessary since there is no reliable information on these populations other than State claims data for Federal adoption funds, which have substantial analytical limitations.

As a result of successful adoption initiatives, some States now have more children receiving adoption assistance than receiving foster care maintenance payments. With the increased activity in adoption and the corresponding outlays for the program, there has been an increase in requests for information about the population from the Congress, States, the media, and other sources. There also is a growing need at the Federal level for information to use for planning and budget projection purposes.

Children who are in out-of-home care and who are the subject of a title IV-E adoption assistance agreement are likely to show up in both the out-of-home care

and adoption assistance subsidy files until the point of the finalization of the adoption. In part, this is because sections 473 and 475(3) of the Act require States to enter into title IV-E adoption assistance agreements with adoptive parents prior to the finalization of a child's adoption, during which time the child may remain in out-of-home care. This may be true of children under State adoption assistance agreements as well, depending on State requirements. However, we believe we need this duplication of data in order to get complete information on the child's out-of-home care and adoption assistance experiences. Since we understand that the time between when an adoption assistance agreement becomes effective and the finalization of the child's adoption is relatively short, we expect such duplication to be limited. We welcome comments on this proposal.

In subparagraph (b)(2), we seek information on children on whose behalf a subsidy is paid pursuant to a guardianship agreement with the State agency because we are interested in providing a national picture of children in these arrangements for the first time. We are not proposing that States include in the reporting population children who may be the subject of a guardianship or guardianship agreement in which a financial subsidy is not paid to the child's guardian. We believe that non-subsidized guardianships are a small portion of the guardianship arrangements in which State agencies are involved, that States maintain little information on them and there exists no compelling interest for ACF to require States to report information on these arrangements.

States provide guardianship subsidies to a legal guardian for the care and support of a child who may be at risk of entering foster care or who may have otherwise remained in foster care. Although there is no Federal requirement or entitlement funding for States to provide guardianship subsidies, we understand that more than half of the States provide these supports to encourage greater permanency for children for whom adoption and reunification have been ruled out.

States have established subsidized guardianship programs using State and local funds and funds from the Temporary Assistance for Needy Families Program. Seven States have obtained a child welfare demonstration waiver pursuant to section 1130 of the Act to test the effectiveness of a subsidized guardianship program for children in foster care. The demonstration waivers provide States with greater flexibility to use title IV-B

and title IV-E funds for services that can facilitate improved safety, permanency and well-being for children. (Our authority to permit States to conduct new waivers expired in March 2006). Our proposed reporting population includes children in any subsidized guardianship arrangement regardless of the source of funding.

1355.42 Data Reporting Requirements

We propose to add a new section 1355.42 on data reporting requirements, including the report periods for the data files, general provisions for collecting and submitting the out-of-home care and adoption assistance and guardianship subsidy files, and record retention rules to comply with AFCARS requirements.

Section 1355.42(a) Report Periods and Deadlines

In paragraph (a), we propose that each State submit an out-of-home care data file and an adoption assistance and guardianship subsidy data file to ACF on children in the reporting populations on a semi-annual basis. The report periods extend from April 1 to September 30 and from October 1 to March 31 of each Federal fiscal year. These report periods are the same as in the existing AFCARS.

Several stakeholders suggested that we consider moving to annual, or even less frequent reporting, rather than semi-annual reporting of AFCARS data. Many commenters were concerned about the perceived complications of ACF compiling an annual file from two semi-annual submissions for the purposes of the CFSRs and the annual outcomes report to Congress. We want to assure States that we are able to create an annual file. We believe that some States' concerns about compiling an annual file were related to their inability to replicate the information from ACF precisely. ACF has recently started using a readily-available software program. The logic associated with this software's de-duplication function is readily transferable to other software packages; therefore, States will be able to replicate the annual files more easily. Finally, we expect that the new requirements proposed here for using a permanent and encrypted person identification number (see proposed 45 CFR 1355.43(a)(4), 1355.43(a)(5) and 1355.44(a)(3) in this NPRM) will aid both our own and States' ability to create annual files.

Further, we believe that an annual submission would hamper our ability to provide timely data and analysis to stakeholders and would not meet our needs. A six-month submission process

is preferable because AFCARS is now linked inextricably to a number of ACF priorities and legislative requirements, including the CFSRs and title IV-E eligibility reviews. For example, most States are monitoring their progress in achieving the steps of their CFSR program improvement plans on a quarterly basis. Because States submit AFCARS twice a year, we can provide States with their results on the statewide data indicators every six months for comparison. A move to annual submissions would mean that a State would not be able to use AFCARS data to see how it has improved as timely. Annual data would add six additional months to the time it would take ACF to verify whether a State has achieved the agreed upon amount of improvement for a CFSR program improvement plan. Also, annual AFCARS submissions would mean that our period under review for the CFSR onsite review would need to be extended and we could not review States as frequently because they are tied to the AFCARS report period. Finally, the title IV-E eligibility reviews require that we select a sample of children who received foster care maintenance payments during a six-month period that coincides with the State's most recent AFCARS submission (45 CFR 1356.71). In formulating the title IV-E reviews, we chose a recent six-month AFCARS period specifically so that we would review recent cases of children in foster care.

We also propose in paragraph (a) that State agencies submit their data files to us within 15 calendar days of the end of the report period. If this date falls on a weekend, the State must submit their files by the end of the following Monday. This is a change from the current AFCARS, which allows a 45-day period in which State agencies may prepare their data files for submittal to ACF. Although some stakeholders requested more time to prepare their files, we believe that the shorter time frame is workable and will also better meet State and Federal needs for data.

As mentioned earlier, AFCARS data is used extensively in a number of ACF priorities and requirements, including the Child and Family Service Reviews. If ACF receives the data a month earlier than we do now, we will be better able to analyze the data for use in CFSR data profiles and program improvement plans. Also, since adoption incentive funds are tied to how well States perform in increasing their adoptions as seen in the AFCARS data, we can award adoption incentive funds to States sooner.

The vast improvements in automation in the field of child welfare strengthen our belief that a State can prepare data files within 15 days. Now States can record and verify data in a more timely fashion than when the original AFCARS regulation was issued. Finally, we have provided significant technical assistance to States to encourage ongoing quality assurance checks on the data recorded in their information systems. We believe that State agencies will be able to meet this shorter time frame for submitting data with continued and routine use of our data quality utilities. We welcome comment on the shorter submission time frame.

Finally, in paragraph (a) we require that State agencies submit their data to us in two separate data files. Currently, State agencies must submit four data files (Appendices A and B to 45 CFR 1355): (1) A detailed foster care file with information on a child in foster care during the report period; (2) a detailed adoption file with information on all children adopted during the report period in whose adoption the State agency has some involvement; (3) a foster care summary file in which the State indicates the total number of foster care records and the age distribution of children in those records; and, (4) an adoption summary file in which the State indicates the total number of adoption records and the age distribution of the children adopted.

We propose to eliminate the existing foster care and adoption summary files because they are no longer necessary. ACF originally intended to use the summary files to verify the completeness of a State's data submissions and to ensure that the file was not corrupted during transmission. The summary files also were to serve as a quick count of the number of children in foster care and those being adopted. However, because the summary files contain aggregate data, the number of children who entered, were discharged, were adopted, were served or were in care on a specific day cannot be determined. Further, we are able to use new technology that is better able to verify the completeness of a State's data submission without requiring the State to generate summary files.

The proposed out-of-home care data file contains the majority of information that State agencies report to us currently in the detailed foster care and adoption data files. We propose to discontinue the submission of voluntary adoption data and eliminate the separate adoption data file. Rather, children who are adopted from out-of-home care will be included in the out-of-home care data file, and children for whom the State

agency has been involved in their adoption by entering into an adoption assistance agreement will be included in the adoption assistance and guardianship subsidy data file (some children will be reported in both files). The current separate adoption data file was developed originally to permit State agencies to submit data on all adoptions (inclusive of private, independent, or international adoptions in which the State agency was not involved) without the data appearing erroneous due to duplicated information that may have resulted from States' obtaining the data from a variety of sources. For example, had States obtained their data on all adoptions from court records and incorporated that data into the foster care data file, public agency adoptions would have been duplicated. This strategy was based on the premise that State agencies would voluntarily submit data on adoptions outside of the public agency. However, just a few States have submitted non-public agency adoption data consistently, making the information unusable.

Section 1355.42(b) Out-of-Home Care Data File

In paragraph (b), we provide instructions on how the State must report the out-of-home care information under the proposed 45 CFR 1355.43.

Specifically, in paragraph (b)(1), we propose that a State provide us with the most recent information for the elements regarding general information, child information, and parent or legal guardian information (proposed 45 CFR 1355.43(a), (b) and (c)). This means that in each file submission we are seeking current, point-in-time data for these elements similar to the time frame for most elements in the existing AFCARS. This information is largely demographic in nature, and tends to remain static over a six-month report period or even longer. For example, information on the child's parent, such as race, ethnicity and date of birth, does not change over the course of a report period.

In paragraph (b)(2), we propose that a State submit recent and historical information for the elements regarding removal information, living arrangements and provider information, permanency plans and ongoing circumstances, general exit information, and exit to adoption information (proposed 45 CFR 1355.43(d), (e), (f), (g) and (h), respectively). This information is required, unless the exception described below applies. This means that for every file submission, we are seeking information on the child's lifetime experience while in out-of-home care in the State's placement and

care responsibility as described through the reporting of these elements. This will allow ACF to develop a comprehensive picture of a child's lifetime experience with entries, living arrangements, permanency plans, and exits while in the State's child welfare system. This is in contrast to the existing AFCARS, which requires that a State submit certain detailed information on the child's current foster care episode and current placement setting only.

We want to be clear that we propose that State agencies submit recent and historical information pertaining to removals, permanency plans and circumstances, living arrangements and exits every report period rather than updates on children who were in out-of-home care before or who remain in out-of-home care from one report period to the next. This is because we have learned from the existing structure of AFCARS that gaps in information raise numerous questions about the child's experiences and make the data more difficult to analyze. Part of our goal in developing this proposed regulation is to eliminate features of the existing AFCARS that hinder the collection of reliable, quality data. If we were to ask State agencies to report only changes in the child's living arrangements, permanency goals, entry into or exit from out-of-home care we would not have a way to verify that the child's experiences have, in fact, remained the same. We also believe that this approach is less burdensome on States. Although sending a child's history involves submitting more data to us than an update as children exit and re-enter out-of-home care and their living arrangements and permanency plans change, we believe that it is less complicated and therefore requires fewer State resources than the alternative. In other words, sending a child's full history requires the State to submit all the information it has on these elements, rather than figure out a way to cull out only the information that has changed each report period.

We propose to get more comprehensive data for certain elements in response to our own need for data and in response to stakeholders' requests that ACF consider how to move AFCARS towards gathering some longitudinal information. Many States noted that they already have this capability. A number of States also asserted that the breadth of this information allowed them to conduct more sophisticated analysis on what happens to a child, or groups of children in foster care. Further, States and other stakeholders saw this type of

information as critical to the CFSRs. In particular, stakeholders believe that longitudinal data would better inform CFSR measures such as time in foster care, foster care re-entries and the stability of foster care placements. For example, once we have information on all out-of-home care episodes a child experiences, we can potentially analyze data to determine whether children entering out-of-home care for the first time after a certain point in time have more positive outcomes than those who entered out-of-home care earlier. Also, we can potentially use the data to improve upon our placement stability measure by not only analyzing the number of placements that a child experiences in an episode, but the type of placements as well. Further, with the richness of data that longitudinal information can provide, ACF and States can be better informed in developing and implementing program improvement plans to address compliance issues raised during a CFSR. In light of the results of the first round of CFSRs and the challenges that are ahead for States in implementing changes to their child welfare systems, we find the potential to have improved data for use in the CFSR and other priorities a compelling reason for proposing these changes. We welcome comments on this approach.

We chose to propose gathering comprehensive data on removals, permanency plans and ongoing circumstances, living arrangements and exits after considering whether a more limited approach to developing longitudinal data would meet our needs for data, as well as those of the States. The limited option would require a State to submit detailed removal, permanency plan, living arrangement and exit information on the child's four most recent out-of-home care episodes. We also considered requiring detailed living arrangement information on the child's four most recent living arrangements only. Under this option, the State would inform us how many total removals and living arrangements the child had experienced. We considered four out-of-home care episodes because our analysis of existing AFCARS data suggests that the vast majority (approximately 99 percent) of children in the existing foster care reporting population have no more than four foster care episodes. This option would allow us to capture almost all foster care episodes without requiring State agencies to submit extensive histories on children. We similarly thought that limiting the number of living arrangements that State agencies

would report to AFCARS would minimize the burden of this approach.

Ultimately, we decided that this more narrow approach was not sufficient. One problem with a limited longitudinal database was that we would have no information on the children who present some of the more significant challenges to States. Children who experience high numbers of multiple living arrangements or frequently enter and exit out-of-home care are some of the nation's most vulnerable children. Furthermore, these children often require States to expend more of their resources to address their problems.

In paragraph (b)(3), we propose an exception to the requirement to report complete information on all out-of-home care episodes for children in the reporting population. The exception applies to those children who had an out-of-home care episode prior to the effective date of the forthcoming final rule. Specifically, the exception applies to: (1) Children who are in out-of-home care on the effective date who also had a prior episode before the final rule goes into effect, and (2) children who enter out-of-home care after the effective date who had a prior episode before the final rule goes into effect. For such children, we are proposing that the State report the child's removal dates, exit dates and exit reasons (1355.43(d)(1), (g)(1), and (g)(3) respectively) for each out-of-home care episode that occurred before the final rule effective date. The exception does not apply to a child's "open" or ongoing episode that coincides with the effective date of the final rule; for such children we propose that a State report all information described in paragraphs (b)(1) and (b)(2) during that ongoing out-of-home care episode. As time passes after the final rule goes into effect, this provision will apply to a diminishing number of children who are in the out-of-home care reporting population.

We propose this exception to the general rule to report complete information in order to strike a balance between our desire for recent and historical information on all children in out-of-home care in accordance with the proposed new AFCARS elements with the challenge that some State agencies may face in gathering this information for a child's previous contacts with the State child welfare system before these new rules go into effect. We chose to have State agencies report at least the child's prior removal and exit dates and exit reasons, because we believe these elements are most critical to our ability to construct certain cohorts of children for analysis in the CFSRs and other outcome-based activities. Further, States

currently collect this information in the normal course of their casework activities for children in foster care and report some information for these elements under the existing AFCARS.

Our expectation is that for children who experience an out-of-home care episode prior to the implementation of the proposed new AFCARS, States will report more than the minimum information required by the exception. We expect, but do not require, States to provide as much information as they have in their case files and information systems on the child's out-of-home care episodes that occur before the effective date of the final rule and at least as much information as they report currently under the existing AFCARS. States that do not provide this additional information will not be penalized. States that provide it with errors will not be penalized either. From our review of States with a SACWIS, we have found that many States are collecting comprehensive information and information that pertains to the proposed new elements. Therefore, we believe that it is reasonable to expect States to provide us with information on the new elements regarding prior episodes even in the absence of a mandate. In fact, we considered establishing different exceptions to the requirement to report comprehensive information for those States that have an operational SACWIS versus those that do not because we believe that the type of information they are able to collect and report is more complete and robust than other States. Even so, since this is the first time we are requiring certain information in AFCARS, we believe that we must allow all States an equal opportunity to collect the proposed information for children who already are known to the State.

Finally, we acknowledge that even though we propose that States report a child's removal and exit dates and exit reasons of the out-of-home care episodes that occur prior to the final rule effective date, this limited information will be newly required for some children in certain circumstances. In particular, since we propose to expand the reporting population to include children who are in out-of-home care settings that are not considered foster care under our program rules, States have not consistently reported removal and exit dates and exit reasons for AFCARS purposes. Further, since the existing AFCARS requires that States report the date of first and latest removal and exit reason for the most recent foster care episode in a six-month period, some children may have interim removal dates and exit dates and

reasons that States currently are not reporting to us. We still believe, however, that while this proposed reporting may be newly required, States generally have this information as a matter of course in their own information systems and this requirement would not produce an undue burden. We welcome comment on this provision.

Section 1355.42(c) Adoption Assistance and Guardianship Subsidy Data File

In paragraph (c), we propose that the State submit recent, point-in-time information for all elements in this data file. This information is needed only at a given point in the report period because it is static over time. For example, adoption subsidies may remain the same over many years or for the duration of the adoption assistance agreement, unless the parent requests a change in the amount of the subsidy, or the child's circumstances change.

Section 1355.42(d) Reporting Missing Information

In paragraph (d), we propose how the State must report missing information. If the State agency fails to collect the information for an element, the State agency must report the element as blank or missing. The State agency may not develop program codes that default or map information that caseworkers did not collect or enter into the State's information system to a valid response option. This is the case even when there may be a response option for an element that allows the State to indicate that the information has not yet been determined or is unknown. This provision is consistent with ACF's longstanding practice; however, States have pointed out that there is no official guidance on this issue. Therefore, we wish to state unequivocally that this practice of defaulting is not permitted.

For example, we propose that the State indicate the specific permanency plan for a child or indicate that the permanency plan has not yet been determined for the child. If the State's information system is programmed in a way to allow the worker to select various plans (i.e., adoption, reunification, etc.) or not input the information at all (i.e., leave the information blank), the State agency may not report to ACF the child's plan as "not yet determined," when the State does not have any information. Rather, the State may only report that the plan is "not yet determined" if the State has programmed its information system in a way that allows the worker to select that

he/she has actually not yet determined the plan.

Section 1355.42(e) Electronic Submission

In paragraph (e) of this section we propose that States submit their data files to ACF electronically, consistent with ACF's specifications. States currently submit their data files to us electronically; however, we are removing from the regulation a number of technical specifications that detail how States must submit their files electronically (see appendix C to part 1355). Instead, we will issue technical requirements and specifications through official ACF policy subsequent to our issuance of the final rule. We have learned through our experience with the existing AFCARS that it is prudent not to regulate the technical specifications for transmitting data. As technology changes, we must be able to keep pace with the most current, practical and efficient transmission methods that will meet State and Federal needs.

We are particularly interested in exploring new technologies due to the enactment of the E-Government Act of 2002 (Pub. L. 107-347). This law focuses the Federal government on using improved internet-based technology to make it easier for State or local governments and citizens to interact with the Federal government. One internet-based technology that we are exploring for AFCARS is the use of Extensible Mark-Up Language (XML). XML is a text-based format that allows entities to describe, deliver and exchange data among a range of applications, provided that the sender and receiver have agreed in advance on the data definitions. We believe that XML has several benefits to States and ACF, including:

- Enabling the integration and collation of any data and information irrespective of storage environment or document type;
- Facilitating data interchange independent of the operating system and hardware; and,
- Allowing new data elements to be added readily with minimal changes to the data file format.

We recognize that some States already have implemented the use of XML to transfer data, while others may have encountered some barriers to doing so.

Section 1355.42(f) Record Retention

In paragraph (f), we propose that States retain records for as long as necessary to comply with the AFCARS reporting requirements. In particular, we are making Departmental record retention rules in 45 CFR 92.42(b) and

(c) inapplicable to AFCARS. These Departmental record retention rules require States to retain financial and programmatic records, supporting documents, and statistical records related to Federal programs and requirements for a period of three years. Because we are seeking comprehensive data on children in out-of-home care, including information on their prior experiences with the child welfare system, a three-year retention period is insufficient.

Practically, this means the State must keep applicable records until the child reaches the age of majority in the State, or else is no longer of an age to be in the reporting populations. This is because we propose that a State keep a child's identification number consistent over time and indicate the child's entire history with the child welfare system. Since a child's information is likely to be contained in an automated information system and relatively simple to archive, we believe these record retention rules are reasonable.

1355.43 Out-Of-Home Care Data File Elements

We propose to add a new section 1355.43 providing all elements for the out-of-home care data file. Under this section, each element is described in detail and the acceptable response options are also defined. (Attachment A to the preamble contains a quick reference of all the out-of-home care elements.) We propose that the State agency must collect and report the information described in these elements for each child in the out-of-home care reporting population.

Section 1355.43(a) General Information

In paragraph (a) of this section we propose that States collect and report general information that identifies the reporting State and the child in out-of-home care.

State. In paragraph (a)(1), we propose that the State responsible for reporting the child identify itself using the numeric two-digit State Federal Information Processing Standards (FIPS) code. We use the FIPS code because it is a standard issued by the National Institute of Standards and Technology (NIST) to ensure uniform identification of geographic entities through all Federal government agencies. The requirement for the State to identify itself is not new (see appendix A to part 1355, section II, I.A); however, the existing regulation incorrectly requests that the State use the alphabetic U.S. Postal Service abbreviation rather than the FIPS code. We corrected this

mistake in policy (Child Welfare Policy Manual 1.2A.3 #1 and 1.2B.2 #4), but are now codifying it in regulation.

Report date. In paragraph (a)(2), we propose that a State continue to indicate the report period date (see appendix A to part 1355, section II, I.B). Specifically, States are to report to us the last month and year that corresponds with the end of the report period, which will always be either March or September of any given year.

Local agency. In paragraph (a)(3), we propose that the State report to us the local agency that has responsibility for the child using a five-digit FIPS code. The local agency must be the county or a county equivalent unit which has responsibility for the child. The information requested is the same as in the existing AFCARS regulations (see appendix A to part 1355, Section II, I.C). However, consistent with existing policy we want to emphasize that we are interested in the location of the agency that has responsibility of the child, and not the county where the child is residing (Child Welfare Policy Manual 1.2B.2 #3).

Child record number. In paragraph (a)(4), we propose that the State report the child's record number, which is a unique person identification number, as an encrypted number. The person identification number must remain the same for the child until the age of majority, no matter where the child lives while in the State's placement and care responsibility and across all report periods and episodes of out-of-home care. If the child was previously adopted in the State, however, the State may provide a new record number for the child. The State must apply and retain the same encryption routine or method for the person identification number across all report periods. The State's encryption methodology must meet all ACF standards that we prescribe through technical bulletins or policy.

This is a revised element in that we are no longer allowing the use of sequential numbers for AFCARS and propose rules for encryption and consistent numbers (see appendix A to part 1355, section II, I.D). The changes to this element are based on findings from AFCARS reviews and technical assistance which indicate that some States use different identification numbers or change key or seed numbers for the same child. One issue that has been identified in some States that do not have a SACWIS is that the child's record number may change if the child moves within the State. We are concerned about a State's ability to track a child's complete out-of-home care

experience in the State when they do not use the same identification number, so we propose that States discontinue this practice.

Further, we believe that States share our desire to understand the entire experience of a child with the State's child welfare system. Numerous commenters on the **Federal Register** notice suggested keeping a child's identification number consistent through his or her child welfare experience. That is why we also have required States to use the same single person identification number for reporting a youth to the National Youth in Transition Database and encouraged States to use the same number for reporting a child to the National Child Abuse and Neglect Data System (NCANDS).

Encryption will ensure that the child's identity will remain confidential. Encryption is one of a number of different methodologies that a State can use to code confidential information. However, we are requiring encryption as opposed to other methods of coding confidential data, like sequential numbering, because it is secure and easier than other methods to cross-reference files for identification at a later date. For example, encryption protects a child's sensitive information by masking the State or local agency's person identification number from Federal staff, researchers or other persons who may come into contact with the data the State submits to ACF. In practice, a State encrypts a record number by introducing a seed or key number into a mathematical formula to code the numbers. The State reveals the original person identification number by re-introducing the same seed or key number to reverse the mathematical formula, a process known as decryption. The State ensures confidentiality by keeping the mathematical formula secure and limiting access to the formula to authorized persons only.

Encryption also is more efficient than some other methods because the State need only safeguard the seed or key number, not a whole list of numbers, which crosswalk between the masked identification number and the real record number. Furthermore, the vast majority of States use encryption methods already in reporting information to AFCARS. The few States that do not use encryption currently have indicated to ACF that they intend to use encryption in the near future. We believe, therefore, that requiring an encryption method will impose a minimal burden on States.

Finally, we have created an exception to the general requirement that a child's

record number remains the same until the age of majority. The exception is for a child who re-enters out-of-home care following an adoption. We are making this exception in recognition of some State policies to change identifiers for children when they are adopted after being in out-of-home care. Regardless of a change in the child's record number, the State must report the child's entire child welfare experience.

Family Record Number. In paragraph (a)(5), we propose for the first time that the State report a unique and encrypted family record number that is associated with the child. Provided the child's family remains the same during the child's out-of-home care and any subsequent out-of-home care episodes, this number must remain the same regardless of where the child or family resides. However, should the child's family change due to adoption we propose that the State submit the adoptive family's record number.

Although we have not requested this information before in AFCARS, we believe that all States use a family number or equivalent in their case management systems to identify the family in which the child in foster care is a member. We propose to collect this information primarily to aid in the identification of sibling groups, which we describe in greater detail in section 1355.43(b)(11).

Section 1355.43(b) Child Information

In paragraph (b) we propose that States collect and report various characteristics of the child in the out-of-home care reporting population.

Child's date of birth. In paragraph (b)(1), we propose to continue to require States to report the child's date of birth (see appendix A to part 1355, section II, II.A). The only change that we made in the proposed definition is to no longer instruct States to report an abandoned child's date of birth as the 15th of the month. During AFCARS assessment reviews, we found that many States were not aware of this instruction or that workers were reluctant to enter an unknown birth date as the 15th of the month. Moreover, we have come to realize that the State child welfare agency is often able to establish or estimate an abandoned child's date of birth quickly by consulting with health officials and/or records. Therefore, we are requiring that the State always provide the child's actual or estimated date of birth.

Child's gender. In paragraph (b)(2), we propose that States report information on the child's gender, consistent with the existing regulation (see appendix A to part 1355, section II, II.B).

Child's race. In paragraph (b)(3) we propose to continue to require information on the race of the child (see appendix A to part 1355, section II, II.C). The racial categories of American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander and White listed in proposed subparagraphs (b)(3)(i) through (b)(3)(v) are consistent with the Office of Management and Budget's (OMB) standards for collecting information on race. (See OMB's Provisional Guidance of the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity, at http://www.whitehouse.gov/omb/inforeg/re_guidance2000update.pdf for more information.) Each racial category is a separate data element to represent the fact that the OMB standards require States to allow an individual to identify with more than one race. Consistent with the OMB standards, self-reporting or self-identification is the preferred method for collecting data on race and ethnicity. This means that the State is to allow the child, if age appropriate, or the child's parent(s) to determine race.

If the child's race is unknown, the State is to so indicate in subparagraph (b)(3)(vi). A child's race can be categorized as unknown only if a child or his parents do not actually know the child's race. The fact that the State agency has not asked the child or parent for the child's race is not an acceptable use of the unknown response option. Further, it is acceptable for the child to identify that he or she is multi-racial, but does not know one of those races. In such cases, the State must indicate the racial classifications that apply and also indicate that a race is unknown. If the child is abandoned, the State must so indicate in subparagraph (b)(3)(vii). We have provided a definition of abandoned so that we are clear that it is to be used in very restrictive circumstances and not any time a parent may be temporarily unavailable. If a child or young person who was abandoned as an infant identifies as being of a certain race or multiple races, the State must indicate the applicable race(s), rather than abandoned. Finally, in the situation in which the child or child's parent declines to identify any race, the State must so indicate in subparagraph (b)(3)(viii).

Child's Hispanic or Latino ethnicity. In paragraph (b)(4), we propose that a State report the Hispanic or Latino ethnicity of the child. Similar to race, these definitions are consistent with the OMB race and ethnicity standards and should be self-reported by the child or his parent. Also, the State may report whether the child's ethnicity is

unknown because the parent or child does not know the information, whether the child is abandoned, or that the child or parent has declined to provide this information.

In the elements in paragraph (b)(5) and its subparagraphs, we propose for the first time that the State report the child's use of language. We propose to collect this information because we believe language is an important characteristic of a child that may aid the State in delivering services to him or her. Further, those children who do not speak English or who communicate through sign language may face particular challenges in a State's child welfare system. If we collect this information we will be able to analyze the data to see if language used has an effect on a child's experience in foster care. We believe that having this information will be a greater benefit to ACF and the States than the relatively low burden on caseworkers in collecting the data. We welcome comments on this new element.

Child's language. In paragraph (b)(5), we propose that the State indicate whether the child is verbal, pre-verbal or non-verbal. We are defining verbal to include the use of any language, whether it be a spoken language or other communication, such as sign language. A child who is pre-verbal is one who is too young to use language. A non-verbal child is a child who is of an appropriate age to use language but appears unable or incapable of using language. The child may be non-verbal due to a significant developmental delay or severe deprivation of exposure to language. We believe that we must capture a child's ability to be verbal along with the specific languages the child uses to be able to analyze this characteristic correctly.

Languages used. In subparagraph (b)(5)(i), we require that the State indicate all the languages that a child uses, if appropriate. We have provided several response options that reflect the most common languages used in the United States. However, the State is to indicate any other language(s) the child uses that is not in that list. For a child who uses sign language, the State is to indicate that the child uses sign language in addition to any other language (e.g., English or Spanish) used.

Language preference. In subparagraph (b)(5)(ii), we propose that the State indicate the language with which the child has the greatest facility if the child uses more than one language. For children who are bilingual or multilingual with an equal facility in those languages, the State may indicate all that apply.

We considered requesting information on the child's primary language only, but found this terminology problematic for individuals who may be bilingual or multilingual. We also considered whether we should ask which language the child used in his/her home, but found that construction equally problematic for multilingual families. We believe that allowing the State to identify the languages used by the child and the ones in which the child has the greatest facility is the most straightforward way of gathering the information we desire.

Health, behavioral or mental health conditions. In paragraph (b)(6), we propose to continue to require States to report information on whether a child has been diagnosed with a health, behavioral or mental health condition, with some modifications (see appendix A to part 1355, section II, II.D). Information pertaining to the health characteristics of a child is important in understanding the length of time children remain in care, their placement needs, and, in general, the needs of children being served by the agency. We believe that by collecting this information in AFCARS, we can better support the CFSR in gathering information on children's well-being. Further, requiring this information is consistent with the provision in section 475(1)(C) of the Act for the State to have a case plan that includes the child's health records and known medical problems.

We propose to continue to require that the State indicate diagnoses made by a qualified professional only as determined by the State. A qualified professional may be a doctor, psychiatrist, or, if applicable in the State, a licensed clinical psychologist or social worker. We make this distinction as a means to gather information on medically diagnosed conditions rather than conditions that may be observed by a caseworker to determine the most appropriate placement or referrals for a child. Additionally, this data element will provide ACF with information on whether children in out-of-home care have received a clinical assessment for the diagnosed conditions.

The proposed language also expands upon the types of conditions in the existing regulation. We chose to expand the list of conditions because we learned through AFCARS and SACWIS reviews and providing technical assistance that States had difficulty matching children's actual diagnoses with the existing AFCARS categories. We believe that this has caused data on children's health conditions to be underreported in the past. We

developed the new AFCARS categories based on the International Classification of Diseases (ICD) and the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV). We separated some conditions that are grouped together in one category in either the ICD or the DSM IV in order for the information to better meet our needs. We tried to create categories that distinguish conditions that may be more medically/physically based, education-related, or mental/emotional in nature.

Specifically, we propose to continue to collect information on whether a child is visually or hearing impaired but have made the two into separate response options because the needs of these two groups are distinct. We continue to gather information on mental/emotional disorders but have narrowed the definition to those types that are more severe or prolonged in nature. We have broken out the previous category by adding childhood disorders and anxiety disorders. The DSM IV categorizes learning disabilities under "disorders usually first diagnosed in infancy, childhood, or adolescence." We believe, since this condition relates to educational achievement, that it should be separated from the other conditions listed in "childhood disorders." Also, we propose to add categories related to drug and substance abuse separately in order to distinguish these disorders from other behaviors. Finally, we have added the specific category "developmental disability" to reflect the definition in section 102(8) of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106-402).

We also propose to change the title of these elements from "disabilities" to "health, behavioral or mental health conditions." Our intent for collecting this information is to gather data on the problems, disorders, and behaviors of the children in out-of-home care, rather than pinpoint children whose conditions meet a narrow construction of disability. Also, since what is considered a disability can vary for Federal or State programs, insurance purposes, or other benefits, we chose to use a more general term.

Finally, we want to be clear that States must report information known prior to the child's current out-of-home care episode. It is likely that some of the diagnosed conditions will not be corrected or cured in a short period of time. Therefore, if a child re-enters out-of-home care, the State must report the previously known diagnosis if it is still applicable. This principle also applies to a child newly entering out-of-home care who has a known diagnosed

condition. For instance, a child may have been born with a congenital defect and is undergoing treatment (or not) for the problem. If the State agency is aware and has obtained a medical summary, then this information should be recorded and reported to AFCARS.

Current immunizations. In paragraph (b)(7), we propose for the first time that a State indicate whether the child's immunizations are current as of the end of the report period. A State agency is to indicate whether the child's immunizations are current, or the State agency may indicate that it has not yet determined the status of the child's immunizations because it has not compiled or obtained the child's immunization records. If a child is too young to be immunized at the time of reporting, *i.e.*, the child is a newborn, the State may indicate that the child's immunizations are current. For the purposes of AFCARS, we are requiring that States determine whether immunizations are up-to-date in accordance with the Recommended Childhood and Adolescent Immunization Schedule (available from the Centers for Disease Control (CDC)) in consultation with the child's practitioner.

We are seeking this information because we are interested in gathering data that will allow us to understand more about a child's well-being while in out-of-home care. Further, this information is readily available to States in most cases since it is a required part of a foster child's case plan (section 475(1)(C)(v) of the Act).

Educational Performance. In paragraph (b)(8), we propose for the first time that a State report information on whether the child has repeated grades in school (in subparagraph (b)(8)(i)) and the number of repeated grades (in subparagraph (b)(8)(ii)). In subparagraph (b)(8)(ii), the State must consider each time a child repeats a grade separately. For example, if a child remained in the tenth grade for three school years, the State must report the number of grades repeated as two.

We have chosen grade level performance as a proposed new data element in an effort to learn more about a child's well-being while in out-of-home care. A recent study of students in Illinois indicated that children in foster care are more likely to be behind in their grade level performance than students who have not experienced a removal from home (Chapin Hall, Educational Experiences of Children in Out-Of-Home Care, 2004). We believe that grade level performance is an appropriate indicator of educational performance because it is used

consistently across the country, is appropriate for all school-age children, and relatively simple for a State agency to collect and report. Further, we believe that this element is consistent with the statutory requirement for States to compile information on the child's grade level performance while in foster care (section 475(1)(C)(ii) of the Act).

Special education. In paragraph (b)(9), we propose to collect information for the first time about whether the child received special education instruction during the report period. The term "special education," as defined in 20 U.S.C. 1401(29), means specifically designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. States are to indicate whether the child received special education during the report period, or indicate that the State agency has not yet determined whether the child is receiving special education. We are specifically requesting that States indicate whether the child actually receives special education instruction, rather than whether the child needs or has been referred for special education services. We believe that data on whether the child actually receives special education will be more reliable than information on eligibility for such services and this information will be simpler for States to obtain.

We propose to collect this information because of our interest in monitoring the well-being of children in the out-of-home care reporting population and our desire to provide a more comprehensive picture of the needs of children. We also believe that gathering this information is consistent with the case plan requirements in section 475(1)(C) of the Act.

Prior adoption. In paragraph (b)(10), we propose to continue the requirement for the State agency to report whether the child has experienced a prior finalized adoption (see appendix A to part 1355, section II, II.E). We clarify in the proposed regulation text that we are interested in whether the child has experienced a finalized adoption prior to the current out-of-home care episode as opposed to an adoption that occurs during the current out-of-home care episode. We also are clarifying that the State is to include any type of prior adoption in this element, regardless of whether the adoption was public, private, independent, or an intercountry adoption. Many commenters on the **Federal Register** notice expressed a desire for continuing and expanding the information we collect on prior adoptions to better determine the extent to which children in out-of-home care are involved in dissolved adoptions

where the adoptive parents' rights are terminated and displaced adoptions where the child enters out-of-home care after a finalized adoption.

Prior adoption date. In paragraph (b)(10)(i), we propose for the first time that a State report the finalization date of the child's prior adoption. In the case of an intercountry adoption, the child's parents may have gone through a readoption process in the State where they reside. While in many cases this process is optional for a child whose adoption was finalized in the originating country, we understand that there are some States that require the child to be readopted in his/her State of residence. In such cases, we are requiring that the State provide the date that the adoption is considered final in accordance with the State's laws on readoption.

In the existing AFCARS, we ask the State to report the child's age range at the time of the prior finalized adoption (appendix B to part 1355 section II, II.E). This information, however, was insufficient to determine accurately when the child was previously adopted. Thus, we propose that the State report the actual finalization date to allow us to determine how much time has elapsed between the child's previous adoption and his or her current out-of-home care stay.

Prior adoption type. In paragraph (b)(10)(ii), we seek information for the first time on the type of adoption the child experienced previously. In this element, States must distinguish between a prior adoption that occurs out of the reporting State's foster care system, another State's foster care system, an intercountry adoption, or another type of private or independent adoption. Commenters on the **Federal Register** notice believed that an element of this nature would be useful in informing our understanding of dissolved and displaced adoptions.

We define intercountry adoptions as those that occur in another country, or those adoptions that are finalized in the United States after the foreign child has been brought into the country for the purposes of adoption. Another country in this case means any country outside of our definition of a State for title IV-B in 45 CFR 1355.20. We seek this information primarily in response to the requirements of the Intercountry Adoption Act (IAA) of 2000 (Pub. L. 106-279). The IAA added section 422(b)(14) to the Social Security Act and requires that a State collect and report certain information on children who are adopted from other countries and who enter State custody as a result of the disruption of a placement for adoption

or the dissolution of that adoption. This information will allow us to compile the number of children and permanency plans for children involved in dissolved adoptions and from where such children originated.

Prior adoption location. In subparagraph (b)(10)(iii), we propose that a State submit the FIPS code which corresponds with the State or country in which the child was previously adopted, if applicable. This also is a new element. We propose to collect this information so that we can calculate accurately the dissolution and displacement rates for both the State in which the child was adopted and the State in which the displacement or dissolution occurred. Further, collecting information on the actual country of the prior adoption will inform our understanding of intercountry adoptions that require the intervention by State public child welfare agencies consistent with the IAA.

Number of siblings living with the child at removal. In paragraph (b)(11), we propose for the first time that the State report the total number of siblings living with the child at the time of the child's removal from home, if any. These siblings may be biological, legal or by marriage but cannot be adults according to the State's age of majority. The State is not to include the child who is the subject of the report (i.e., the child whose record number is reported for the element in paragraph (b)(4)) in this count.

We wish to be clear that States must report only the number of the child's siblings who were living with the child at removal and not the total number of siblings of the child. This includes all siblings living with the child at removal, whether the sibling relationship is biological, legal or by marriage. We are making this distinction because it is more useful for us to know the number of sisters and brothers who lived with the child rather than the sum total of all siblings regardless of where they lived. Since we are interested in understanding the dynamics of sibling groups for permanency planning purposes, we do not believe it is necessary for the State also to report information on a child's brothers or sisters who are not present in the home and for whom the parent/legal guardian may not be responsible.

The reason that we require States to report this information is because we want to get an accurate count of the number of siblings in out-of-home care who were actually living together at one time prior to the entry of the child into out-of-home care. We need this element specifically so that we can understand

when the number of siblings in out-of-home care is different from the number of siblings who were living together at removal. For example, it is possible that the mother could give birth to an infant who is removed from home after the reported child enters out-of-home care, thereby increasing the count of the number of children in out-of-home care, but not the number of siblings in the AFCARS population when the child was removed. This has implications for the child's permanency plan and State agency expectations for placing siblings together.

We propose this element, along with the family identification number (discussed previously) and the number of siblings placed together (described later), in order to get information on sibling groups for a variety of reasons. Good practice dictates that, where possible and in the best interests of the child, siblings in out-of-home placements should be placed together. However, we also know that addressing the needs of sibling groups provides agencies with special challenges. The data that we propose to collect, among other things, will provide us with extremely useful information about siblings. For example, this data will allow us to analyze how being a part of a sibling group involved with the child welfare agency affects the timeliness and success of reunification. Furthermore, it is especially important to know about sibling groups for adoption purposes, since we know that many children placed into out-of-home care are later placed for adoption. In addition, most States use "sibling" groups as one of the special needs categories for providing adoption subsidies. We understand that this is one of the most difficult groups of children for whom States must find adoptive homes.

Many **Federal Register** commenters agree that we need to modify AFCARS to obtain information on siblings. Commenters believe that such data will allow States to track sibling groups that are placed together or apart; analyze how well agencies preserve sibling attachments, as well as determine and implement services that specifically address the needs of sibling groups. Typically, States have this information in case files, but it is not yet an established practice for all States to track this information in their case management systems. We found through the CFSRs that a State can lose track of a child's siblings. We believe that requiring States to report sibling groups through AFCARS will decrease the frequency of this happening.

Finally, requiring sibling information in AFCARS will be useful for the CFSRs. In the CFSR, we rate States on several items that relate to this issue, such as preserving family connections, visiting between children in foster care and their families, and relative placements. As States enter program improvement plans (PIPs) to improve these areas, it will be helpful to have this data in AFCARS to be able to identify where the problems are and track progress over time. We also rate the safety and well being items on all children in the family, regardless of whether the case is a foster care case.

Minor parent. In paragraph (b)(12), we propose that the State collect and report the number of children either fathered or borne by the young person in the State's AFCARS report. If the young person has no children, the State must indicate zero. States are to report the total of all children of the young parent, irrespective of whether or not such children live with their parent.

Commenters requested an element of this nature and we feel it is important for us to have improved data about the characteristics of young people in out-of-home care. This information can allow us to analyze the extent to which having children affects a youth's permanency plan. This data element also will be used in conjunction with a subsequent data element in 45 CFR 1355.43(e)(9) about the population of young people in out-of-home care who have children for whom they are responsible and are living with them. The combination of information in the two elements will allow us to determine the number of young people in out-of-home care who have children, and the extent to which those young people are responsible for the care of their children.

Child financial and medical assistance. In paragraph (b)(13), we propose that a State report for the first time the type of financial and medical assistance that the child received during the current six-month report period. The State is to indicate whether the child receives benefits under title XVI of the Act (including SSI), the State's Medicaid program including under title XIX waivers or demonstrations, the State's Children's Health Insurance Program (CHIP) including under title XXI waivers or demonstrations, a State adoption subsidy, a State foster care payment, child support, other financial assistance or no financial assistance.

While there are elements in the existing AFCARS that require States to report the sources of Federal support for the child, this element is different in that it focuses on a variety of financial

and medical assistance rather than just Federal support. The statute at section 479(c)(3)(D) of the Act requires that we collect national information on "the extent and nature of assistance provided by Federal, State, and local adoption and foster care programs." As such, we believe that expanding the scope of our financial and medical assistance elements to gather more information on assistance for the child is required by law. This proposed element, in conjunction with the following element on receipt of title IV-E foster care maintenance payments and elements in the living arrangement section of this NPRM (1355.43(e)), will allow us to gather more information on the kinds of financial and medical assistance that support children in out-of-home care.

Title IV-E foster care during report period. In paragraph (b)(14), we propose a new element for the State to report specifically whether the child received a title IV-E foster care maintenance payment during the current report period. The State is to respond affirmatively that the child has received a title IV-E foster care maintenance payment only if one was paid on the child's behalf during the current six-month report period, or the child is eligible for the program in accordance with section 472(a) of the Act and the State will claim Federal reimbursement under title IV-E for the child's foster care maintenance payment.

This element is used primarily to extract the title IV-E foster care eligibility review samples. Currently, the title IV-E foster care eligibility review sample is drawn from an existing AFCARS element that requires States to identify foster care maintenance payments as one of many Federal sources of support for the child. We have learned through technical assistance and AFCARS assessment reviews, however, that States often report this element incorrectly. A common mistake with the existing element involves the State indicating that the child is receiving title IV-E foster care maintenance payments when the child has met some title IV-E eligibility requirements (e.g., AFDC eligibility) but not all. We wish to isolate this element so that we can clearly define it and improve the sample selection process for the title IV-E foster care eligibility reviews.

Section 1355.43(c) Parent or Legal Guardian Information

In paragraph (c), we are seeking demographic information on the child's parent(s) or legal guardian(s).

Year of birth of parent(s) or legal guardian(s). In paragraphs (c)(1) and

(c)(2), we propose that the State collect and report to AFCARS the birth year of the child's parents or legal guardians. This information is sought on the child's parent or legal guardians regardless of with whom the child is living at the time of removal from home. If the State cannot obtain this information because the child is abandoned, the State must so indicate. This information differs from the existing AFCARS in that we currently request the year of birth of the child's caretakers from whom he or she was removed (see appendix A to part 1355, section II, VII.B). The information collected under the existing regulation does not clearly indicate whether the child's caretaker was the parent, legal guardian, or some other person who was temporarily taking care of the child at the time that the child was removed from home. Because of this lack of clarity, our ability to analyze the existing data is limited.

We believe that focusing the proposed elements on the child's parents or legal guardians is more consistent with the statutory mandate to collect demographic information on the biological and adoptive parents of children in foster care (section 479(c)(3)(A) of the Act). By expanding our requirement to gather the year of birth of all legal parents (*i.e.*, inclusive of biological parents, adoptive parents and stepparents) or the child's legal guardian, we believe we are better meeting the intent of the statute to understand the characteristics of persons who are legally responsible for children who must enter foster care.

Mother married at time of the child's birth. In paragraph (c)(3), we propose that a State report to us whether the child's biological mother was a married person at the time the child was born. This element is similar to one that States collect currently, except that in the existing element we require that a State provide this information only for children who are adopted (see appendix B to part 1355, section II, IV.B). We believe that this information is better suited for the out-of-home care reporting population as a whole. According to comments, some stakeholders believed this information was unnecessary while others believed it should be expanded to be reported for the entire out-of-home care reporting population. We chose to expand the reporting of this element for a few reasons. First, we understand from AFCARS assessment reviews that many States already collect this information when a child enters out-of-home care rather than at the point of adoption, so broadening the scope of this requirement should not increase the

burden on States. Second, from our analysis of the existing data on whether the child's mother was married at the time of the child's birth, we have found that the marriage rates in our population are lower than the national average. According to the National Center for Health Statistics, 34% of births are to unmarried women compared to over half of the births of children adopted from public foster care systems. One of the priorities of this administration is to promote healthy marriages, in part, because researchers have found many benefits for children and youth who are raised by parents in healthy marriages. In that context, we are interested in gathering data that may help us assess if a mother's marital status at the time of the child's birth is a factor in a child's child welfare experience. This collection also is consistent with the statutory mandate to collect demographic information under section 479(c)(3)(A) of the Act.

Termination of parental rights petition. In paragraphs (c)(4) and (c)(6), we seek new information on the date that a petition to terminate parental rights (TPR) was filed against the child's parents. This information will provide us with data we can use to evaluate how States are complying with the requirement in section 475(5)(E) of the Act to file a petition to terminate the parental rights of certain children in foster care. Further, this information, in conjunction with information collected on final dates of TPR and adoption, will help us determine how long it takes for permanency to be achieved for children who are adopted.

Termination of parental rights. In proposed paragraphs (c)(5) and (c)(7), we continue the existing requirement for States to collect and report data on the date that parental rights are terminated for each parent (see appendix A to part 1355, section II, VIII).

For all data elements related to the termination of parental rights, we propose to clarify that we are seeking information on a child's putative father, if applicable. A putative father is a person who is alleged to be the father of a child, or who claims to be the father of a child, at a time when there may not be enough evidence or information available to determine if that is correct. For the current AFCARS we have fielded questions on whether States should provide information on putative fathers. Since States must terminate the parental rights of any putative fathers to ensure that a child legally is free adoption, we want to be clear that we are interested in this information as well.

Finally, we would like to note that we propose to eliminate the existing element on the family structure of the child's caretakers from whom the child was removed (see appendix A to part 1355, section II, VII.A). We concur with several commenters to the **Federal Register** notice that this information is not useful as currently constructed. However, we have proposed alternative elements in paragraph (d) that we believe will give us better insight into the composition of the child's household at the time of removal.

Section 1355.43(d) Removal Information

In paragraph (d) we propose that the State submit information related to the child's removal from home and the assumption of responsibility by the State agency for placement and care of the child. We request that for any child in the reporting population, the State submit removal information regarding every occasion that the child is removed from home until the child has reached the age of majority. This is a significant change from the existing AFCARS, where we require detailed removal information on the child's most recent removal only.

The major reason for making this change is that we will be able to analyze more accurately the frequency and circumstances surrounding a child's entry into out-of-home care. As pointed out earlier, many States and other stakeholders have indicated that longitudinal data that permits the examination of entry, exit, permanency plan and living arrangement information is critical to the CFSR process and other efforts to measure outcomes.

Date of child's removal. In paragraph (d)(1), we propose that the State collect and report the date or dates on which the child was removed from his or her parents or legal guardians and placed under the placement and care responsibility of the State title IV-B/IV-E agency. This proposed element differs from the existing AFCARS, which asks for the dates of the child's first removal and latest removal from home for the purpose of placement in a foster care setting (see appendix A to part 1355, section II, III.A). The proposed element requires the State to report all removal dates in one element and clarifies which dates the State must report in certain circumstances.

In many cases the date of the child's removal will be when the child is removed physically from his home and placed directly into out-of-home care. However, for a child who was already away from his parents at the time the

State child welfare agency receives placement and care responsibility (i.e., in the case of a runaway, constructive removal, or transfer of placement and care responsibility from a separate public agency), the State agency must report the date when it receives placement and care responsibility rather than the date of physical removal. Further, if the child was in out-of-home care previously and returned home with continued State agency placement and care responsibility (which must be reported as an exit in accordance with our proposed reporting population), the date of the child's removal is the date of the new removal from the child's home.

A major reason why we are proposing that States report all removal dates is so that we can accurately analyze a child's repeat foster care re-entry rate for CFSR purposes, particularly any associated length of time to re-entry. Currently, we are able to measure a child's re-entry rate using AFCARS information, but this information has limitations. For example, the current AFCARS does not allow us to analyze the child's entire detailed history of removals. Furthermore, by requiring that the State title IV-B/IV-E agency provide us with all of the dates in a child's entire removal history, rather than only the first and current removal dates, we can identify trends that might assist States in better understanding their data and making program improvements as needed. Without the entire history, we are unable to determine, for example, the effects of States' program improvement planning efforts on repeat entries into foster care, the duration of all episodes of foster care, and the outcomes of a child's stay in foster care.

We do not believe that the changes to the removal date will be an additional burden on States because we understand that most, if not all States, have this information in their existing information systems. In fact, this proposal may ease State burden such that the State can simply transmit all of its removal date information, rather than separating out which dates to report for AFCARS purposes only. We welcome comments on this proposal.

Removal transaction date. In paragraph (d)(2), we propose that the State title IV-B/IV-E agency continue to report the date that the State agency entered the child's removal date into the State's information system (see appendix A to part 1355, section II, III.A). This transaction date must accompany every removal date. This must be a computer-generated, non-modifiable date. To be timely, the date must be entered within 15 days of the

child's removal from his/her parent and placement under the agency's responsibility.

Although this is a significant change in the time frame for the State to enter the date of a child's removal, we have found that States report more accurate, high quality data when the transaction date is entered into the information system close in time to the event that it describes. This is our ultimate goal with this proposed change; to have accurate dates of removal for all children reported. A child's removal date is one of the most critical data elements in the AFCARS, as it is the anchor date for calculating certain CFSR outcome measures and is necessary for other purposes as well.

Some commenters to the **Federal Register** notice suggested that entering the transaction date should be secondary to ensuring child safety. We agree that child safety is paramount, and understand the competing demands placed on child welfare workers. However, we have not changed our position that States must enter the child's removal date into the State's information system in a timely manner. Further, information from our analysis of AFCARS data submitted for the FY 2003 and FY 2004 report periods indicate that three-fourths of the cases are entered within 15 days of the child's removal. Therefore, we do not believe that this proposed change will be a significant departure from State practice in most instances. We welcome comments on this proposed change.

Environment at removal. In paragraph (d)(3), we propose that the State agency report if the child was living in a household or in another environment at the time of each removal. This is a new element. We propose that States report whether the child was living in a household or another environment (e.g., the child has run away) so that, in conjunction with the two subsequent elements on household composition and biological parents' marital status, we can learn more about the child's home or situation prior to entering out-of-home care. The existing AFCARS requires a State to report the family structure of the child's caretakers at removal. We have found this information to be insufficient for our analytical needs as it does not provide information about with whom the child was living, if anyone, or identify family relationships specifically. We believe that more detail about the child's environment at removal will inform our analysis of how children come into out-of-home care and their child outcomes.

Household composition at removal. In paragraph (d)(4) and its subparagraphs

(d)(4)(i) through (xi), we propose for the first time that the State report all adults in the child's household with whom the child was living at the time of each removal. We propose that States identify the composition of the child's household if the child was actually removed from a home environment as identified in the previous element. States may identify parents, grandparents, other relatives, a paramour of a parent or caretaker, other non-relatives, adult siblings, or other non-related caretakers, by indicating how many of each category of persons was in the home. For example, if the child was living with the biological mother and stepfather at removal, the State would indicate that there was one biological parent, one stepparent, and indicate a zero for all other persons.

We propose to require that States report this information because we want to gather as much information as is practical about a child's life at the time of removal to conduct various analyses relating to under what circumstances and with whom children are living before they enter out-of-home care. We are aware that some children who are legally removed from their parents do not live with them at the point of removal, or are also cared for by another adult. Some may be living informally with relatives or neighbors. In short, having this information will enrich what we know about children who enter out-of-home care.

We have been careful to clarify in our description of a non-related caretaker that States report information on only those persons who have assumed responsibility for the day-to-day care of the child. This is because we are interested in collecting information on those persons who have an ongoing caretaking role for the child as opposed to those who may have temporary physical possession of the child. We believe it serves little analytic purpose to gather information on persons who are not part of the child's household prior to the child's entry into out-of-home care. For example, there may be a situation where a parent leaves the child with a babysitter or neighbor for the day but has not returned a couple of days later, at which point the babysitter or neighbor contacts the child welfare agency. In such a situation, the babysitter or neighbor has not assumed responsibility for that child and the State must report information on the persons in the child's household instead. We welcome comments on this element.

Biological parents' marital status. In paragraph (d)(5), we propose that the State report the marital relationship

between the child's biological parents if the child was removed from at least one biological parent. We propose that the State report whether the biological parents are married to each other and whether they are living together at the time of the child's removal. We also have a category for a deceased biological parent that should be used regardless of the parents' marital status at the time of the parent's death. We are proposing this element because, as noted earlier, we are interested in the role that marriage plays in positive child outcomes, particularly as it relates to the child's biological parents.

Manner of removal. In paragraph (d)(6), we propose that the State title IV-B/IV-E agency continue to collect and report on the State's authority to remove the child from home for each removal (see appendix A to part 1355, section II, IV.A). We have made no changes to the information that is reported, except that it must be reported for every removal the child experiences. Specifically, the State title IV-B/IV-E agency is to indicate whether the State's authority for removing the child from home for each removal was based on a court order or a voluntary placement agreement. If this is not yet determined, the State must so indicate and update the record to reflect the manner of removal once it is known. We continue to envision that the "not yet determined" category will happen in short-term cases only since establishing the appropriate legal authority to remove a child from home is an initial and critical State agency responsibility.

We considered making changes to this section in an attempt to distinguish court orders that are for the placement of children into the agency's responsibility for dependency reasons and those that are for juvenile justice agency involvement reasons. Because State practice with regard to this issue is so varied, we do not think that there is a single way to categorize court orders. Therefore, we propose changes to the elements related to child and family circumstances at removal and juvenile justice involvement to gather information on children with juvenile justice agency involvement.

Child and family circumstances at removal. In paragraph (d)(7), we propose to collect data about the circumstances surrounding the child and family at the time of the child's removal from home. While currently we collect information on the circumstances associated with a child's most recent removal (see appendix A to part 1355, section II, IV.B for all response options), we propose in this element to require this information for

every removal and expand the list of circumstances, among other things, to include juvenile justice information.

We do not characterize these circumstances as the reasons for or causes of removal, although certainly some of these factors may have been the sole basis for the removal. Consistent with the existing AFCARS, we propose that the State agency only include information in this element that it has gathered about the child, the child's family and circumstances at the time the agency removes the child from home. As the State investigates and works with a family, the agency may learn of other factors or underlying issues that could have contributed to or necessitated removal. But we are not seeking that information here. Rather, we propose additional elements to capture circumstances that may arise during the course of the child's stay in out-of-home care as discussed later in the permanency and exit sections of the NPRM. In this element, we wish to understand, in a comprehensive manner, what is occurring in a child's life at the time of removal. Therefore, we propose to retain the current feature of AFCARS to require that the State indicate all of the circumstances associated with a child's removal. We have had concerns with the practice in some State agencies of reporting only the primary reason associated with the child's removal, leaving out important information about other relevant circumstances. We want to emphasize here that the State must report all of the circumstances at the time of the child's removal. Below, we explain all the response options for this element.

Juvenile Justice. We propose two new response options for circumstances at removal that are juvenile justice related. Currently, in AFCARS, the circumstances associated with the child's removal do not include the child's involvement, if any, with the juvenile justice system. Consequently, we have not been able to identify which children begin their out-of-home care experience with alleged or adjudicated delinquent or status offenses. As indicated earlier, we have heard through a variety of sources, including comments on the **Federal Register** notice and the CFSRs, that it is important to clarify the characteristics of the reporting population so that we will be able to analyze the differences in various CFSR and other outcome measures.

Specifically, we propose that a State report whether the child is alleged or found to be a status offender at removal. We propose to define status offenses as those that are specific to juveniles,

including but not limited to, running away from home, underage alcohol violations and truancy. We propose that the State title IV-B/IV-E agency report a child status offender even if the status offense is alleged. We also request that the State report whether, at the time the child was removed from home, the child is an alleged or adjudicated delinquent. States are to indicate this circumstance irrespective of whether the child has had a hearing or a trial or has been found guilty for the delinquent act of which he or she was accused. We are more interested in knowing whether the young person has been involved in a juvenile justice type of activity rather than whether the young person was found guilty. Primarily, our goal is to obtain additional information about the reporting population when there is involvement with the juvenile justice system, even if the offense is not later adjudicated.

Runaway. We propose that the State title IV-B/IV-E agency collect and report whether, at the time the State title IV-B/IV-E agency assumed placement and care responsibility for the child, the child had run away from home. Currently in AFCARS, we collect this information through the "child behavior problem" element. We propose now that States report separately on children who have run away at the time that the agency takes responsibility for the child. With increased interest and focus on missing children, we agree with the **Federal Register** respondents who believe that running away from home is a specific child behavior that needs to be tracked separately from general child behavior problems.

Physical abuse. We propose that States continue to collect and report whether physical abuse was a condition associated with the child's removal. This type of child maltreatment remains a significant condition associated with a child's entry into out-of-home care. We propose to maintain the definition of physical abuse that currently appears in AFCARS. The definition of physical abuse is: "alleged or substantiated physical abuse, injury or maltreatment of a child by a person responsible for the child's welfare." We believe that this definition adequately captures both substantiated and alleged child physical maltreatment. We considered using the National Child Abuse and Neglect Data Systems (NCANDS) definition of physical abuse, which is: a "type of maltreatment that refers to physical acts that caused or could have caused physical injury to the child." However, the NCANDS definition does not capture the concept of alleged physical abuse. Specifically, the NCANDS

definition of physical abuse contemplates that the physical abuse of the child has been substantiated, rather than merely alleged. Because the circumstances of removal have to be reported to AFCARS when the child is removed from the home, it is unlikely that physical abuse already will have been substantiated in all cases. We therefore believe that the current definition better captures what is possible to report at an early stage.

Sexual abuse. We propose that the State title IV-B/IV-E agency continue to collect and report whether sexual abuse was a condition associated with the child's removal. This type of child maltreatment remains a significant condition associated with a child's entry into out-of-home care. We propose to maintain the definition of sexual abuse that currently appears in AFCARS. The definition of sexual abuse is: "alleged or substantiated sexual abuse or exploitation of a child by a person who is responsible for the child's welfare." We believe that this definition adequately captures both substantiated and alleged child sexual abuse and exploitation. We considered using the NCANDS definition for sexual abuse, which is: "a type of maltreatment that refers to the involvement of the child in sexual activity to provide sexual gratification or financial benefit to the perpetrator, including contacts for sexual purposes, molestation, statutory rape, prostitution, pornography, exposure, incest, or other sexually exploitative activities." However, the NCANDS definition does not capture the concept of alleged sexual abuse. Specifically, the NCANDS definition of sexual abuse contemplates that the sexual abuse of the child has been substantiated rather than alleged. Because the circumstances of removal have to be reported to AFCARS when the child is removed from the home, it is unlikely that sexual abuse already will have been substantiated in all cases. We therefore believe that the current definition better captures what is possible to report at this early stage.

Psychological or emotional abuse. We propose that the State collect and report whether alleged or substantiated psychological or emotional abuse by a person who is responsible for the child's welfare was a circumstance of removal from the home. This includes verbal abuse directed against the child by the person who is responsible for the child's welfare. This is a proposed new response option. In AFCARS currently, we do not require the State to report specifically on emotional or psychological abuse as a circumstance associated with removal. In § 1.2B3 of

the Child Welfare Policy Manual (Question and Answer #3), however, we instruct that circumstances of "mental abuse" should be considered as neglect for AFCARS purposes. By adding a response option for psychological or emotional abuse, we propose to distinguish neglect from psychological and emotional abuse, which we believe is a useful distinction to make.

Neglect. We propose that the State continue to collect and report whether neglect was a condition associated with the child's removal. This type of child maltreatment remains a significant condition associated with a child's entry into out-of-home care. We propose to maintain the definition of neglect that currently appears in AFCARS, as we believe it adequately captures both substantiated and alleged child neglect. We considered using the National Child Abuse and Neglect Data Systems (NCANDS) definition of neglect, which also includes deprivation of necessities. That definition is: "a type of maltreatment that refers to the failure by the caretaker to provide needed, age-appropriate care although financially able to do so, or offered financial or other means to do so." However, the NCANDS definition does not capture the concept of alleged abuse. Specifically, the NCANDS definition of neglect contemplates that the neglect of the child has been substantiated, rather than alleged. Because the circumstances of removal have to be reported to AFCARS when the child is removed from the home, it is unlikely that neglect already will have been substantiated in all cases. We therefore believe that the current definition better captures what is possible to report at this early stage.

Medical neglect. We propose a new response option that will allow the State to report whether medical neglect was a circumstance of removal from the home. We propose that medical neglect is defined as an alleged or substantiated type of maltreatment that is caused by a failure of a child's caretaker to provide for the appropriate health care of the child, even though the caretaker is financially able to do so, or is offered assistance to financially do so. We have modeled the definition on the NCANDS definition. However, we propose to include the concept of 'alleged' medical neglect to the definition because, as we have explained, an allegation of medical neglect is not always substantiated at the time of removal.

Domestic violence. We also propose a new response option for the State to report whether domestic violence was a circumstance associated with the child's removal from the home. We propose to

define domestic violence as "alleged or substantiated physical or emotional abuse between one adult member of the child's home and a partner." In proposing this definition, we do not want to limit the definition, for example, to violence between the parents of the child who is removed from the home. Instead, we construe this term broadly to mean any person who is or was a partner to an adult living in the home. We believe that this broad definition accurately reflects the reality of many domestic violence circumstances. As with other elements, we considered adopting the NCANDS definition, but decided that the definition was too limiting for our purposes because it defines domestic violence as occurring between spouses or parent figures. Additionally, the NCANDS definition does not address allegations of domestic violence. As we have explained, at the time of removal, workers are likely to have allegations of conduct to report to AFCARS, and not always substantiations.

Abandonment. We propose that the State continue to report abandonment as a circumstance of removal, but we propose a change in the definition of an abandoned child for AFCARS reporting. We propose now to define abandonment to mean that the child is left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. The current AFCARS regulations define abandonment as "child left alone or with others, caretaker did not return or make whereabouts known." The major difference with the proposed definition is that abandonment only includes the circumstance where the parent's identity is unknown. That is not always the case under the current AFCARS, since the definition of abandonment is broader and encompasses both the situations in which the State knows the parent's identity, and when it does not. The circumstance where the child is left alone and the parent's identity is known, but the agency does not know where the parent is, will now be reported in the new response option "failure to return."

We propose this change so that we can identify the truly abandoned child whose parents are unknown from a child who is left with others, but the State knows the identity of the parent. We are often asked by members of Congress and others to identify cases of abandoned children (most often infants) in which the parents have left the child alone, with someone, or somewhere, but have not made their identity known. Further, information requests regarding this population of children have

increased with the proliferation of “safe haven laws.” Currently, we are unable to distinguish this specific population of children in AFCARS, because as we have explained, the current definition of abandonment is broad. Furthermore, the permanency planning needs of these children are different from those of a child whose parents are known. For instance, both under the Child Abuse Protection and Treatment Act (CAPTA) program and the title IV–E program, States are required to expedite permanency for an abandoned child since there is not an identified parent with whom the agency can work toward reunification.

Failure to provide supervision. We propose a new response option for the State to report whether a parent or legal guardian’s failure to supervise a child is a circumstance of the child’s removal. This includes when the parent or legal guardian fails to provide adequate care and/or age appropriate supervision for the child on a recurring or long-term basis. Currently in AFCARS, we advise States to report a parent’s failure to supervise as “neglect” through instruction in section 1.2B.3 of the Child Welfare Policy Manual (Question and Answer #5). We believe, however, that a failure to supervise is distinct enough from general child neglect to warrant a separate element.

Failure to return. We also propose a new response option for the State to report the circumstance of a caretaker who leaves the child alone or with others and does not return for the child or make his/her location known to the child welfare agency. Currently, States report this circumstance under the category of “abandonment.” As we explained earlier, we propose that States report this type of circumstance in a separate data element from “abandonment” so that we can identify a truly abandoned child from one where the whereabouts of the parent are not known. As we noted earlier, we often are asked by members of Congress and others to identify abandoned infants, but under the current AFCARS we are unable to make these distinctions. Therefore, we are not proposing that the State provide new information, but that the State report the information to us differently.

Caretaker’s alcohol abuse. We propose that the State continue to collect and report whether the child’s parent, legal guardian or other responsible caretaker’s compulsive use of alcohol was a circumstance of the child’s removal from the home. However, we propose to change the definition slightly because we believe that such changes will more readily and

accurately reflect our intent. Currently in AFCARS, the State title IV–B/IV–E agency collects and reports information about a caretaker’s compulsive use of alcohol that “is not of a temporary nature.” We do not want to limit this circumstance to long-term abuse of alcohol only, as we believe that even short-term abuse has deleterious effects on the child.

Although some stakeholders advised us to apply the NCANDS definition of alcohol abuse to AFCARS, we have decided not to adopt the NCANDS definition. NCANDS defines alcohol abuse as “compulsive use of alcohol that is not of a temporary nature. Applies to infants addicted at birth, or who are victims of Fetal Alcohol Syndrome, or who may suffer other disabilities due to the use of alcohol during pregnancy.” The NCANDS definition does not include the concept of alleged alcohol abuse. At the time of removal, it is likely that the State will be able to report unsubstantiated or alleged conduct only. We therefore believe it is important to include the notion of alleged alcohol abuse for AFCARS purposes. The NCANDS definition also expressly excludes the concept of temporary alcohol abuse, which as explained above, we believe is relevant to an assessment of the child’s circumstances at removal. Finally, the NCANDS definitions include infants who are born addicted at birth. As we have explained below, for AFCARS purposes, we want to be able to identify clearly when an infant is addicted to alcohol at birth as opposed to an adult caretaker who compulsively uses alcohol.

Caretaker’s drug abuse. We propose that the State continue to collect and report whether the child’s parent, legal guardian or other caretaker’s compulsive use of drugs is a circumstance of the family at the time of removal. We have suggested the very same modifications to this data element as the response option related to caretaker’s abuse of alcohol for the same reasons.

Child alcohol use. We propose that the State continue to report whether the child’s alcohol use was a circumstance of the child’s removal from home. This proposed response option differs from the existing one, however, by no longer capturing situations in which the child is born addicted to alcohol at birth. We believe that an infant who is exposed to alcohol in utero is different from a child who compulsively uses alcohol of his or her own accord.

Child drug use. We propose that the State continue to report whether the child’s drug use was a circumstance at

the time of the child’s removal from home. This proposed element differs from the current element, however, by no longer capturing situations in which the child is born addicted to drugs at birth. As stated above, we believe that an infant who is exposed to drugs in utero is different from a child who compulsively uses drugs of his or her own accord.

Prenatal alcohol exposure. We propose that the State collect and report whether a child has been prenatally exposed to alcohol that has resulted in fetal alcohol exposure, fetal alcohol effect or fetal alcohol syndrome. Currently in AFCARS, we do not require the State provide information separately on this circumstance. Instead, States report “infants addicted at birth” as part of a child’s own alcohol abuse. This new response option will allow us to distinguish a child whose removal circumstances involve prenatal alcohol exposure from a child who has his or her own alcohol use issues.

Prenatal drug exposure. We propose that the State collect and report whether a child has been exposed to drugs prenatally. Currently in AFCARS, we do not require the State to provide information separately on this circumstance; instead States report “infants addicted at birth” as a part of a child’s own drug abuse. This new response option will allow us to distinguish a child whose removal circumstances involve prenatal drug exposure from a child who has his or her own drug use issues.

Diagnosed condition. We propose that the State continue to report whether the presence of a child’s diagnosed health, behavioral or mental health condition was a circumstance associated with the child’s removal from the home. States currently report similar information as “child disability” but we propose here to modify this definition to align with the diagnosed condition element in paragraph (b)(6). We continue to believe the collection of this information is necessary to understanding the status of children when they are removed from their homes. We know that some children are placed out of their homes not because they have been abused or neglected, but because they have a condition, circumstance or disability that causes their parent or caretaker to be unable to care for them. Furthermore, a child’s diagnosed condition or disability significantly impacts a child’s permanency and other factors. Thus, it is essential that we know whether the child’s diagnosed condition or disability is related to the removal from home.

Inadequate access to mental health services. We propose a new response

option that the State collect and report whether a circumstance of a child's removal was in order to access mental health services. We agree with the **Federal Register** commenters who suggested that we should know when a child needing mental health services is placed in out-of-home care so that the State can ensure that the child can access mental health services. Many stakeholders increasingly have become interested in this topic, including States and the Congress. Some States have enacted or proposed laws to ensure that parents can relinquish placement and care responsibility for their children to the State for the purpose of mental health treatment without losing custody of the child. This response option will help us to determine the breadth of such circumstances in particular States and nationwide.

Inadequate access to medical services. We propose a new response option that the State title IV-B/IV-E agency collect and report whether a circumstance of the child's removal from the home was in order to access medical services. We understand that sometimes children have specific medical conditions that are separate from a child's mental health needs. Therefore, we are adding this circumstance of removal so that States can indicate all of the possible situations that exist when a child is removed from home. Inadequate access to medical services may include situations where the child's caretakers seek the child's removal to access a medical service that they cannot provide. It does not include instances of withholding medical services or medical neglect. We are not sure how often this is a circumstance related to a child's placement outside of the home, but want to provide a complete list of possible circumstances.

Child behavior problem. We propose that the State continue to collect and report information about whether a child's behavior problem(s) was a circumstance associated with the child's removal from the home. We propose to maintain most of the definition that currently appears in AFCARS, but propose to alter it slightly for clarity and accuracy. Currently in AFCARS, we include adjudicated conduct and a child who has run away from home or another placement in the definition of "child behavior problem." We specifically propose to exclude status offenses, juvenile delinquent conduct and running away from the category of "child behavior problem." We propose that both runaway and juvenile justice children be reported separately so that we can identify clearly a behavioral problem that has already come to the

attention of the juvenile justice agency. Thus, we are redesigning this response option to capture situations when a parent is unable to manage the child's behavior, but there has been no involvement by the juvenile justice system.

Death of caretaker. We propose that the State continue to collect and report information on whether the death of a child's parent, legal guardian or caretaker was a circumstance of the child's removal from home. We are modifying this response option to capture whether the death of a child's legal guardian was a circumstance of removal.

Incarceration of caretaker. We propose that the State continue to collect and report information on whether the parent, legal guardian or caretaker's incarceration was a circumstance of the child's removal from home. We have modified this response option to read "a child's parent, legal guardian or caretaker is temporarily or permanently placed in jail or prison which adversely affects his/her ability to care for the child." This new definition will broaden the current AFCARS definition to include when the parent, legal guardian or caretaker's incarceration is not only in jail but in prison as well. We understand that jails are typically local facilities that are used to incarcerate a person for less than a year, whereas prisons are State or Federal facilities that can confine a person for a longer period. We have also modified this response option to capture information on the incarceration of a legal guardian. Previously the response option referred to the parent or caretaker only.

Caretaker's inability to cope. We propose that the State collect and report information on whether a parent, legal guardian or caretaker's inability to cope due to a physical or emotional illness or disabling condition adversely affecting the parent's ability to care for the child is a condition related to the child's removal from the home. This response option is the same as the existing one.

Caretaker's limited mental capacity. We propose that the State collect and report separately as a circumstance of removal whether a child's parent, legal guardian or caretaker's limited mental capacity is adversely affecting the person's ability to care for the child. This is a new response option. We propose that limited mental capacity means that the parent, legal guardian or caretaker has limitations in his/her ability to function in areas of daily life, such as communication or self-care. It also may be characterized by a significantly below-average score on a

test of mental ability. Previously, States reported a caretaker's limited mental capacity in the response option for a caretaker's inability to cope. However, since low cognitive functioning is distinct from low emotional functioning, we wish to capture those circumstances in a separate response option so we can understand them more clearly. Moreover, many States include limited mental capacity separately in their SACWIS. Therefore, this may not be a significant change for many States.

Inadequate housing. We propose that the State continue to collect and report whether inadequate housing was a circumstance of the child's removal from the home. We continue to define inadequate housing as housing facilities that are "substandard, overcrowded, unsafe or otherwise inadequate, resulting in their not being appropriate for the parents and child to reside together." Homelessness is also included in the definition of this response option. We see no reason to make changes here as this definition is adequate for our information purposes and stakeholders did not raise concerns.

Disrupted intercountry adoption. We propose to include a disrupted intercountry adoption as a new child and family circumstance of removal. We are referring to the specific situation where a child has been brought into the United States for the purpose of adoption and placed in a preadoptive home but that placement has been disrupted and the child enters out-of-home care before the child's adoption is finalized. We are including this response option to address the requirement in section 422(b)(14) of the Act, for States to report information on children who enter State custody as a result of the disruption of a placement of an intercountry adoption.

Voluntary relinquishment. We propose that the State report whether a voluntary relinquishment was a circumstance of the child's removal from home as under current AFCARS requirements. We have retained the definition of relinquishment as "the biological/legal parent(s) in writing, assigned the physical and legal custody of the child to the agency for the purpose of having the child adopted." In this circumstance, a parent has voluntarily surrendered his or her parental rights to the title IV-B/IV-E agency and the State agency may place the child for adoption. We see no reason to change the definition.

Section 1355.43(e) Living Arrangement and Provider Information

In paragraph (e), we propose that the State collect and report information on

each of the child's living arrangements every time the child is in out-of-home care, as well as information about the providers who are caring for the child. We have modified our living arrangement types from the current AFCARS requirements (see appendix A to part 1355, section II, V.A) to accommodate the changes to the reporting population. Specifically, we are proposing that States report information on children who are in out-of-home care for AFCARS purposes, regardless of the type of setting. Furthermore, we propose to require that a State send us the child's full history of living arrangements and the provider information every time the State submits an out-of-home care data file. We want this historical information rather than just updates on the child's living arrangements from one report period to the next and for every out-of-home care episode. We explain our reasons more fully below.

During consultation, many urged us to consider amending the AFCARS regulations with the goal of gathering longitudinal information for children in out-of-home care. Many States already have this capability. Hence, we propose to restructure the provider and living arrangement information so that we can develop comprehensive longitudinal data on a child's entire experience in his or her living arrangements. This is in contrast to the existing AFCARS, which requires that the State title IV-B/IV-E agency submit detailed information only on the child's current placement setting at the end of a report period and provide a count of placement settings during the child's current foster care episode. Moreover, when 12-month annual files are constructed from the AFCARS semi-annual submissions, only the information on the last placement setting is retained. This limits the types of analyses that can be conducted.

Information on each of the child's living arrangements is critical to the CFSRs. In particular, stakeholders believe that comprehensive and longitudinal placement data will better inform CFSR measures related to the stability of foster care placements. For example, once we have comprehensive and longitudinal information, we can follow groups of children who enter foster care at different points in time to assess the impact of various policy changes on the course of their placement changes. Also, we potentially can use the data to improve our placement stability measure by not only analyzing the number of placements that a child experiences in foster care, but the type of placements, as well. We are interested in being able to explore

whether children are moving from one living arrangement to another in support of their permanency goals. Further, with the amount of data that comprehensive longitudinal information can provide, ACF and States can be better informed in developing and implementing program improvement plans to address issues raised during a CFSR.

We have heard from **Federal Register** respondents and other stakeholders that placement setting data is the most challenging for States to report and for others to analyze. Our current rules attempt to guide States toward which placement settings count for AFCARS purposes based on criteria such as whether the State agency intends for the child to return to a traditional foster care setting. We realize that such criteria are subjective and are not used consistently across States or even within a State. The proposed living arrangements elements, along with changes to the reporting population, will alleviate this problem by requiring a State to report all living arrangements while a child is under the State agency's placement and care responsibility.

Finally, we would like to note that the information in this living arrangement section is required regardless of whether the living arrangement is under the direct responsibility of the title IV-B/IV-E agency or another private or State agency. We have learned through our AFCARS assessment reviews that some States failed to provide detailed demographic information on foster parents because they were licensed or managed by a private agency. The State must report living arrangement information for all children in the AFCARS reporting population in accordance with the element definitions irrespective of any agreements or contractual arrangements.

Date of living arrangement. In paragraph (e)(1), we propose for the first time that the State title IV-B/IV-E agency collect and report the month, day and year of each of the child's living arrangements in each out-of-home care episode. This is different from the existing elements that relate to placements, in which States report the date the child was placed in the current placement setting, or on a trial home visit, and a count of how many times the child changed placement settings (see appendix A to part 1355, section II, III.B).

In general, States will report the date the child is physically removed and placed by the State agency in the living arrangement. However, there are two exceptions to this general rule—when a child is already in a living arrangement at the beginning of the out-of-home care

episode and when a child runs away in the midst of an out-of-home care episode. For a child who is already living in a foster family home, other facility, or has run away from his or her home or facility at the time the State title IV-B/IV-E agency receives placement and care responsibility for the child, the State must provide the date of the State agency receiving placement and care. When a child runs away from a living arrangement during his or her out-of-home care episode, the State must report in this element the date the child runs away. While being on runaway status is not a living arrangement per se, we want the date the child runs away so that that we can calculate the actual time the child is absent from the provider or facility without permission. The original date of placement in a living arrangement prior to a State agency obtaining placement and care responsibility in these circumstances, we believe, is not information we need since it falls outside of how we are defining out-of-home care in AFCARS. Further, we would need additional elements for States to provide more contextual information on why the date of the living arrangement precedes the date of removal report in order to distinguish it from a data error. We welcome comments on this approach.

We are no longer seeking the date that the child begins a trial home visit. Current policy requires a State to report the date the child enters a trial home visit (Child Welfare Policy Manual 1.2B.7 #23). As we explained in the reporting population section of the preamble, if the State title IV-B/IV-E agency returns the child home the child exits the AFCARS reporting population. If the child is visiting family, whether it is for a trial reunification or to remain connected with the family, the State must not indicate any change in the child's living arrangement.

We believe that this new approach to capturing information on dates of living arrangements will provide us with a more complete view of a child's placement experiences, as well as help us to determine whether a child's living arrangements are long-term or change frequently.

Living arrangement type elements. In paragraph (e)(2) through (e)(4), we propose that the State indicate more precisely the type of living arrangement for the child. Currently, the State is required to tell us whether the child is in a preadoptive home, a relative or non-related foster family home, a group home, institution, supervised independent living setting, or whether the child has runaway or is on a trial

home visit (see appendix A to part 1355, section II, V.A). We have found that these options, which were intended to be mutually exclusive, did not capture fully the range of living arrangements. Commenters also opined that more detailed information was needed to better understand the types of homes and facilities where children lived in out-of-home care. Further, since we have expanded our reporting population definition, we have made an effort to better categorize the living arrangements so that we can distinguish them. These distinctions are explained further below.

Foster family home. In paragraph (e)(2), we propose that the State identify whether the child's living arrangement is a foster family home. This is a new element which will allow us to further identify the type of living arrangement for the child. If the child is placed in a foster family home, the State must go on to further categorize the foster family home and provide demographic information for the foster parent(s). Otherwise, the State must indicate another type of living arrangement in which the child is placed. If the child has run away from a foster family home or other living arrangement, then the State must indicate that the child is not in a foster family home.

Foster family home type. In paragraph (e)(3), we propose that the State identify whether the foster family home is licensed, therapeutic, provides shelter care, or is that of a relative, and/or a preadoptive home. This is a new element. The State is to identify all foster family home types that apply. In the current placement setting element in AFCARS, States can choose among three options which were designed to be mutually exclusive: Preadoptive home, relative foster family home (which could be licensed or not) and a licensed non-relative foster family home. These response options and definitions provided us with limited analytical possibilities. For example, we could not determine whether children were placed in preadoptive homes that were also relative homes. Further, we did not know the extent to which children were placed in licensed foster family homes. We believe that requiring the State to indicate separately all possible characteristics of a foster family home will allow us to improve how we use this information. The specific response options are discussed below.

We have added a licensed foster family home as its own response option so that we can clearly identify when a child is placed in a licensed foster family home. While States are not permitted to use title IV-E funds to

support unlicensed foster family homes, States may use their own funds to do so. We hope this information will help us learn more about how the use of unlicensed foster family care affects a child's outcomes.

A therapeutic foster home is a foster family that provides specialized care and services. Therapeutic foster homes for children with more challenging behaviors or needs are more prevalent today than when AFCARS was originally developed. Adding this option is in line with our goal to have the data more accurately reflect a child's living arrangements. Further, this element, along with elements that detail the circumstances of the child's removal and the child's conditions, will allow us to get a richer picture of the needs of children in out-of-home care.

We propose to add shelter care foster family home as a response option so that we can track how States use shelter care. We have defined a shelter care foster family home as one that is designated by the State agency or licensed by a licensing entity as a shelter care home and is short-term or transitional in nature. We understand that shelter care is used to provide States with an opportunity to assess the child's needs and future placements while providing care and protection for the child. However, we have some concerns about the stability of children's placements when States use shelter care, and particularly when used for young children. We hope that by capturing the phenomena of shelter care in the data we will be able to analyze how shelter care affects children's permanency. We welcome comments on this response option and its description.

The amended response option of relative foster family home allows us to determine whether or not there is a kin relationship between the child and the foster parents. This response option is consistent with our goal to better understand the relationship between a child in foster care and the child's caregivers. The response option is limited to persons related by a biological, legal or marital connection and does not include fictive kin (i.e., non-relatives who have a pre-existing relationship with the child, such as godparents, neighbors, and teachers).

Finally, we propose a response option of a "pre-adoptive home." However, we propose to define a pre-adoptive home as one in which the family and agency have agreed on a plan to adopt the child. We believe this definition is more precise than the current definition of pre-adoptive home, which only indicates that the family "intends" to adopt the child. By changing the

definition to include agency participation, we wish to convey concrete circumstances where the agency and the foster family are working in concert to achieve permanency for the child through the foster family adopting the child.

Other living arrangement type. In paragraph (e)(4), we propose that the State identify whether a child is placed in one of eleven living arrangements for a child who is not placed in a foster family home. The proposed living arrangements are mutually exclusive and are as follows: Group home-family-operated, group home-staff-operated, group home-shelter care, residential treatment center, child care institution, child care institution-shelter care, supervised independent living, juvenile justice facility, medical or rehabilitative facility, psychiatric facility, and runaway. This is a new element although the current AFCARS placement setting options include most of these living arrangement types, or a variation thereof. We propose to modify and expand the existing AFCARS list, as we have found that the current AFCARS living arrangement options do not represent adequately the various types of living arrangements for a child in foster care. Further, we propose three of the new living arrangements (juvenile justice facility, medical or rehabilitative facility, and psychiatric facility) because we have expanded our reporting population to include children who are under the agency's placement and care responsibility who may be living in a facility outside the scope of foster care. Commenters also believed that the living arrangement response options should be more detailed and better defined.

We propose to continue to include group homes as a type of living arrangement; however, we propose to require that the State title IV-B/IV-E agency report whether the home is family operated or staff operated, or regardless of who operates it, a shelter care group home. We propose to define a family operated home as a group home setting that provides 24-hour care in a private family home in which the family members are the primary caregivers. A staff operated group home is characterized as one in which staff provides 24-hour care for children through shifts or rotating staff. A shelter care group home also provides 24-hour care but is designated by the State agency or the State agency's licensing entity as providing shelter care.

Determining whether a child has been placed into a family operated or a staff operated group home will provide us with further insight into the child's

living arrangement. Currently under AFCARS, we define group home as a small, licensed group setting that generally has from seven to twelve children. We have found that this definition was too limiting and did not reflect the actual living arrangements available to children in some States. Therefore, our new proposed definitions do not include a specific number of children who reside in the group setting. Further, as stated earlier, we are concerned about the placement stability of children that are placed in shelter care and want to be able to identify any trends in using shelter care. Our concern is compounded for young children who are placed in shelter care facilities that involve congregate (group) care, so we are adding this category as a separate response option. We do not believe it is necessary to determine whether shelter care group homes are operated by a staff or family, but welcome comments on this response option.

We propose to add residential treatment centers as a type of living arrangement and define them as facilities that are for the purpose of treating children with mental health or behavioral conditions. Currently, in AFCARS, we include "residential treatment facilities" in the definition of "institutions," rather than as a separate option. We propose to make this a separate and distinct option so that we may identify a child's living arrangement with more specificity and detail.

We propose to identify a child care institution as a new living arrangement type. We do not believe that the current AFCARS definition of an "institution" accurately reflects the type of living arrangements in which children reside because the definition does not provide enough specificity. We are defining a child care institution as a private facility, or public child care facility for no more than 25 children, which is licensed by the State or tribal licensing authority. This definition is a statutory definition for the title IV-E program which we believe is most suitable here as well. We exclude other institutions whose primary purpose is to secure children who have been determined to be delinquent from this definition of a child care institution. Furthermore, we are modifying the current definition of institutions to exclude residential treatment facilities, which we now include as a living arrangement for States to report separately.

We propose to identify a child care institution that is also designated as a shelter care facility. This is a new response option so that we can examine

the use of shelter care as discussed previously. We welcome comments on this response option.

We propose to maintain supervised independent living as a living arrangement and propose one change to the definition that currently appears in AFCARS for consistency with the reporting population definition. Currently, the definition of supervised independent living is an alternative transitional living arrangement where the child is under the supervision of the agency. We want to be clear that the State is only to report living arrangements where the child is under the placement and care of the State, not simply being supervised by the State.

We propose for the first time that the State indicate whether a child's living arrangement is a juvenile justice facility. We are defining a juvenile justice facility as a secure facility or institution in which alleged or adjudicated juvenile delinquents are housed while under the State agency's responsibility for placement and care. This definition is broad enough to include all manner of juvenile facilities, whether they are locked or employ some type of treatment component.

We are adding a medical or rehabilitative facility as a new living arrangement type. We define a medical or rehabilitative facility as one where a child receives medical or physical health care. This could include a hospital or facility where a child receives intensive physical therapy.

We also propose for the first time that the State report whether a child is in a psychiatric facility. We are defining a psychiatric facility as one in which a child receives emotional or psychological health care. This includes both psychiatric hospitals and residential treatment centers.

Finally, we have defined the response option of runaway as a child who has left without authorization any home or facility in which the child was placed. The current living arrangement definition of runaway refers to a child who has "run away from the foster care setting." We have broadened the definition so that it is clear that this runaway response option must be used any time a child has left a living arrangement without authorization.

We propose to remove trial home visits as a possible response option, because we do not view a trial home visit as a specific living arrangement as discussed above.

Private agency living arrangement. In paragraph (e)(5), we propose that the State title IV-B/IV-E agency collect and provide information about whether each of the child's living arrangements are

licensed, managed, or run by a private agency. This is a new element. The State is to indicate whether the living arrangement has private agency involvement. If the State has indicated in the previous element that the child has run away, the State is to so indicate here for consistency purposes.

As States increasingly use private agencies to perform a variety of child welfare services, there are important implications for the State's oversight of its responsibilities to children in foster care. We have learned from the CFSRs that States have had varied levels of success with contracting out child welfare services. We believe that by tracking the use of private agency involvement in living arrangements, we may be able to analyze its impact on child outcomes. We welcome comments on this proposal.

Location of living arrangement. In paragraph (e)(6), we propose that the State title IV-B/IV-E agency continue to report whether the child has been placed outside of the reporting State (see appendix A to part 1355, section II, V.B). If the child has run away, the State is to so indicate. As with the current AFCARS, only the State with placement and care responsibility of the child should include the child in the reporting population. With this information ACF and States may be able to explore the extent to which out-of-State placements occur, the reasons for those placements, and to what extent they affect timely permanency for children. Additionally, this information is required by statute at section 479(c)(3)(C)(iii) of the Act.

State or country where the child is living. In paragraph (e)(7), we propose that the State title IV-B/IV-E agency report the FIPS code of the State or country outside of the U.S. where the child is placed for each living arrangement that is outside of the reporting State. Some commenters requested that we propose an element in AFCARS that identifies where children in interstate placements are located.

Federal law is clear that delays in foster or adoptive interjurisdictional placements are not to be tolerated (section 471(a)(23) of the Act). Our analysis of existing data on out-of-State placements demonstrates that it takes much longer to achieve permanency for children who are placed out-of-State compared to children whose placements are intrastate. We hope that expanding on this information will support more sophisticated analyses of out-of-State placements. We believe that requiring States to identify the specific location of a child's out-of-State placement is consistent with the statutory

requirement that a State have a Statewide information system from which the State can readily identify the location of a child in foster care, or who has been in foster care in the preceding 12 months (section 422(b)(8)(A)(i) of the Act).

Number of siblings placed together. In paragraph (e)(8), we propose that the State title IV-B/IV-E agency report the number of the child's siblings who are placed together with the child who is the subject of the record, as of the last day of the child's stay in that living arrangement. In the case of an ongoing living arrangement at the end of a report period, the State is to report the number of siblings in the same living arrangement on the last day of the report period. States are not to include the child who is the subject of the record in the count of siblings placed together. For example, if the child is placed in a foster family home with the child's two sisters, the State would indicate "2" for this element because the total should not include the child who is the subject of the record.

This information, in conjunction with the family identification number and number of siblings with child at the time of removal, will increase our ability to identify sibling groups in out-of-home care. We are requesting this information because we are often asked by stakeholders whether sibling groups are being placed together in out-of-home care. This information will allow States and the Federal government to analyze how often siblings are placed in living arrangements together when placed out of their own homes. As noted earlier, this information also will be useful in the CFSR process as it will provide rich information about patterns of sibling placements in terms of the current status of the child and for sampling and data profile purposes as well.

Number of children living with the minor parent. In paragraph (e)(9) we propose the State report the number of children living with their minor parent in each living arrangement. If the child who is the subject of this record is not a minor parent, the State agency must leave this element blank. We propose that a State agency include in this count only those children for whom the minor parent is responsible *and* who are in the same living arrangement, not those children who are also in the out-of-home care reporting population on their own merit and who may or may not be placed with their minor parent.

For example, if a teenager is in a child care institution while the teenager's infant child is in out-of-home care in the foster family home of the teenager's aunt, the State would report "0" for this

element. Further, if a teenager's infant child has been removed from his or her care, the State agency has assumed placement and care responsibility and placed the child in the foster family home of the teenager's grandmother, the State would report "0" for this element even if the teenager is also placed in the foster family home of the grandmother.

We are requiring that States report this information because we want to know when a minor parent in out-of-home care is responsible for the care of his or her own child living with him or her. In general, children of youth in out-of-home care who are living with their minor parent(s) are not themselves considered to be in out-of-home care if they have not been removed from their parent(s) and placed under the State agency's placement and care responsibility. However, these young parent-child(ren) families require enhanced resources from the child welfare system. This is acknowledged in the title IV-E program in which a minor parent's foster care maintenance payment must include the costs for any child placed in the same living arrangement with him or her. In addition, the out-of-home care patterns of these young parent-children families may differ in a variety of ways from those exhibited by youth in care who are not parents. There could also be differences among those youth who are parents, relating to whether or not their children are living with them. For example, youth with children living with them in care may have different permanency plans, living arrangements, lengths of stay in foster care, exit destinations, and/or patterns of re-entry than other youth in care. Examination of trends in these patterns can inform State policy so that necessary resources can be made available to meet the needs of these families.

Foster parent's marital status. In paragraph (e)(10), we propose that the State title IV-B/IV-E agency continue to report information regarding the foster parent's marital status. This is basic demographic information about the child's provider that we must continue to collect in AFCARS because it is required by section 479(c)(3)(A) of the Act. However, we have modified the name of the element and added to the definition for clarity and accuracy. Currently in AFCARS, this element is called "Foster Family Structure" and the State must report whether the child's foster parent(s) are a married couple, unmarried couple, single male or single female (see appendix A to part 1355, section II, IX.A). We now propose to include these same four marital status options, as well as one other category of

marital status: separated. Additionally, we specify that the State agency should report this information for each foster family home in which the child is placed.

We propose that a "married couple" means that the foster parents are considered united in matrimony according to the laws of the State in which they live. This category would include common law marriage, where State law provides for such. The State agency should choose "unmarried couple" if the foster parents live together as a couple, but are not united in matrimony according to the laws of the State in which they live. "Separated" means that the foster parents legally are separated, or are living apart, but remain legally married. A single female/male is a foster parent who is not married, and is not living with another individual as part of a couple. If a State indicates that the foster parents are a married couple or an unmarried couple, then the State is also to provide information on all elements for a 'second' foster parent in the elements that follow. If the foster parent is a single person, or separated, then the State must provide information for the data elements regarding one foster parent only. There is not a separate category for a foster parent who is a widow/widower. Such individuals should be reported according to their current marital/living situation (e.g., single if the foster parent has not remarried or is living as part of an unmarried couple.)

Foster parent(s) relationship to the child. In paragraph (e)(11), we propose that the State title IV-B/IV-E agency identify the familial relationship, if any, of the foster parent(s) to the child for each foster family home in which the child is placed. This includes pre-adoptive homes in which the child is placed. We propose to include the following relationship options: siblings; maternal and paternal grandparents; or other maternal or paternal relatives. Relatives, by definition, are limited to persons related by a biological, legal or marital connection and do not include fictive kin. We propose that the State title IV-B/IV-E agency will report also if the child is not related to the foster parent(s). Currently in AFCARS, States report on whether a child is placed in a relative foster home, but we do not know the specific relative with whom the child is placed. We believe that it is essential to obtain this information, primarily so we can understand the trends surrounding relative, and particularly grandparent, care of children in the child welfare system. Further, several commenters suggested

that we collect more detailed information on the relationship between foster parents and their charges. The data we derive from this element also may provide insight into the extent to which States involve paternal relatives in caring for a child whose parents or legal guardians cannot care for him or her.

Year of birth for foster parent(s) elements. In paragraphs (e)(12) and (e)(16), we propose that the State title IV-B/IV-E agency collect and report the year of birth for the foster parent(s). States collect similar information in the existing AFCARS (see appendix A to part 1355, section II, IX.B). Currently in AFCARS, we instruct the State agency to estimate a year of birth if the foster parent(s) exact birth date is unknown. We propose to delete this instruction to estimate the foster parent(s) date of birth. We expect that the State will always have the date of birth for a foster family provider with whom a child under State responsibility is placed. We also propose that the State title IV-B/IV-E agency report the foster parent(s) year of birth for every foster family home in which the child has been placed. This is basic demographic information about the child's foster parent that we must collect in AFCARS, as it is statutorily required.

Race of foster parent(s). In paragraphs (e)(13)(i)-(vii) and (e)(17)(i)-(vii), we propose that the State title IV-B/IV-E agency collect and report the race of the foster parent(s). The proposed element is similar to that in the existing AFCARS requirements (see appendix A to part 1355, section II, IX.C). This is basic demographic information about the child's foster parent that is statutorily required.

Currently in AFCARS, we explain that an individual's race is determined by how they define themselves or by how others define them. We propose to modify this explanation. We now propose that race and ethnicity are characteristics that the individual determines and self-identifies, irrespective of how others define them. This is consistent with the Office of Management and Budget's standards regarding racial identification. We propose to include the following racial categories: American Indian or Alaska native; Asian; Black or African American; Native Hawaiian or other Pacific Islander; or White. The racial categories are consistent with the Office of Management and Budget's (OMB) standards for collecting information on race. Additionally, we include new categories for individuals who decline to identify their race or whose race is unknown.

Latino/Hispanic ethnicity of foster parent(s). In paragraphs (e)(14) and (e)(18), we propose that the State title IV-B/IV-E agency report the Latino/Hispanic ethnicity of the foster parent(s). The proposed element is similar to one in the existing AFCARS requirements (see appendix A to part 1355, section II, IX.C). Similar to the race element, we propose that the State title IV-B/IV-E agency report whether the foster parent(s) self-identify as being of Hispanic or Latino ethnicity. Foster parents may decline to identify whether they are of Hispanic or Latino ethnicity or indicate that they do not know their ethnicity. This is basic demographic information about the child's foster parent that is statutorily required.

Language of foster parent(s) elements. In paragraph (e)(15) and (e)(19), we propose new elements for the State to collect and report information on the foster parent(s) languages. We propose to collect this information because we believe knowing the foster parent's language will assist the worker in providing services to the child and family. The foster parent language elements in subparagraphs (i), language used and (ii), language preference, mirror the language elements for the child. We do not believe it is necessary to have an element for the State to indicate whether the foster parent is verbal because we expect that all foster parents will be verbal, which is inclusive of using sign language.

Sources of Federal assistance in living arrangement. In paragraph (e)(20), we propose that the State collect and report the Federal assistance that support room and board payments made on behalf of the child in each living arrangement. The State is to indicate all sources of Federal assistance that apply. This element is a significant change from the existing AFCARS element on financial assistance, as we want to capture the types of Federal funds that are supporting the child's maintenance (i.e., room and board) in out-of-home care and we propose that the State report this information for each of the child's living arrangements. State agencies may indicate that the child's room and board are supported with title IV-E foster care, title IV-E adoption subsidy, title IV-A TANF, title IV-B Child Welfare Services, title XX Social Services Block Grant, other Federal funds, or no Federal funds.

We have specified in the response options that States are to report a funding source of either title IV-E foster care or adoption subsidy when the child is *eligible* for such funds. Eligible means that the child has satisfied fully all of the criteria for the foster care

maintenance payments program in section 472 of the Act (including requirements for a placement in a licensed or approved foster family home or child care institution) or section 473 of the Act (including requirements for the child to be placed in a preadoptive home with an adoption assistance agreement signed by all parties in effect). We chose to specify that the child be eligible for such funds, rather than paid such funds because States are reimbursed by the Federal government for allowable title IV-E foster care maintenance payments and adoption subsidies. States therefore submit claims for their allowable costs after they have made payments on behalf of eligible children, sometimes months after the fact. The timing of States' reimbursement for title IV-E payments and submitting AFCARS reports may be such that a child may not have actually "received" a Federal payment at the time that we are requesting such information.

We have tied the reporting of this information to a particular day within each living arrangement. If the child has already left a living arrangement by the time the State reports the information, then the State is to report the Federal funds supporting the child's maintenance on the last day the child was in the living arrangement. If the child, however, is in a living arrangement on the last day of the report period, then the State is to report the Federal funding sources on the last day of the report period. We propose to focus on the Federal funds provided on a particular day within a living arrangement so that we can better analyze the sources of Federal funds supporting children's room and board in out-of-home care. Further, with the proposed new element amount of payment (see discussion below), we can estimate better the title IV-E foster care and adoption assistance payments made in each living arrangement.

Finally, although some commenters suggested that financial information was not necessary, we propose to collect this information because section 479(c)(3)(D) of the Act requires that we collect the nature of assistance provided by Federal, State, and local adoption and foster care programs.

Amount of payment. In paragraph (e)(21), we propose that the State report the per diem amount paid on behalf of a title IV-E eligible child for either the last day of the living arrangement, or the last day of the report period if the living arrangement is ongoing. The State is to report this information for every living arrangement in which title IV-E adoption assistance or title IV-E foster

care was a source in accordance with the element described in paragraph (e)(20). If no such payment has been made, the State title IV-B/IV-E agency should so indicate by reporting a zero payment.

Our proposal is distinct from the current AFCARS regulation (see appendix A to part 1355, section II, XII). Currently, States report the total amount of the monthly foster care payment, regardless of the source, i.e., whether it was Federal, State or another source of funds. States also report the total monthly amount of the adoption subsidy for the child and indicate whether the subsidy was paid under title IV-E. We are no longer asking for the State to report the monthly amount, but the daily amount, as we will calculate the monthly rate based on the per diem rate that the State reports to us. As we understand it, State information systems are designed such that the daily rate is readily available for reporting. Therefore, this aspect of the proposal should be less of a burden on States and in line with how their information systems are structured. We also are making a change in that we propose that States report the amount of the payment only when a title IV-E payment is made on behalf of a child. Currently, the State is to report the amount of the payment regardless of the source. This change is made as we primarily are interested in knowing about the amount of funds under the Federal foster care and adoption assistance programs, since these are the two largest programs for which we have fiscal oversight responsibility.

Section 1355.43(f) Permanency Plan Information and Ongoing Circumstances

In paragraph (f), we propose that the State title IV-B/IV-E agency provide information on each permanency plan for the child in every out-of-home care episode.

In general we are expanding our current AFCARS information by increasing the number of permanency plan options, requesting information on concurrent permanency plans, and the ongoing circumstances or issues children and families face while the child is in out-of-home care. We believe these changes will allow us to track better the actual plans that State agencies develop for children in their placement and care responsibility. Further, we believe that getting more comprehensive permanency plan information and a sense of the ongoing circumstances of families over the child's entire involvement with the child welfare system will aid our ability to analyze the data. In particular, this

information may inform both the Statewide assessment and onsite portions of the CFSRs. Further, more detailed permanency plan data will allow us to analyze how States are meeting the provisions of the Adoption and Safe Families Act (ASFA) for more timely permanency for children in foster care.

Although Federal regulations (45 CFR 1356.21(g)) require States to develop permanency plans for children in foster care consistent with the program definition, we understand that most States develop and update permanency plans for all children in their care and placement responsibility regardless of the child's living arrangement, consistent with good practice. We will not penalize States for indicating that a permanency plan has not yet been established for those children for whom a permanency plan is not required by Federal rules. Therefore, we propose that States report this information for all children in the out-of-home care reporting population if that information has been collected in accordance with best practices procedures.

Permanency plan. In paragraph (f)(1), we propose to require that States indicate the type of permanency plan established for the child. We propose to include additional permanency plan options and modify the current response options in AFCARS (see appendix A to part 1355, section II, VI) to better reflect our understanding of current State practice.

The State is to indicate that the permanency plan is to "reunify with parent(s) or legal guardian(s)" if the State is working with the child's family for a limited time to establish a stable family living environment. This is a modification from the current AFCARS instruction. Currently, States indicate whether a child is reunifying with a parent or principal caretaker from whom the child was removed. We have replaced the term "principal caretaker" with "legal guardian" because we believe the latter better reflects the persons with whom the State would be working toward reunification. Further, we are no longer limiting reunification to situations in which the plan for the child is to be reunited with the parent or legal guardian from whom the child was removed. Although we understand that States may be required by their own laws to make "reasonable efforts" to reunite a child with the person from whom removal occurred, we believe that reunification occurs when a child is reunited with a noncustodial parent, as well.

The State must indicate that the permanency plan is to "live with other

relatives" when the State is working towards the child living permanently with a relative, other than his or her parents or legal guardians. We are modifying this definition from the existing AFCARS definition to remove the instruction that such relatives are "other than the ones from whom the child was removed." This instruction is no longer necessary given the changes made to the reunification response option above. We modify also the existing AFCARS definition to remove the instruction that "this could include guardianships" since guardianships are most often a separate and distinct plan from living with relatives. We describe the guardianship plan options below.

We propose to retain the current plan definition of "adoption" which is to facilitate the child's adoption by relatives, foster parents, or other unrelated individuals.

We propose to include "independent living" as a permanency plan option, replacing the current AFCARS case plan goal entitled "emancipation" to reflect more accurately our intent. We have modified the existing AFCARS definition for "emancipation" so that States choose this option when the child either is eligible for, or already receiving independent living services. This is one of the distinguishing factors between the plan of "independent living" and of "planned permanent living arrangement."

We propose to include "planned permanent living arrangement" as a permanency plan option to replace the current AFCARS case plan goal of "long term foster care." This is primarily a name change only, as we have kept the definition similar to that of long term foster care for the planned permanent living arrangement option. The primary reason for this change is that the ASFA removed the plan "long term foster care" from the statute and replaced it with "planned permanent living arrangement" as a permanency plan. As indicated in comments to the **Federal Register** notice, many States have adopted ASFA's terminology and we wish to reflect that terminology and approach in AFCARS.

We propose to separate the current AFCARS case plan goal of guardianship into relative guardianship and non-relative guardianship as possible permanency plan options. Currently, in AFCARS, relative guardianships are included in the permanency plan option of "live with a relative," which does not allow us to distinguish relative guardianship plans from a plan for the child to live with a relative absent a guardianship arrangement. We are proposing a change to require States to

report when the plan is for the adult relative to become the child's legal guardian. This may not always be the intent with the "live with relative" permanency plan option. We also believe that this modification will help us understand the trends related to guardianships. Furthermore, distinguishing between relative and non-relative guardianship arrangements may shed light on how well the agency has preserved ties between the child and family members.

We propose that States indicate the response option of "non-relative guardianship" when the State agency intends to establish a legal guardianship with an unrelated individual. This is essentially the same as the current definition of guardianship in AFCARS. However, this definition no longer includes establishing a legal guardianship with an agency as an option. We believe that an agency guardianship is more reflective of a legal status in the process of arranging an adoption in some States or may be part of an agency's efforts in moving towards a planned permanent living arrangement. Therefore, we believe that this is no longer necessary.

Finally, we propose that the State title IV-B/IV-E agency continue to report when the child's permanency plan has not been established. This currently appears in the AFCARS regulation as "case plan goal not yet established." For the reasons described earlier, we believe permanency plan is a more appropriate and accurate term. From our analysis of the existing data we note that some States indicate that a plan has not been established several months into a child's stay in care. We are unclear whether this is an inaccurate reflection of State's permanency planning practices or States are indeed not establishing permanency plans consistent with Federal time frames. Nonetheless, for those children for whom a State has not established a plan, "permanency plan not established" must be indicated.

Date of permanency plan. In paragraph (f)(2), we propose that the State title IV-B/IV-E agency report the month, day and year that each permanency plan for the child was established. We propose to collect the dates of each permanency plan because over the course of a child's stay in out-of-home care States often change a child's permanency plan. Thus, we will be able to know all the permanency plans that have been established for the child, as proposed in the previous element, and when they were established.

Concurrent planning. In paragraph (f)(3), we propose that the State title IV-

B/IV-E agency indicate whether the State agency has or has not developed a concurrent permanency plan for the child. Only if the State or local agency does not engage in concurrent planning would it report that this element is not applicable for the child. This is a new proposed data element which was requested by some stakeholders. Since the passage of the Adoption and Safe Families Act of 1997, which permits and encourages the use of concurrent planning, we know that many States have moved toward identifying an alternate plan for a child. Usually, a State will identify an alternative plan that the State agency will work towards at the same time as reunification, so that permanency can still be achieved timely should efforts toward reunification with the parent or legal guardian not be successful. We believe that information on concurrent planning will demonstrate the extent to which States develop alternative permanency plans for a child and use creative thinking to maximize a child's permanency options. If the State title IV-B/IV-E agency has not established a concurrent plan, we instruct the State agency to leave blank the remaining elements on concurrent permanency plans.

Concurrent permanency plan. We propose in paragraph (f)(3)(i) that the State identify the concurrent plan for the child, as applicable. We propose that the concurrent plan options include: Live with relatives; adoption; independent living; planned permanent living arrangement; relative guardianship; and non-relative guardianship. A concurrent plan is usually associated with a reunification plan, so we have not included reunification in the response options. We considered excluding independent living and planned permanent living arrangement from the list of concurrent permanency plans because we do not believe that these are viable alternatives to reunification from a practice perspective. However, we believe that regardless of our concerns about State practice in this area, our responsibility here is to collect information on all possible alternatives that a State agency may choose for a child. This information would allow us to analyze the extent and efficacy of a State's use of concurrent planning.

Date of concurrent plan. In subparagraph (f)(3)(ii), we propose that the State title IV-B/IV-E agency report the month, day and year that each concurrent plan, if any, is established. This is a new proposed data element that will help us to determine how long and under what circumstances an agency may employ concurrent case

planning to achieve permanency for a child in its care. As with permanency plans, States are to provide this information for every concurrent plan established for the child.

Date of periodic review or permanency hearing. In paragraph (f)(4), we propose that the State title IV-B/IV-E agency report the date of each of the child's periodic reviews or permanency hearings required by section 475 of the Act. This element is different than the one in the current AFCARS requirements (see appendix A to part 1355, section II, I.E), in that we are now seeking this information on every review or hearing versus the most recent in the existing AFCARS. We believe that this information is important so that we can analyze the timeliness of the permanency decisions made for children in foster care.

Juvenile justice involvement. In paragraph (f)(5), we propose a new data element that requires a State to indicate whether a child has been involved in the juvenile justice system in the form of an alleged or adjudicated delinquency or status offense during each six-month report period. For children who remain in out-of-home care from one report period to the next, the State is to provide the entire history of whether the child was involved with the juvenile justice system. States are to report all that apply rather than a single category of juvenile justice involvement, as it is possible that a child could have been involved in both status and delinquent offenses. If the child has no alleged or adjudicated status offenses or delinquencies, then the State is to report that the child is not involved with the juvenile justice system.

We propose this new element because we believe, as do many stakeholders who provided comments and consultation to us, that it is important to understand more about young people in out-of-home care who are involved with the juvenile justice system. Currently, in AFCARS, we have no way of identifying young people who are involved with the juvenile justice system. We have heard through a variety of sources, including the CFSRs, that it is important to clarify the characteristics of the reporting population so that we can analyze potential differences in the experiences of children involved in the juvenile justice system versus those who are not.

Additionally, States indicate that they have experienced a marked increase in the number of juvenile justice-involved children in their child welfare systems. This new data element will allow us to establish those numbers and determine whether or not juvenile justice-involved

children have different experiences than other children in out-of-home care. Analyzing this data also may have implications for the manner in which States provide services to juvenile justice-involved children in out-of-home care, either individually or as a class. It similarly will assist States and the Federal government to understand the experiences of children who are dually involved in out-of-home care and juvenile justice, which in turn, will help States in their program improvement efforts to better serve such children.

We considered whether to require States to provide more detail about a child's juvenile justice involvement, such as whether the youth was on probation, through several new elements. However, we settled on this one data element which will tell us what we believe is the most critical concern, which is whether the youth who is in out-of-home care is involved with the juvenile justice system because he/she committed or is alleged to have committed a juvenile offense.

Circumstances at initial permanency plan. In paragraph (f)(6), we propose that States collect and report data for the first time about the circumstances surrounding the child and his/her family at the time of the development of the initial permanency plan, typically within 30 to 60 days of the child's placement in out-of-home care. States must indicate whether the circumstances are apparent, or if the family has been assessed to be in need of assistance with regard to the circumstances. This information will be collected in addition to the listed circumstances at the time of removal and at subsequent points discussed later in this proposed rule.

We propose that States report this information to us because we are interested in getting a sharper picture of the circumstances surrounding the child while in out-of-home care. Here we are interested in all circumstances that surround the child and family while the child is in out-of-home care and not just those events that may have precipitated the child's placement in out-of-home care. Currently, we are collecting this information only at removal, when the agency may know the least about the child and family. Knowing the total array of circumstances for the child and family at the time the State agency develops the initial permanency plan will provide a more complete picture of the challenges faced by the system and its clients. We propose that States collect and report this information at the time of the development of the permanency plan because we believe that is when many States have

completed a more thorough assessment of the child and family. This information will facilitate identification of more complex cases that require more resources from the less complex cases. It also will permit an assessment of "cumulative risk" for children that could be related to such phenomena as length of stay and reason for discharge.

Most of the response options for this element are the same as those for the element "child and family circumstances at removal" described in paragraph (d)(5). However, we have added the response option of "none of the above" for a family and child for whom all preexisting issues have been resolved and no new issues have arisen. We also have deleted the response options for status offenses, delinquency and runaway because they are reported in other elements on an ongoing basis. States report whether a child has run away continuously through the living arrangement elements described in paragraphs (e)(1) and (e)(4) and report whether a child is involved with the juvenile justice system each report period in the element described in paragraph (f)(5). We considered going further and eliminating certain response options based on what we believed were unlikely scenarios at the time of the development of the permanency plan, but decided against doing so. For example, we considered eliminating "abandoned" as a response option at the time of the development of the initial permanency plan based on our original thinking that abandonment is a condition that is associated with the time of removal only. However, we now believe that we should allow for the possibility that the State agency may not have had enough information to support a response of abandonment at the time of removal, but did at the later point of developing the permanency plan. We welcome comments on this proposal.

Annual circumstances. In paragraph (f)(7), we propose for the first time that the State collect and report information on the circumstances of the child and family that coincide with the child's permanency hearing, or no more frequently than annually. Like the preceding element, we propose this element in an effort to get a more comprehensive picture of the child and family. Again, we propose a similar set of response options as in the element "circumstances at the initial permanency plan." However, we would like to note that States must consider these definitions as they relate to children who have not been in their own homes for a year or more. For example, a year into a child's out-of-home care stay, the child may allege

that he or she was sexually abused while still residing at the parent's home. In this circumstance, the State agency would indicate in the annual circumstances element that sexual abuse is a circumstance at this annual marker only if it is still relevant to the permanency and/or planning for the child, such as when the agency has determined that there is an assessed risk of its reoccurrence or the child and parent are receiving counseling as a result of the previous sexual abuse. We welcome comments on this proposal.

Annual circumstances date. In paragraph (f)(8), we propose that the State indicate the date each year that the State provided the information for the preceding element "annual circumstances." This information is necessary so that we can ensure that this information is being reported in a timely manner.

Section 1355.43(g) General Exit Information

In paragraph (g), we propose that the State report information that describes when and why a child exits the out-of-home care reporting population, if applicable.

Date of exit. In paragraph (g)(1), we propose that the State title IV-B/IV-E agency collect and report the month, day and year that the child exited the out-of-home care reporting population, if applicable. We propose that the State report every exit date from the out-of-home care reporting population. An exit occurs when the agency's placement and care responsibility for the child has ended, the State agency has returned the child home, or the child reaches the age of majority and is not receiving title IV-E foster care maintenance payments (see 1355.41(a)(2)).

Currently, in AFCARS, we ask States to report the most recent "date of discharge" from foster care only (see appendix A to part 1355, section II, X.A). Therefore, our proposal is new in that we are requesting the date of every exit and clarifying that States must report an exit when a child is no longer under the agency's placement and care versus being "discharged." States will report a date of exit when a child is returned to live with his/her parents even if the State agency continues to hold placement and care responsibility of the child, as discussed earlier in the out-of-home care reporting population section. If the child exited through adoption, the State agency must enter the date that the court finalized the adoption as the exit date. If the child has not exited, the State agency should leave this data element blank.

Exit transaction date. In paragraph (g)(2), we propose that the State title IV-B/IV-E agency report the date that the State agency entered the child's exit date into the information system. This date must accompany every exit date for the child. As with the removal transaction date, this must be a computer generated, non-modifiable date and be entered within 15 days of the child's exit. Currently, in AFCARS, we require the State title IV-B/IV-E agency to enter transaction dates within 60 days of the event (see appendix A to part 1355, section II, X.A), but now propose to require the transaction date much earlier, primarily to ensure the quality of this data. The child's exit date is one of the most critical data elements in AFCARS, since it is the end point for several of the CFSR outcome measures. It is also critical because the exit date coupled with the removal date assists in defining the population of children in foster care in the nation and is absolutely critical in order to understand a State's child welfare system. Therefore, it is incumbent on the Department to ensure the number of children in foster care provided to the public and the Congress is accurate and verifiable.

As we noted in the preamble to the "removal transaction date" element, some commenters to the **Federal Register** notice suggested that entering the transaction date should be secondary to ensuring child safety. While we agree that child safety is paramount, we have found that States report more accurate, high quality data when the transaction date is entered proximate to the event that it describes. We understand the competing demands placed on State child welfare agencies. However, we have not changed our position that States must enter the child's exit date into the system timely, which we are proposing to be within 15 days rather than 60 days of the child's exit from out-of-home care. As we indicated earlier, information from our analysis of the data submitted from the FY 2003 and FY 2004 report periods indicates that two-thirds of the cases are entered within 15 days of the child's exit. Therefore, we do not believe that this proposed change will represent a significant departure from State practice in most instances.

Exit reason. In paragraph (g)(3), we propose that States collect and report information on the reason for a child's exit from the out-of-home care reporting population, if applicable, which we currently identify as "reason for discharge" in AFCARS (see appendix A to part 1355, section II, X). We are proposing that the exit reason be

provided for each of the child's exits from the out-of-home care reporting population.

We propose the following exit reasons, which are similar to the current response options in AFCARS: Reunify with parents/legal guardians; live with other relatives; adoption; emancipation; relative guardianship; non-relative guardianship; transfer to another agency; death of child; and runaway. Below we discuss each of our proposed exit reasons.

States are to indicate that the child has exited to "reunify with parents/legal guardians" when the child has returned to a parent or legal guardian. This differs from the current AFCARS response option which more broadly captures a child's return to the home of his or her primary or principal caretaker. We have made an effort throughout this proposed regulation to remove the term caretaker, as we believe it is too vague. Further, we specify that a State is to include in this exit reason a child who is returned home to live with a parent under the State agency's continued placement and care responsibility.

We propose to retain the response option of "live with other relatives;" however, we have modified the definition. Currently, AFCARS instructs States to select this response option when the child has exited to live with a relative other than the one from whose home he or she was removed. We propose to instruct States instead to select this option when the child exits to live with a relative who is not his or her parent or legal guardian. Relatives are limited, by definition, to persons related by a biological, legal or marital connection. Fictive kin are not relatives for AFCARS purposes.

We propose to modify the current response option of "guardianship" so that States can specifically indicate whether the child exited the reporting population to a relative or non-relative guardianship arrangement. We believe that this level of specificity will allow us to better analyze children's outcomes.

We propose to modify the exit reason of "transfer to another agency" to refer to situations in which the responsibility for the placement and care of the child was transferred to a different agency either within or outside of the State. This is a clarification in that we are using the term "placement and care" rather than simply "care" as is used currently in AFCARS. States are to report an exit when the actual "placement and care" for the child has changed. There may have been some confusion about when States are to

report a transfer, since States organize their child welfare agency structures differently. States are to report this exit reason when the State title IV-B/IV-E agency transfers its placement and care to an agency outside of the IV-B/IV-E agency. These transfers often are made to a juvenile justice or disability agency, if these agencies are external to the title IV-B/IV-E agency. However, if such agencies reside within a single title IV-B/IV-E agency, such internal transfers of responsibility should not be included in this response option.

We propose to modify the current AFCARS definition of the response option "runaway" to specify that the agency's placement and care responsibility ended as a result of the child's running away. We want to be sure that it is clear that an exit is reported only when the agency is no longer responsible for the child. If a child remains under the State agency's responsibility for placement and care but the child is on runaway status, the State is to continue to report the child to AFCARS with a living arrangement of "runaway."

We have included the existing response options of "exit to adoption," "emancipation," or "death of child" without change.

Death due to abuse/neglect in care. In paragraph (g)(4), we propose that when the State title IV-B/IV-E agency indicates an exit reason of "death of child" that the State also indicate whether the death occurred as a result of the provider's abuse or neglect of the child. We propose that the State indicate whether the State has concluded that the child's death is due to the provider's abuse or neglect of the child or that the cause of the child's death has not yet been determined if there is an ongoing investigation to determine the culpability of the provider in the child's death.

We propose this element to supplement information we collect in CAPTA about child fatalities and child maltreatment. We believe that the incidence of such deaths is minimal; children are more likely to die in out-of-home care as a result of natural causes or accidents. Irrespective of the cause, approximately 560 fatalities occurred in FY 2004 according to AFCARS data. However, we are interested in attempting to pinpoint the actual incidence of maltreatment related fatalities. In determining which response options to propose for this element, we struggled with striking a balance between getting timely data and data that is accurate and fair towards the provider. We acknowledge that many State agencies may not have completed

their investigations into the cause of a child's death where maltreatment by a provider is suspected by the end of a report period, so that the data we receive may underestimate the actual incidence of child fatalities due to a provider's abuse or neglect. We welcome comments on this proposal.

Transfer to another agency. In paragraph (g)(5), we propose that when the child's exit reason is "transfer to another agency," that the State title IV-B/IV-E agency collect and report, where applicable, the type of agency to which the child's placement and care was transferred. This is a new proposed data element. We propose to include as possible options: a tribe or tribal agency; a juvenile justice agency; a mental health agency; another State agency; or a private agency. We are requiring the State to report the type of agency to which a child is transferred because we agree with stakeholders that this will enhance our ability to know more about what happens to children who leave the child welfare system. Further, this information can be used to meet the requirements of CAPTA for annual State data on the number of children transferred from the child welfare system into the custody of the juvenile justice system (section 106(d)(14) of CAPTA).

Circumstances at exit from out-of-home care. In paragraph (g)(6), we propose for the first time that the State agency report the child and family circumstances that exist at the time of the child's exit from out-of-home care. We have carried over the same set of response options from the other child and family circumstance elements; however, we acknowledge here that these may apply to a child or family differently than they do at an earlier point in time. Therefore, we have instructed States to indicate that a particular circumstance exists if the State agency has put in place referrals for services or is providing monitoring or after care services with regard to that circumstance. We do not believe it is realistic to expect that States will have helped children and families to resolve all issues that surround a child's placement in out-of-home care, but rather hope that this element, in combination with the other circumstances elements, will provide us with a better picture of the challenges and needs of child welfare clients.

For example, at the time of removal, the State agency indicates that one of the child and family circumstances is the child's behavior problem. When the child exits out-of-home care to reunification with the family, the child may still have a behavior problem, but

throughout the child's stay in out-of-home care the State agency provided services to help the child and family manage these behaviors and the State agency also has arranged after care services to address any ongoing behavior problems. In such a situation, the State agency would indicate the child's behavior problem as a circumstance at exit. We welcome comments on this proposal.

Section 1355.43(h) Exit to Adoption Information

In paragraph (h), we propose that a State collect and report information on the circumstances of a child's exit from the AFCARS reporting population to a finalized adoption. This information should only be reported if the exit reason reported under paragraph (g)(3) is adoption. As indicated earlier, we require that States report much of this information in the existing AFCARS, but in a separate adoption file.

Adoptive parent(s) marital status. In paragraph (h)(1), we propose that the State provide information on the marital status of the adoptive parent(s). This is similar to an existing AFCARS element in the adoption file (see appendix B to part 1355, section II, VI.A). This information is being collected for the purpose of obtaining basic demographic information about the adoptive family consistent with the mandate at section 479(c)(3)(A) of the Act. In this element we clarify how States should categorize the adoptive parent(s) marital status appropriately. There is not a separate category for an adoptive parent who is a widow/widower. Such individuals should be reported according to their current marital/living situation.

Adoptive parent(s) relationship to the child. In paragraph (h)(2), we propose to expand the current requirement that the State provide information on the adoptive parent's relationship to the child (see appendix B to part 1355, section II, VI.D) to include more response options that describe kin relationships. The proposed element requires the State to indicate whether the relative relationship between the adoptive parent and child is that of a maternal or paternal grandparent, another maternal or paternal relative or a sibling. The relative response options are limited to persons related by a biological, legal or marital connection and do not include fictive kin. States also may select whether the child is unrelated to his or her adoptive parent or the adoptive parent was the child's foster parent. This element requires the State to select all applicable responses.

We believe that with the emphasis in ASFA on using relatives as a resource

for children, it is important to understand the trends surrounding relative adoptions. We also believe it is important to know the extent to which both maternal and paternal relatives are being utilized as adoptive resources.

Adoptive parents' date of birth elements. In paragraphs (h)(3) and (h)(6), we propose that a State report the adoptive parents' date of birth. This is similar to an existing data element where a State reports the adoptive parents' year of birth (see appendix B to part 1355, section II, VI.B). We believe that States already collect a full date of birth versus a year of birth, thus this change will not present an undue burden. This information is being collected for the purpose of obtaining basic demographic information about the adoptive family consistent with the mandate at section 479(c)(3)(A) of the Act.

Adoptive parents' race elements. In paragraphs (h)(4)(i)–(vii) and (h)(7)(i)–(vii), we propose to continue to collect information on the race of the adoptive parents. As discussed in the sections regarding the child and foster parent's race, the racial categories in paragraphs (h)(4)(i)–(v) and (h)(7)(i)–(v) are consistent with the OMB standards for collecting information on race. The State is to allow the adoptive parent(s) to determine his or her own race. If the adoptive parent's race is unknown, the State is to so indicate, as outlined in subparagraphs (h)(4)(vi) and (h)(7)(vi). It is acceptable for the adoptive parent to identify with more than one race, but not know one of those races. In such cases, the State must indicate the racial classifications that apply and also indicate that a race is unknown. We anticipate that States will be able to obtain information on the race of the adoptive parent(s) in most instances. This differs from an inability to provide information on the race of a biological parent who abandoned a child currently in out-of-home care. If, however, the adoptive parent declines to identify his or her race, the State must indicate that this information was declined, as outlined in subparagraphs (h)(4)(vii) and (h)(7)(vii).

Adoptive parents' ethnicity elements. In paragraphs (h)(5) and (h)(8), we propose that a State report the Hispanic or Latino ethnicity of the adoptive parent. Similar to race, these definitions are consistent with the OMB race and ethnicity standards. Also, the State may report whether the adoptive parent's ethnicity is unknown or whether the adoptive parent has declined to provide this information.

Interstate or intercountry adoption. In paragraph (h)(9), we propose that the

State identify whether the child has been placed for adoption outside of the State or country. This is a new element for the out-of-home care data file, although there is a similar element in the existing AFCARS adoption file and the proposed adoption assistance and guardianship subsidy file (1355.44(c)(7)). We believe that gathering information on the location of children in out-of-home care who are placed for adoption may allow us to identify trends and/or challenges in interjurisdictional adoptions that occur across State lines or in other countries.

Interjurisdictional adoption location. In paragraph (h)(10), we are requiring for the first time that the State identify the FIPS code of the specific State or country outside of the U.S. in which the child was placed for adoption or the State or country into which the child was placed. This element in combination with the previous element on intercountry and interstate adoption will provide information on the extent to which States are maximizing all potential adoptive resources for waiting children and will assist the Department in responding to questions and concerns regarding interjurisdictional placement issues.

Adoption placing agency or individual. In paragraph (h)(11), we propose that the State provide information on the entity or individuals that assist in placing a child for adoption. This data element is required in the existing AFCARS adoption file and is proposed for the adoption assistance and guardianship subsidy file in this NPRM; however, the response options are different in order to be relevant to the out-of-home care population. States here can indicate whether the placing agency was the State title IV-B/IV-E agency or a private agency or tribal agency under contract or agreement with the State.

1355.44 Adoption Assistance and Guardianship Subsidy Data File Elements

We propose to add a section 1355.44 which provides all elements for the adoption assistance and guardianship subsidy data file. Each element is described in detail, and the acceptable response options also are defined. (Attachment B contains a quick reference to all the adoption assistance and guardianship subsidy data file elements.) The State agency must collect and report the information as described in these elements for each child in the adoption assistance and guardianship subsidy reporting population.

Section 1355.44(a) General Information

In paragraph (a) we propose to collect general information that identifies the State submitting the adoption assistance and guardianship subsidy file and the child.

State. In paragraph (a)(1), we propose that the State responsible for reporting the child identify itself using the numeric Federal Information Processing Standards (FIPS) code. The definition of this element is the same as the one proposed in the out-of-home care data file. We need to have this information in the adoption assistance and guardianship subsidy data file as well as the out-of-home care data file because the State will submit the two files to us separately.

Report date. In paragraph (a)(2), we propose that a State continue to indicate the month and year of the report period. Again, this information is the same as the report date required for the out-of-home care data file.

Child record number. In paragraph (a)(3), we propose that the State report the child's record number, which is a unique person identification number, as an encrypted number. Similar to the instructions for the record number element in the out-of-home care file, the State must apply and retain the same encryption routine or method for the person identification number across all report periods. The State's encryption methodology must meet any ACF standards that we prescribe through technical bulletins or policy. This will allow the Department to track the amount of subsidy changes over time. In addition, this information will help predict future changes based upon the age distribution of the population and the age distribution of those entering each year.

Section 1355.44(b) Child demographics

In paragraph (b), we propose that States collect and report demographic information on the child, including the child's date of birth, race and ethnicity.

Date of birth. We propose in paragraph (b)(1), that the State report the child's date of birth. This is basic demographic information which is mandated by section 479(c)(3)(A) of the Act. In addition, this information is needed to determine at what age children are being adopted. Since most children continue to receive a title IV-E adoption subsidy until the age of 18, the information will assist States and the Federal government in conducting budget projections and program planning.

Race data elements. In paragraphs (b)(2)(i) through (b)(2)(viii), we propose that the State report information on the race of the child. As discussed in earlier elements related to race, the racial categories here are consistent with the OMB standards for collecting information on race. The State is to allow the parent(s) or the child, if appropriate, to determine the child's race.

If the child's race is unknown, the State is to so indicate, as outlined in subparagraph (b)(2)(vi). It is acceptable for the child to be identified with more than one race, but not know one of those races. In such cases, the State must indicate the racial classifications that apply and also indicate that a race is unknown. If the child has been abandoned the State is to indicate that the race cannot be determined in subparagraph (b)(2)(vii). Finally, if the parent(s) or the child, if appropriate, declines to identify the child's race, the State must indicate that this information was declined as outlined in paragraph (b)(2)(viii).

Hispanic or Latino ethnicity. We propose in paragraph (b)(3), that the State report the Hispanic or Latino ethnicity of the child. Similar to race, these definitions are consistent with the OMB race and ethnicity standards. Also, the State may report whether the child's ethnicity is unknown or whether the parent(s) or child, if appropriate, has declined to provide this information.

Section 1355.44(c) Adoption Agreement Information

In paragraph (c), we propose that the State collect and report information on the nature of adoption assistance agreements and additional information surrounding those adoption arrangements. We are seeking this information for all children who are the subject of an adoption assistance agreement, whether final or not and regardless of whether the agreement is for an ongoing subsidy, nonrecurring costs, services and/or health insurance or Medicaid. For children who are the subject of a guardianship agreement rather than an adoption assistance agreement, the State is to leave the elements described in this paragraph blank.

Adoption assistance agreement type. In paragraph (c)(1), we propose that the State indicate whether the child is in an adoptive placement or finalized adoption pursuant to either a title IV-E adoption assistance agreement (as set forth in section 473(a)(1)(A) of the Act and 45 CFR 1356.40(b)) or a State adoption assistance agreement during the current report period. Collecting this

point-in-time information will provide the Department with current information on this rapidly growing population of children. This will assist the Department in responding to questions raised by the Congress and States on these children. In addition, the information will assist the Federal government and States in planning and budgeting for the adoption assistance program under section 473 of the Act. Collecting data on children for whom there is either a Federal or State agreement for adoption assistance is consistent with the mandate in section 479(c)(3)(D) of the Act to gather information on the nature of adoption assistance.

We want to be clear that we propose States to report information on the child for whom the State agency has a signed adoption assistance agreement in effect with the adoptive or prospective parents. Also, as long as an adoption assistance agreement is in effect between the State and the adoptive or prospective parents at the end of subsequent report periods, the State is to continue to report information on the child. For example, State X has an adoption assistance agreement for a child who is residing with his adoptive parents in State X. Two years later the family moves to State Y and the adoption assistance agreement remains in effect. State X must continue to report information on the child. Another example is a child who is the subject of an adoption assistance agreement who is in out-of-home care temporarily. Regardless of the fact that the child is not currently at home with the adoptive parents, the State must continue reporting information on this child as long as the agreement remains in effect.

Adoption subsidy amount. In paragraph (c)(2), we propose that the State provide the per diem amount of an adoption subsidy payment, if any, made to the adoptive parents on behalf of the child during the last month of the report period. This is a revised element. Currently we require States to report the monthly subsidy amount at one time after the finalization of the adoption. We propose here that States report this information each report period beginning when the adoption assistance agreement becomes effective and continuing for the duration of the agreement. We believe that information will be useful for States and the Federal government for budgetary planning and projection purposes. Further, this information is consistent with section 479(c)(3)(D) of the Act, which requires us to collect information on the extent of assistance provided by Federal, State and local adoption programs.

We propose that a State report the total amount of the subsidy payment made to the adoptive parent(s), rather than the portion that the State may seek reimbursement for under title IV-E. Further, in any situation where the State has an adoption assistance agreement with adoptive parents but is not providing an actual payment in the last month of the report period, the State is to indicate that \$0 payment was made. Such a situation is likely to occur if the adoption assistance agreement is for a "deferred subsidy," which States may enter into with prospective parents of a child who may be at risk for developing a health condition (e.g., a child born to a substance-addicted mother) at a later point, but is not exhibiting current signs that warrant a financial payment in addition to the provision of Medicaid. By collecting information on those agreements where a payment is not made, we can determine the extent to which States are providing ancillary services to adopted children.

Nonrecurring adoption expenses elements. In paragraph (c)(3), we propose that States report whether the State paid nonrecurring adoption expenses to the adoptive parent(s) under the title IV-E program. Nonrecurring adoption expenses are reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs (section 473(a)(6) of the Act and 45 CFR 1356.41). States are to report if the State paid nonrecurring expenses during any point in the current report period.

In paragraph (c)(4), we propose that States report the amount of the nonrecurring costs paid to the adoptive parent. This includes payments the State agency makes directly to other service providers rather than to the adoptive parent. The State is to report an amount only if it responded that the adoptive parent received reimbursement for nonrecurring costs during the current report period in the previous element. If the State indicated that the adoptive parent did not receive any nonrecurring costs, then the State must leave this element blank.

We seek information on nonrecurring cost reimbursements consistent with the requirement in section 479(c)(3)(D) of the Act to collect information on the extent of adoption assistance. We have chosen to solicit information on the payment or reimbursement of nonrecurring adoption expenses under the Federal adoption assistance program only, as we are not aware of separate State-only funded programs which offer this benefit to adoptive families. We also ask that the State report the total

amount of the reimbursement during the report period. Unlike adoption subsidy payments which are ongoing and may fluctuate over time, reimbursements for nonrecurring costs are more likely to be made in a lump-sum or over a finite period of time. Thus, we need to gather the total cost of the reimbursements over an extended time rather than in a single month.

Adoption finalization data elements. In paragraph (c)(5), we propose that the State report whether the child who is the subject of an adoption assistance agreement has had his or her adoption finalized. In paragraph (c)(6), we request the date that the child's adoption was finalized, if applicable. We are requesting this information to track the number of children who are receiving adoption assistance and for whom adoption has been achieved. This information also will allow us to analyze the extent to which States are putting adoption supports in place prior to the child's finalized adoption.

Interstate and intercountry adoption. In paragraph (c)(7), we propose that the State identify whether the child has been placed out of State or within State, or was the subject of an incoming or outgoing intercountry adoption. Outgoing intercountry adoptions are those that involve a child who is immigrating to another country for the purposes of adoption.

This is an expansion of the existing AFCARS requirement for the State to indicate whether a child was placed across State lines or was the subject of an incoming intercountry adoption. We wanted to include State reporting of outgoing intercountry adoptions for the first time because we have learned that they do occur and are sometimes subsidized by the State agency. Further, we expect that more outgoing intercountry adoptions may occur after the Hague Convention protections are in full force and effect for children for whom an outgoing adoption may be in their best interests.

Interjurisdictional adoption location. In paragraph (c)(8), we require for the first time that the State identify the FIPS code of the State from which or into which the child was placed for adoption, or the country from which or into which the child was placed. This element in combination with the previous element on intercountry and interstate adoption will provide information on the extent to which States are maximizing all potential adoptive resources for waiting children and will assist the Department in responding to questions and concerns regarding interjurisdictional placement issues.

Adoption placing agency or individual. In paragraph (c)(9), we propose that the State provide information on the entity or individuals that placed the child for adoption. This data element is required in the existing AFCARS; however, we have expanded the response options to be more specific.

We have added a new response option of "State agency" which is the title IV-B/IV-E agency that has placement and care responsibility of the child in out-of-home care and is reporting the child to AFCARS. This response option is more specific than the existing option of "public agency," which could be any public agency in the State. It is important for us to be specific here primarily because of the Adoption Incentives Program. We must calculate whether States are eligible for financial incentives for completed adoptions based on whether the child was a foster care child and in the placement and care responsibility of the State agency. Similarly, we have added two response options of "private agency under a contract or agreement" and "Tribal agency with agreement" so that States can indicate when children are in foster care under the State title IV-B/IV-E agency's placement and care responsibility (or shared responsibility) and still receive credit for such a child's adoption for the Adoption Incentives Program. Under the existing AFCARS, States have been confused as to whether these adoptions should be reported as placed by the public agency or the private agency.

The categories "Tribal agency," "private agency," "birth parent" and "independent person" have been retained from the existing AFCARS with minor modifications to their definitions. The reporting of these adoptions is being retained because it will permit continuity and consistency of our estimates of the total number of adoptions.

One piece of information that we are no longer requiring States to report separately is the adopted child's special needs status. In the current AFCARS we require States to report whether a State has determined that the child has special needs, and the primary factor (the child's race, age, membership in a sibling group or medical condition or disability) in this determination. We have found that this information does not lend itself to meaningful analysis nor does it represent the Federal definition of special needs, which is comprised of three criteria only one of which relates to the child's condition which makes the child difficult to place. We believe that with the changes we

propose to strengthen collection of health conditions and identify sibling groups along with data on age and race, we will have sufficient information to analyze the characteristics of the children in the adoption assistance reporting population.

Agreement termination date. In paragraph (c)(10), we propose that States report the date that an adoption assistance agreement was terminated or expired during the report period. This information will allow us to calculate more accurately the extent of adoption assistance by allowing us to generate the total number of children served under subsidy agreements for the report period. Typically, Federal adoption assistance continues until the child is age 18, or age 21, if the State determines the child has a mental or physical disability that warrants the continuation of assistance. However, the State may terminate Federal adoption assistance under two additional circumstances: Where the adoptive parents are no longer legally responsible for the child, or are no longer providing any support to the child. Further, States may terminate State subsidies or assistance according to State law or policies. We are interested, therefore, in receiving data that will assist us in analyzing when agreements end.

Section 1355.44(d) Subsidized Guardianship Information

In paragraph (d), we propose that a State provide information on children who are the subject of a subsidized guardianship agreement with the State title IV-B/IV-E agency. Although we are not mandated to collect this information under section 479 of the Act, we are requiring information on this growing population of children to try and understand the number and types of children for whom subsidized guardianship is the permanent plan. Further, we believe that we have a general responsibility to ensure the well-being of children who are served by State child welfare systems and would be remiss if we did not collect basic information.

Subsidized guardianship agreement type. In paragraph (d)(1), we propose that the State identify whether the guardianship subsidy is being supported with any title IV-E funds, or if the State is using State-only funds for the subsidy payment. Only those States that have an approved demonstration waiver from ACF to operate a subsidized guardianship program may indicate that the guardianship subsidy includes title IV-E funds.

Subsidized guardianship-amount. In paragraph (d)(2), we propose that the

State indicate the per diem dollar amount of the guardianship subsidy as of the last month of the reporting period.

Agreement termination date. In paragraph (d)(3), we propose the State indicate the date that the guardianship subsidy agreement expired or was terminated. This information will allow us to generate the total number of children served under guardianship subsidy agreements for the report period.

1355.45 Compliance

In section 1355.45 we propose the types of assessments we will conduct to determine the accuracy of a State's data, the compliance standards, and the manner in which States initially determined to be out of compliance can correct their data. This section also specifies how we propose to implement the statutory mandates of Public Law 108-145.

Public Law 108-145 added section 474(f) to the Social Security Act, which requires that the Department withhold certain funds from a State that has "failed to submit to the Secretary data, as required by regulation, for the data collection system implemented under section 479." Although we recognize that the provisions related to AFCARS in section 479 were designed to bolster our authority to take financial penalties for noncompliance with AFCARS requirements, we did not believe that the statute on its face was clear enough to implement penalties immediately after its enactment. In ACYF-CB-IM-04-04, issued on February 17, 2004, we notified State agencies that we would not implement the penalty structure in the statute until we published final regulations. Further, because we were in the midst of developing these proposed rules that would change significantly the information that States submit to AFCARS, we did not believe it prudent to implement a new penalty structure for the existing requirements in regulation.

Section 1355.45(a) Files Subject to Compliance

In paragraph (a) we propose that ACF determine whether a State's out-of-home care data file is in compliance with certain file and data quality standards (described further below in paragraphs (c) and (d)). The law requires that we assure that the data submitted to us is reliable and consistent and authorizes us to utilize appropriate requirements and incentives to ensure that the system functions reliably (sections 479(c)(2) and (4) of the Act, respectively). We have chosen to fulfill these

requirements by establishing specific standards for compliance, consistent with our current requirements (see appendix E to part 1355). We do not believe there is a need to change this general approach.

We are not proposing to establish compliance standards for the adoption assistance and guardianship subsidy file. The primary reason is because we are not statutorily mandated to request information on guardianship agreements. As such, we will not apply a penalty here. We do have authority to seek information on governmental assistance for adoption, and our most pressing information needs can be met through the out-of-home care data file. Moreover, the statute outlines a very specific financial penalty for noncompliance with AFCARS regulations, such that the same financial penalty is mandated regardless of whether we define noncompliance as errors within both files or just one.

Although we have not proposed compliance standards and penalties for the adoption assistance and guardianship subsidy file, this information is still important to ACF and the States and we will take other steps to ensure that States submit quality data. In particular, we may target technical assistance efforts to this information and/or develop a data quality utility for the adoption assistance and guardianship subsidy file that will allow a State agency to evaluate the quality of that file before submitting it to ACF.

Section 1355.45(b) Errors

In paragraph (b) we have outlined the types of data errors and how we will assess a State's out-of-home care data file to identify those errors.

Missing data. In paragraph (b)(1), we define missing data as instances when the element is blank or missing when a response is required. The data element descriptions in 45 CFR 1355.43 list the circumstances in which a blank or missing response may be acceptable. For example, the elements regarding second foster parent information should be left blank if the State agency previously indicated that the first foster parent is single. In such cases, the blank response is not missing data.

We want to note that we propose a more specific definition of the term missing data than is used in the existing AFCARS. AFCARS currently uses the term "missing data" to refer to both blank responses and invalid responses (discussed below). We chose not to use a similar definition here to avoid the common confusion that only blank data is problematic.

Finally, we want to underscore that States are not permitted to mask the fact that they have not obtained information by mapping it to a valid, but untrue, response option. This practice is not permitted as specified in 45 CFR 1355.42(d), as it provides a misleading and inaccurate account of the characteristics and experiences of the reporting population.

Invalid data. In paragraph (b)(2), we define invalid data as any instance in which the response the State provides does not match one of the valid responses or exceeds the possible range of responses. These types of errors are not new. In the existing AFCARS, invalid data is known as "out-of-range" data. For example, if the response options for an element are "yes," "no" and "abandoned," a State's response of "unknown" is invalid data for that element. In our experience, invalid data errors are easily remedied by State agencies.

Internally inconsistent data. In paragraph (b)(3), we define internally inconsistent data as those elements that fail an internal consistency check that is designed to validate the logical relationships between two or more elements within a record. For example, a response of "permanency plan not established" for the element "permanency plan" described in 45 CFR 1355.43(f)(1) and a date provided for the element "date of permanency plan" described in 45 CFR 1355.43(f)(2) are internally inconsistent data. We will not attempt to determine which of the elements is/are "likely" to be at fault, but will identify all elements assessed by the specified internal consistency in error.

These types of errors are not new and there are internal consistency validations in the existing AFCARS. However, we have found that the existing internal consistency checks, while providing an important first step to quality data, were not extensive enough. Unfortunately, there were a number of occasions where a State's data passed all the existing internal consistency checks, but ACF and the State discovered that the data provided an inaccurate and unreliable picture of children in out-of-home care in the State's placement and care responsibility upon further analysis. Based on our experience in reviews and technical assistance, we believe that more internal consistency checks, along with other assessments that will uncover errors, will provide us with more reliable and consistent data that we can publicize and use for our program activities with a higher degree of confidence. We have chosen not to

promulgate the internal consistency checks through notice and comment rulemaking so as to provide maximum flexibility to change them as needed. We will, however, notify States officially of the internal consistency checks.

Cross-file error. In paragraph (b)(4), we propose a new type of data error known as cross-file errors. To determine whether cross-file errors occur we propose to conduct a check to evaluate the data file for illogical and/or improbable patterns of recurrent response options across all records, or applicable records. For example, if all children have the same date of birth in the out-of-home care file, this is clearly an error.

Cross-file checks are not a part of the existing AFCARS compliance assessments, but are a part of the Data Quality Utility. We propose to evaluate a State's data file for these types of errors to address some common problems identified in AFCARS assessment reviews. Often these problems are a result of underlying issues in the programming of the State's information system as opposed to data entry errors. We believe that adding cross-file checks will assist States and ACF in improving the quality of AFCARS data. As with the internal consistency checks, we will share with States the specific cross-file checks.

Tardy transactions. In paragraph (b)(5), we define tardy transactions as a State agency's failure to record removal and exit dates within 15 days of those events occurring. Assessing a State's data file for tardy transactions is consistent with the existing AFCARS requirements. We continue to believe that ensuring a State's timely entry of removal and exit dates is a critical element of quality data. There is, perhaps, nothing more basic than knowing which children are in out-of-home care at a given moment.

Section 1355.45(c) File Standards

In paragraph (c), we propose a set of file submission standards for ACF to determine that a State's AFCARS is in compliance. These are minimal standards for timeliness, formatting and quality information that the State must achieve in order for us to process the State's data appropriately.

Timely submission. In paragraph (c)(1), we propose that the State agency submit an out-of-home care data file according to the reporting periods and timeline (*i.e.*, within 15 days of the end of each six-month reporting period) as described in 45 CFR 1355.42(a). This proposal is consistent with the existing AFCARS requirements.

Proper format. In paragraph (c)(2), we propose that a State send us its data file in a format that meets our specifications. At this time we cannot outline the exact transmission method and/or formatting requirements for AFCARS data as explained in the discussion on 45 CFR 1355.42(e). However, in our experience, improperly formatted files have contributed to inefficiencies in our ability to process States' data.

In addition, we propose that the State submit 100 percent error-free data for the basic demographic elements described in 45 CFR 1355.43(a)(1) through (a)(5), 1355.43(b)(1) and (b)(2) for every child in the reporting population. These elements describe the State, Report date, Local agency, Child record number, Family record number, Child's date of birth and Child's gender. The errors that may be applicable to these elements are missing data, invalid data and internally inconsistent data.

We are requiring that States have no errors at all for these seven elements because they contain information that is readily available to the State and is essential to our ability to analyze the data and determine whether the State is in compliance with the remaining data standards. For example, the child's date of birth is information that all States collect on children in out-of-home care and would typically have in their information system. Without the child's date of birth we cannot run some other internal consistency or cross-file checks. Moreover, we cannot, for example, look at the age stratification of children in out-of-home care or determine the mean age of children adopted from out-of-home care. Based on our experience with the existing AFCARS, we have found that problems in these elements are often the result of minor errors that can be rectified easily. We therefore believe that a 100 percent compliance standard for these basic and critical elements is appropriate.

Acceptable cross-file. In paragraph (c)(3), we propose that a State's data file must be free of any cross-file errors to be in compliance with the AFCARS requirements. As stated earlier, we believe that cross-file errors indicate a systemic problem with the State agency's reported data. Thus we cannot be confident that the information is reflective of the State's out-of-home care population. Therefore, we believe it appropriate not to tolerate such errors in the State's out-of-home care data file.

Section 1355.45(d) Data Quality Standards

In paragraph (d), we propose a set of data quality standards for the State to be

in compliance with AFCARS requirements. These standards focus on the quality of the data that a State provides to us. The data quality standards relate to missing data, invalid data, internally inconsistent data and tardy transactions. No more than 10 percent of data in a State's out-of-home care data file may have each of these data errors to remain in compliance with the AFCARS. The numerical standard of 10 percent is consistent with the existing AFCARS standards.

We considered decreasing the 'acceptable' amount of errors permitted in the AFCARS data file, for example, to no more than five percent of each data error in order to ensure that we receive better quality data. As noted earlier, a number of public reports and stakeholders have criticized the quality of AFCARS data. Although States and ACF have made great strides in improving the quality of the data over the past few years, we believe there is room for significantly more progress. Decreasing the acceptable threshold for compliance would be one avenue to compel State agencies to continue to work on their data. On the other hand, by increasing the number and breadth of the internal consistency checks and adding cross-file checks to the range of assessments that we perform on State's data, we already are setting a higher bar for compliance. Further, we acknowledge that by adding elements and requiring that the State agency report historical information for certain elements, we are asking States to report more information that will be subject to the compliance assessments, thereby increasing the likelihood of errors. We believe, therefore, that the most appropriate balance is to leave the numeric standard at 10 percent.

Section 1355.45(e) Compliance Determination and Corrected Data

In paragraph (e), we propose our methodology for determining compliance and a State's opportunity to submit corrected data where ACF has initially determined that the State's original submission does not meet the AFCARS standards.

In paragraph (e)(1), we propose that we first determine whether the State agency's out-of-home care data file meets the file standards (*i.e.*, timely submission, proper format, and acceptable cross-file). If the State agency's data file does not meet all the file standards, ACF will so notify the State. As stated earlier in the description of the errors, we believe that if a State's data file cannot meet the file standards the information contained therein is dubious. In particular, if the

State does not meet the proper format standard we cannot process the State's data file and determine if the file meets the other standards.

In paragraph (e)(2), we propose to determine whether the State's out-of-home care data file meets the data quality standards, if the file standards already have been satisfied. We will calculate the error rates for each error type (*i.e.*, missing data, invalid data, inconsistent data and tardy transactions) to determine if any one of them exceeds 10 percent. If an error rate exceeds 10 percent ACF will so notify the State.

In paragraph (e)(3), we propose to notify a State that does not meet either the file or data quality standards within 30 days of the report deadline (*i.e.*, by May 15 and November 14). We are required to notify States within this timeframe in accordance with section 474(f)(1) of the Act. We have not, however, regulated the format of this notification, as we would like to explore the possibility of notifying a State automatically upon receipt (or non-receipt) of a State's data file. We anticipate detailing the data quality errors in the notification to aid the State in correcting its data file.

In paragraph (e)(4), we propose procedures for a State agency to submit a corrected data file to ACF if the State's data file initially does not meet the file and data quality standards. If the State agency does not meet the file standards or the data quality standards (with the exception of the standard for tardy transactions, which is discussed below) a State agency will have until the deadline for submitting data for the subsequent report period to make changes to the data and submit the corrected data file to ACF. This timeframe for the State to submit corrected data is mandated by section 474(f)(1) of the Act. However, if a State does not meet the data quality standard related to tardy transactions, the State may not 'correct' these dates. This is because according to the removal transaction date and exit transaction date elements, these dates must be computer-generated to reflect the data entry date and cannot be modified. Because the State is not permitted to change an entered transaction date, but the law requires that a State have another opportunity to submit data that meets the standards, ACF will look towards the State's next regularly submitted out-of-home care data file to determine whether the State has achieved compliance.

For example, a State agency submits an out-of-home care data file for the report period ending March 31 on April 17 (due on April 15). ACF assesses the

file and notifies the State agency that the out-of-home care data has not met the timely submission standard or the data quality standards for missing data and tardy transactions. The State agency must correct the data in this file so that missing data comprises no more than 10 percent of the applicable records and submit this corrected data file on time—by October 15. In addition, the State agency's out-of-home care data file for the report period ending September 30, also submitted on October 15, must have met the data quality standard related to tardy transactions. If all of these conditions are met, and the corrected data file contains no new errors in excess of the standards, ACF can then determine the State's corrected data in compliance with the AFCARS standards.

The State agency need not develop an actual corrective action plan that outlines how the State plans to comply with the data standards, as is required in other program improvement efforts in child welfare (i.e., Child and Family Service Reviews and Title IV–E Eligibility Reviews). We believe that an actual plan is not necessary in this case, as we anticipate that the Federal system will identify the errors that caused the State's data to be in noncompliance. Furthermore, because the period in which a State may submit data is relatively short, we believe that engaging in a process to develop an action plan and seek ACF approval will only reduce the amount of time the State has to make actual improvements that may bring the State into compliance with the standards.

Section 1355.45(f) Noncompliance

In paragraph (f), we propose to determine that a State has not complied with the AFCARS requirements if the State either does not submit an out-of-home care data file or does not submit corrected data that meets the file and data quality standards. This final determination of noncompliance means that ACF will withhold financial penalties as outlined in 45 CFR 1355.46.

Finally, we would like to emphasize that a determination of compliance with AFCARS standards in this NPRM is separate and apart from the CFSRs as implemented in 45 CFR 1355.31 through 1355.37. This is consistent with the law at section 474(f)(2) of the Act. This means that a State's substantial compliance with titles IV–B and IV–E as determined by a CFSR, including the State's rating on the systemic factor related to statewide information systems, has no bearing on whether ACF determines the State in compliance with the AFCARS standards, and vice versa.

Further, a State agency that enters into a program improvement plan consistent with the requirements of 45 CFR 1355.35 to make improvements to a State's data and/or reporting of such data to AFCARS does not factor into ACF's determination of compliance with the AFCARS standards.

Section 1355.45(g) Other Assessments

In paragraph (g), we propose that ACF may use other monitoring tools that are not explicitly mentioned in regulation to determine whether the State meets all AFCARS requirements. For example, we may wish to continue to conduct onsite reviews in some format to ensure proper data mapping or provide other technical assistance to ensure valid and quality data. We currently use this approach in AFCARS by conducting onsite assessment reviews of a State's process to submit AFCARS data, including validating that the information in case files is accurately portrayed in the AFCARS submission. Through these assessment reviews we have found that States may be in compliance with the AFCARS data standards, but not in compliance with all the AFCARS requirements. For example, through the aforementioned error checks, which we expect to be conducted automatically upon receipt of the data, we cannot determine whether the State is submitting the entire or the correct reporting population. But through the assessment reviews, we have been able to provide States with technical assistance on how to meet all aspects of the AFCARS requirements. We have often heard from States that the onsite activities are beneficial and provide the State with valuable technical assistance. Therefore, we want to reserve our ability to develop and conduct these and other monitoring activities for AFCARS.

1355.46 Penalties

In section 1355.46 we propose how ACF will assess and take penalties for a State's noncompliance with the AFCARS requirements. The penalty structure we propose is consistent with section 474(f) of the Act. Some commenters to the **Federal Register** notice suggested that we use incentives in lieu of penalties to encourage data quality improvement. Subsequent to the closing of the **Federal Register** comment period, the President signed into law the Adoption Promotion Act of 2003, which requires that the Department take specific fiscal penalties for a State agency's lack of compliance with AFCARS standards. There is no provision in this law for incentives.

Section 1355.46(a) Federal Funds Subject to a Penalty

In paragraph (a), we propose that the pool of funds that are subject to a penalty for noncompliance are the State agency's claims for title IV–E foster care administrative costs for the quarter in which the original out-of-home care data file is due (as opposed to the corrected data file). Such administrative costs are inclusive of claims for training and SACWIS. We believe that this provision is consistent with the statutory language in section 474(f)(2) of the Act. The law requires that the pool of funds subject to the penalty is “the amount expended by the State for administration of foster care activities under the State plan approved under this part,” meaning all title IV–E foster care administrative costs. Further, the law specifies that the pool be comprised of a State's claims in the quarter that coincides with the report period deadline (i.e., the first or third quarter of a fiscal year).

Section 1355.46(b) Penalty Amounts

In paragraph (b), we propose specific penalty amounts for noncompliance.

In paragraph (b)(1), we propose to assess a penalty in the amount of a sixth of a percent of the pool of Federal funds subject to a penalty once ACF determines the State agency out of compliance with the AFCARS requirements according to 45 CFR 1355.45(f). Using fiscal year 2004 claims data, we estimate that penalties will range from \$601 to \$349,020 for a State's noncompliance with the standards in a single report period. In paragraph (b)(2), we propose to assess a penalty in the amount of a fourth of a percent of the pool of funds subject to a penalty, should the State's noncompliance continue in subsequent six-month periods. Using FY 2004 data, we estimate that the penalty for subsequent noncompliance will range from \$902 to \$523,530 per report period.

These provisions are consistent with section 474(f)(2)(A) and (B) of the Act. The law specifies the amount of each penalty for noncompliance and requires that penalties continue until the State agency is able to meet the standards. Although the calculated penalty amounts are smaller than those in the existing regulation, a penalty that continues until a State's data file complies with the AFCARS standards provides an incentive for State agencies to correct their data in a timely manner. For example, a State that does not comply with the AFCARS requirement after the first period of corrective action may receive a penalty of \$30,205. If the

State is still unable to meet the data standards in the next six month period the State will be penalized \$45,308 and will continue to receive that penalty amount for each six-month period the State remains out of compliance.

Section 1355.46(c) Penalty Reduction From Grant

In paragraph (c), we propose to take an assessed penalty by reducing the State's title IV–E foster care grant following ACF's determination of noncompliance.

Section 1355.46(d) Interest

In paragraph (d), we propose that a State be liable for applicable interest on the amount of funds we penalize, in accordance with the regulations at 45 CFR 30.13. This proposal to collect interest is consistent with Department-wide regulations and policy on collecting debts owed to the Federal government.

Section 1355.46(e) Appeals

In paragraph (e), we propose to provide the State with an opportunity to appeal a final determination that the State is out of compliance inclusive of accompanying financial penalties to the DHHS Departmental Appeals Board (DAB). Since the law does not require any unique appeal rights or time frames regarding AFCARS requirements, all appeals must follow the DAB regulations in 45 CFR Part 16.

Appendices

We propose to remove all of the appendices because they contain provisions and charts that are being substantively altered or made obsolete by the provisions of this NPRM. Appendix A contains the data element definitions and instructions for the existing foster care file. We propose instead the foster care file at proposed section 1355.43. Appendix B contains the adoption data element definitions and instructions for the existing adoption file. We propose instead that

the adoption data element file be deleted and information pertaining to adoption be incorporated into the foster care file. The adoption assistance and guardianship subsidy file is proposed at section 1355.44. Appendix C contains existing technical file submission details. We explained in the discussion of section 1355.42(e) that we propose not to regulate file submission provisions. Appendix D contains the existing foster care and adoption file layout and summary file details. We explained in the discussion on section 1355.42(a) that we are eliminating the summary files and explained in section 1355.42(e) that we are not regulating file layout. Appendix E contains the existing data standards. We propose instead data standards in section 1355.45. Finally, appendix F contains a chart of allotments upon which the existing penalties are based. We propose instead the penalty calculations consistent with section 474(f) of the Act at section 1355.46.

ATTACHMENT A.—PROPOSED OUT-OF-HOME CARE ELEMENTS

Category	Element	Response options	Section citation
General information	State	FIPS Code	1355.43(a)(1).
	Report date	Date	1355.43(a)(2).
	Local agency	FIPS code	1355.43(a)(3).
	Child record number	Number	1355.43(a)(4).
	Family record number	Number	1355.43(a)(5).
Child information	Child's date of birth	Date	1355.43(b)(1).
	Child's gender	Male	1355.43(b)(2).
		Female.	
	Race—American Indian or Alaska Native.	Yes	1355.43(b)(3)(i) ¹ .
		No.	
	Race—Asian	Yes	1355.43(b)(3)(ii).
		No.	
	Race—Black or African American	Yes	1355.43(b)(3)(iii).
		No.	
	Race—Native Hawaiian or other Pacific Islander.	Yes	1355.43(b)(3)(iv).
		No.	
	Race—White	Yes	1355.43(b)(3)(v).
		No.	
	Race—Unknown	Yes	1355.43(b)(3)(vi).
		No.	
	Race—Abandoned	Yes	1355.43(b)(3)(vii).
		No.	
	Race—Declined	Yes	1355.43(b)(3)(viii).
		No.	
	Child's Hispanic or Latino ethnicity	Yes	1355.43(b)(4).
		No.	
		Unknown.	
		Abandoned.	
		Declined.	
	Child's language	Verbal	1355.43(b)(5).
		Pre-verbal.	
		Non-verbal.	
	Language used	[select all that apply]	1355.43(b)(5)(i).
		English.	
		Spanish.	
		Chinese.	
		French.	
		German.	
		Tagalog.	
		Sign Language.	
		____ (specific other language).	

ATTACHMENT A.—PROPOSED OUT-OF-HOME CARE ELEMENTS—Continued

Category	Element	Response options	Section citation
	Language preference	English Spanish. Chinese. French. German. Tagalog. Sign Language. ____ (specific other language).	1355.43(b)(5)(ii).
	Health, behavioral or mental health conditions.	Child has a diagnosed condition No exam or assessment conducted. Exam or assessment conducted and indicate no condition. Exam or assessment conducted but results not received.	1355.43(b)(6).
	Mental retardation	Applies Does not apply.	1355.43(b)(6)(i).
	Visually impaired	Applies Does not apply.	1355.43(b)(6)(ii).
	Hearing impaired	Applies Does not apply.	1355.43(b)(6)(iii).
	Physically disabled	Applies Does not apply.	1355.43(b)(6)(iv).
	Anxiety disorder	Applies Does not apply.	1355.43(b)(6)(v).
	Childhood disorders	Applies Does not apply.	1355.43(b)(6)(vi).
	Learning disability	Applies Does not apply.	1355.43(b)(6)(vii).
	Substance use related disorder	Applies Does not apply.	1355.43(b)(6)(viii).
	Developmental disability	Applies Does not apply.	1355.43(b)(6)(ix).
	Other mental/emotional disorder	Applies Does not apply.	1355.43(b)(6)(x).
	Other diagnosed condition	Applies Does not apply.	1355.43(b)(6)(xi).
	Current immunizations	Current Not current. Not yet determined.	1355.43(b)(7).
	Educational performance—Repeated grades.	Repeated grade No repeated grades. Not school age.	1355.43(b)(8)(i).
	Educational performance—Number of repeated grades.	Number	1355.43(b)(8)(ii).
	Special education	Special education No special education. Not yet determined.	1355.43(b)(9).
	Prior adoption	Prior adoption No prior adoption abandoned.	1355.43(b)(10).
	Prior adoption date	Date	1355.43(b)(10)(i).
	Prior adoption type	Foster care adoption within State Foster care adoption in another State. Intercountry adoption. Other private or independent adoption.	1355.43(b)(10)(ii).
	Prior adoption location	FIPS code	1355.43(b)(10)(iii).
	Number of siblings living with the child at removal.	Number	1355.43(b)(11).
	Minor parent	Number	1355.43(b)(12).
	Child financial and medical assistance	[select all that apply] SSI or other Social Security Act benefits. Title XIX Medicaid. Title XXI SCHIP. State adoption assistance. State foster care payment. Child support. Other source of financial support. No support/assistance received.	1355.43(b)(13).
	Title IV–E foster care during report period.	Yes No	1355.43(b)(14).

ATTACHMENT A.—PROPOSED OUT-OF-HOME CARE ELEMENTS—Continued

Category	Element	Response options	Section citation
Parent or legal guardian information ...	Year of birth of first parent or legal guardian.	Year Abandoned.	1355.43(c)(1).
	Year of birth of second parent or legal guardian.	Year Abandoned.	1355.43(c)(2).
	Mother married at time of the child's birth.	Married Unmarried. Abandoned. Unknown.	1355.43(c)(3).
	Termination of parental rights petition—first parent.	Date	1355.43(c)(4).
	Termination of parental rights—second parent.	Date	1355.43(c)(5).
	Termination of parental rights petition—second parent.	Date	1355.43(c)(6).
	Termination of parental rights—second parent.	Date	1355.43(c)(7).
Removal information	Date of child's removal	Date(s)	1355.43(d)(1).
	Removal transaction date	Date(s)	1355.43(d)(2).
	Environment at removal	Household Other environment or facility. Abandoned.	1355.43(d)(3).
	Household composition at removal—Biological parent.	Number	1355.43(d)(4)(i).
	Household composition at removal—Adoptive parent.	Number	1355.43(d)(4)(ii).
	Household composition at removal—Stepparent.	Number	1355.43(d)(4)(iii).
	Household composition at removal—Legal guardian.	Number	1355.43(d)(4)(iv).
	Household composition at removal—Maternal grandparent.	Number	1355.43(d)(4)(v).
	Household composition at removal—Paternal grandparent.	Number	1355.43(d)(4)(vi).
	Household composition at removal—Other maternal relative.	Number	1355.43(d)(4)(vii).
	Household composition at removal—Other paternal relative.	Number	1355.43(d)(4)(viii).
	Household composition at removal—Adult sibling.	Number	1355.43(d)(4)(ix).
	Household composition at removal—Parent's or caretaker's paramour.	Number	1355.43(d)(4)(x).
	Household composition at removal—Other non-relative caretaker.	Number	1355.43(d)(4)(xi).
	Biological parents' marital status	Married and living together Married and living separately. Unmarried and living together. Unmarried and living separately.	1355.43(d)(5).
	Manner of removal	Court ordered removal Voluntary placement agreement. Not yet determined. [select all that apply].	1355.43(d)(6).
	Child and family circumstances at removal.	Child status offender.	
		Child delinquency.	
		Runaway.	
		Physical abuse.	
		Sexual abuse.	
		Psychological or emotional abuse.	
		Neglect.	
		Medical neglect.	
		Domestic violence.	
		Abandonment.	
		Failure to provide supervision.	
		Failure to return.	
		Caretaker's alcohol abuse.	
		Caretaker's drug abuse.	
		Child alcohol use.	
		Child drug use.	
		Prenatal alcohol exposure.	
		Prenatal drug exposure.	
		Diagnosed condition.	
		Inadequate access to mental health services.	

ATTACHMENT A.—PROPOSED OUT-OF-HOME CARE ELEMENTS—Continued

Category	Element	Response options	Section citation
Living arrangement and provider information.		Inadequate access to medical services. Child behavior problem. Death of caretaker. Incarceration of caretaker. Caretaker's inability to cope. Caretaker's limited mental capacity. Inadequate housing. Disrupted intercountry adoption. Voluntary relinquishment	1355.43(d)(7). 1355.43(e)(1).
	Date of living arrangement	Date	
	Foster family home	Yes	1355.43(e)(2).
		No.	
	Foster family home type	Licensed home	1355.43(e)(3).
		Therapeutic foster family home. Shelter care foster family home. Relative foster family home. Pre-adoptive home.	
	Other living arrangement type	Group home-family operated	1355.43(e)(4).
		Group home-staff operated. Group home-shelter care. Residential treatment center. Child care institution. Child care institution—shelter care. Supervised independent living. Juvenile justice facility. Medical or rehabilitative facility. Psychiatric facility. Runaway.	
	Private agency living arrangement	Private agency involvement	1355.43(e)(5).
		No private agency involvement. Runaway.	
	Location of living arrangement	Out-of-State	1355.43(e)(6).
		In-state. Out-of-country. Runaway.	
	State or country where child is living ..	FIPS code	1355.43(e)(7).
	Number of siblings placed together	Number	1355.43(e)(8).
	Number of children living with the minor parent.	Number	1355.43(e)(9).
	Foster parent's marital status	Married couple	1355.43(e)(10).
		Unmarried couple. Separated. Single female. Single male.	
	Foster parent(s) relationship to the child.	Paternal grandparent(s). Maternal grandparent(s). Other paternal relative(s). Other maternal relative(s). Sibling(s). Non-relative(s)	1355.43(e)(11).
	Year of birth for first foster parent	Year	1355.43(e)(12).
	Race of first foster parent—American Indian or Alaska Native.	Yes	1355.43(e)(13)(i).
		No.	
	Race of first foster parent—Asian	Yes	1355.43(e)(13)(ii).
		No.	
	Race of first foster parent—Black or African American.	Yes	1355.43(e)(13)(iii).
		No.	
	Race of first foster parent—Native Hawaiian or other Pacific Islander.	Yes	1355.43(e)(13)(iv).
		No.	
	Race of first foster parent—White	Yes	1355.43(e)(13)(v).
		No.	
	Race of first foster parent—Unknown	Yes	1355.43(e)(13)(vi).
		No.	
	Race of first foster parent—Declined ..	Yes	1355.43(e)(13)(vii).
		No.	
	Hispanic or Latino ethnicity of first foster parent.	Yes	1355.43(e)(14).
		No. Unknown. Declined.	
	Languages used by first foster parent	[select all that apply].	

ATTACHMENT A.—PROPOSED OUT-OF-HOME CARE ELEMENTS—Continued

Category	Element	Response options	Section citation
Permanency plan information and ongoing circumstances.	Language preference for first foster parent.	English. Spanish. Chinese. French. German. Tagalog. Sign Language. ____ (specific other language) English.	1355.43(e)(15)(i).
	Year of birth for second foster parent	Spanish. Chinese. French. German. Tagalog. Sign Language. ____ (specific other language)	1355.43(e)(15)(ii).
	Race of second foster parent—American Indian or Alaska Native.	Year Applies Does not apply.	1355.43(e)(16). 1355.43(e)(17)(i).
	Race of second foster parent—Asian	Yes No.	1355.43(e)(17)(ii).
	Race of second foster parent—Black or African American.	Yes No.	1355.43(e)(17)(iii).
	Race of second foster parent—Native Hawaiian or other Pacific Islander.	Yes No.	1355.43(e)(17)(iv).
	Race of second foster parent—White	Yes No.	1355.43(e)(17)(v).
	Race of second foster parent—Unknown.	Yes No.	1355.43(e)(17)(vi).
	Race of second foster parent—Declined.	Yes No.	1355.43(e)(17)(vii).
	Hispanic or Latino ethnicity of second foster parent.	Yes No.	1355.43(e)(18).
	Languages used by second foster parent.	Unknown. Declined. [select all that apply] English. Spanish. Chinese. French. German. Tagalog. Sign Language. ____ (specific other language).	1355.43(e)(19)(i).
	Language preference for second foster parent.	English. Spanish. Chinese. French. German. Tagalog. Sign Language. ____ (specific other language)	1355.43(e)(19)(ii).
	Sources of Federal assistance in living arrangement.	[select all that apply]. Title IV—E foster care. Title IV—E adoption subsidy. Title IV—A TANF. Title IV—B. Title XX SSBG Other federal source. No federal source.	1355.43(e)(20).
	Amount of payment	Dollar amount	1355.43(e)(21).
	Permanency plan	Reunify with parents or legal guardians. Live with other relatives. Adoption. Planned permanent living arrangement. Independent living. Relative guardianship. Non-relative guardianship. Permanency plan not established.	1355.43(f)(1).

ATTACHMENT A.—PROPOSED OUT-OF-HOME CARE ELEMENTS—Continued

Category	Element	Response options	Section citation
	Date of permanency plan	Date	1355.43(f)(2).
	Concurrent planning	Concurrent plan	1355.43(f)(3).
		No concurrent plan.	
		Not applicable.	
	Concurrent permanency plan	Live with other relatives	1355.43(f)(3)(i).
		Adoption.	
		Planned permanent living arrangement.	
		Independent living.	
		Relative guardianship.	
		Non-relative guardianship.	
	Date of concurrent plan	Date	1355.43(f)(3)(ii).
	Date of periodic review or permanency hearing.	Date	1355.43(f)(4).
	Juvenile justice involvement	Not involved	1355.43(f)(5).
		Alleged status offender.	
		Status offender.	
		Alleged juvenile delinquent.	
		Adjudicated delinquent.	
		[select all that apply].	
		Physical abuse.	
		Sexual abuse.	
		Psychological or emotional abuse.	
		Neglect.	
		Medical neglect.	
		Domestic violence.	
		Abandonment.	
		Failure to provide supervision.	
		Failure to return.	
		Caretaker's alcohol abuse.	
		Caretaker's drug abuse.	
		Child alcohol use.	
		Child drug use.	
		Prenatal alcohol exposure.	
		Prenatal drug exposure.	
		Diagnosed condition.	
		Inadequate access to mental health services.	
		Inadequate access to medical services.	
		Child behavior problem.	
		Death of caretaker.	
		Incarceration of caretaker.	
		Caretaker's inability to cope.	
		Caretaker's limited mental capacity.	
		Inadequate housing.	
		Disrupted intercountry adoption.	
		Voluntary relinquishment.	
		None of the above	1355.43(f)(6).
	Annual circumstances	[select all that apply].	
		Physical abuse.	
		Sexual abuse.	
		Psychological or emotional abuse.	
		Neglect.	
		Medical neglect.	
		Domestic violence.	
		Abandonment.	
		Failure to provide supervision.	
		Failure to return.	
		Caretaker's alcohol abuse.	
		Caretaker's drug abuse.	
		Child alcohol use.	
		Child drug use.	
		Prenatal alcohol exposure.	
		Prenatal drug exposure.	
		Diagnosed condition.	
		Inadequate access to mental health services.	
		Inadequate access to medical services.	
		Child behavior problem.	
		Death of caretaker.	

ATTACHMENT A.—PROPOSED OUT-OF-HOME CARE ELEMENTS—Continued

Category	Element	Response options	Section citation
General exit information		Incarceration of caretaker. Caretaker's inability to cope. Caretaker's limited mental capacity. Inadequate housing. Disrupted intercountry adoption. Voluntary relinquishment.	
	Annual circumstances date	None of the above	1355.43(f)(7).
	Date of exit	Date	1355.43(f)(8).
	Exit transaction date	Date	1355.43(g)(1).
	Exit reason	Date	1355.43(g)(2).
		Reunify with parents/legal guardian. Live with other relatives. Adoption. Emancipation. Relative guardianship. Non-relative guardianship. Transfer to another agency. Runaway.	
	Death due to abuse/neglect in care	Death of child	1355.43(g)(3).
		Provider responsible	1355.43(g)(4).
		Provider not responsible. Not yet determined.	
	Transfer to another agency	Transfer to another agency. Tribe or tribal agency. Juvenile justice agency. Mental health agency. Other State agency.	
		Private agency	1355.43(g)(5).
	Circumstances at exit from foster care	[select all that apply]. Physical abuse. Sexual abuse. Psychological or emotional abuse. Neglect. Medical neglect. Domestic violence. Abandonment. Failure to provide supervision. Failure to return. Caretaker's alcohol abuse. Caretaker's drug abuse. Child alcohol use. Child drug use. Prenatal alcohol exposure. Prenatal drug exposure. Diagnosed condition. Inadequate access to mental health services. Inadequate access to medical services. Child behavior problem.	
		Death of caretaker. Incarceration of caretaker. Caretaker's inability to cope. Caretaker's limited mental capacity. Inadequate housing. Disrupted intercountry adoption. Voluntary relinquishment.	
	Adoptive parent(s) marital status	None of the above	1355.43(g)(6).
		Married couple	1355.43(h)(1).
		Unmarried couple. Single female. Single male.	
	Adoptive parent(s) relationship to the child.	Paternal grandparent(s)	1355.43(h)(2).
		Maternal grandparent(s). Other paternal relative(s). Other maternal relative(s). Sibling(s). Non-relative(s). Foster parent(s).	
	Date of birth of first adoptive parent ...	Date	1355.43(h)(3).
	Race of first adoptive parent—American Indian or Alaska Native.	Yes	1355.43(h)(4)(i).
		No.	

ATTACHMENT A.—PROPOSED OUT-OF-HOME CARE ELEMENTS—Continued

Category	Element	Response options	Section citation
	Race of first adoptive parent—Asian ..	Yes No.	1355.43(h)(4)(ii).
	Race of first adoptive parent—Black or African American.	Yes No.	1355.43(h)(4)(iii).
	Race of first adoptive parent—Native Hawaiian or other Pacific Islander.	Yes No.	1355.43(h)(4)(iv).
	Race of first adoptive parent—White ..	Yes No.	1355.43(h)(4)(v).
	Race of first adoptive parent—Unknown.	Yes No.	1355.43(h)(4)(vi).
	Race of first adoptive parent—Declined.	Yes No.	1355.43(h)(4)(vii).
	First adoptive parent's Hispanic or Latino ethnicity.	Yes No. Unknown. Declined.	1355.43(h)(5).
	Date of birth of second adoptive parent.	Date	1355.43(h)(6).
	Race of second adoptive parent—American Indian or Alaska Native.	Yes No.	1355.43(h)(7)(i).
	Race of second adoptive parent—Asian.	Yes No.	1355.43(h)(7)(ii).
	Race of second adoptive parent—Black or African American.	Yes No.	1355.43(h)(7)(iii).
	Race of second adoptive parent—Native Hawaiian or other Pacific Islander.	Yes No.	1355.43(h)(7)(iv).
	Race of second adoptive parent—White.	Yes No.	1355.43(h)(7)(v).
	Race of second adoptive parent—Unknown.	Yes No.	1355.43(h)(7)(vi).
	Race of second adoptive parent—Declined.	Yes No.	1355.43(h)(7)(vii).
	Second Adoptive parent's Hispanic or Latino ethnicity.	Yes No. Unknown. Declined.	1355.43(h)(8).
	Interstate or intercountry adoption	Interstate adoption Intercountry adoption. Intrastate adoption.	1355.43(h)(9).
	Interjurisdictional adoption location	FIPS code	1355.43(h)(10).
	Adoption placing agency or individual	State agency Private agency under a contract/ agreement. Tribal agency with agreement.	1355.43(h)(11).

¹ Some citations are not sequential in this table because the table does not include paragraphs which contain instructions rather than data element definitions. For example section 1355.43(b) contains instructions on the data elements related to a child's race in section 1355.43(b)(i) through (b)(viii).

ATTACHMENT B.—PROPOSED ADOPTION ASSISTANCE AND GUARDIANSHIP SUBSIDY DATA FILE ELEMENTS

Category	Element	Response options	Section citation
General Information	State	FIPS Code	1355.44(a)(1).
	Report date	Date	1355.44(a)(2).
	Child record number	Number	1355.44(a)(3).
Child Demographics	Date of birth	Date	1355.44(b)(1).
	Race—American Indian or Alaska Native.	Yes No.	1355.44(b)(2)(i).
	Race—Asian	Yes No.	1355.44(b)(2)(ii).
	Race—Black or African American	Yes No.	1355.44(b)(2)(iii).
	Race—Native Hawaiian or other Pacific Islander.	Yes No.	1355.44(b)(2)(iv).
	Race—White	Yes No.	1355.44(b)(2)(v).
	Race—Unknown	Yes No.	1355.44(b)(2)(vi).
	Race—Abandoned	Yes No.	1355.44(b)(2)(vii).

ATTACHMENT B.—PROPOSED ADOPTION ASSISTANCE AND GUARDIANSHIP SUBSIDY DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation
Adoption assistance agreement information.	Race—Declined	Yes	1355.44(b)(2)(viii).
	Hispanic or Latino ethnicity	No.	1355.44(b)(3).
		Yes	
		No.	1355.44(c)(1).
		Unknown.	
		Abandoned.	
		Declined.	
	Adoption assistance agreement type ..	Title IV–E agreement	1355.44(c)(2).
		State agreement.	
	Adoption subsidy amount	Dollar amount	1355.44(c)(3).
	Nonrecurring adoption expenses	Expenses paid	
		No expenses paid.	1355.44(c)(4).
	Nonrecurring adoption expenses amount.	Dollar amount	
Subsidized guardianship information ...	Final adoption	Adoption final	1355.44(c)(5).
		Adoption not final.	
	Adoption finalization date	Date	1355.44(c)(6).
	Interstate and intercountry adoption ...	Interstate adoption	
		Intrastate adoption.	1355.44(c)(8).
		Intercountry adoption—incoming.	
		Intercountry adoption—outgoing.	
	Interjurisdictional adoption location	FIPS code	
	Adoption placing agency or individual	State agency	1355.44(c)(9).
		Private agency under a contract/ agreement.	
		Tribal agency with agreement.	
		Tribal agency.	
		Private agency.	
		Birth parent.	
		Independent person.	
	Agreement termination date	Date	1355.44(c)(10).
	Subsidized guardianship agreement type.	Title IV–E guardianship	1355.44(d)(1).
		State guardianship.	
	Subsidized guardianship amount	Dollar amount	1355.44(d)(2).
	Agreement termination date	Date	1355.44(d)(3).

V. Impact Analysis*Executive Order 12866*

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. In particular, we have determined that a regulation is the best and most cost-effective way to implement the statutory mandate for a data collection system regarding children in foster care and those that are adopted and support other statutory obligations to provide oversight of State-operated child welfare programs. Moreover, we have consulted with the Office of Management and Budget (OMB) and determined that these rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review.

We have determined that the costs to the States as a result of this rule will not be significant. At least half of the costs that States incur as a result of the revisions to AFCARS will be eligible for Federal financial participation.

Depending on the cost category and each State's approved plans for title IV–E and cost allocation, States may claim allowable costs as Statewide Automated Child Welfare Information System costs at the 50% rate, administrative costs for the proper and efficient administration of the State plan at the 50% rate, or training of State-agency staff at the 75% rate. We estimate that States costs will be approximately \$36 million annually for AFCARS for the first five years of implementation, half of which (\$18 million) we estimate will be reimbursed by the Federal government as allowable costs under title IV–E. Additional costs to the Federal government to design a system to collect the new AFCARS data are expected to be minimal.

Alternatives Considered

We considered whether alternative approaches could meet ACF and State needs but determined that they could not. First, we considered whether other existing data sets could yield similar information. We determined that AFCARS is the only comprehensive case-level data set on the incidence and experiences of children who are in foster care and/or achieve adoption with

the involvement of the State child welfare agency. Further, we are required by section 479 of the Act to establish and maintain such a data system, so other data sources could not meet our statutory mandate. We also considered whether we should permit States to sample and report information on a representative population of children. We determined that there are several significant problems with using a sampling approach for collecting data on foster care and adoption. First, sampling would severely limit the use of AFCARS data. For example, ACF would be unable to collect reliable sample data for the title IV–E foster care eligibility reviews and the Child and Family Services Reviews or respond to other initiatives such as the Annual Outcomes Report to Congress and Adoption Incentives using sampling data. Second, when using a sample, small population subgroups (e.g. children who spend very long periods in foster care or children who get adopted or run away) would occur so rarely in the data such that analysis on these subgroups would not be meaningful.

Regulatory Flexibility Analysis

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this rule will not result in a significant impact on a substantial number of small entities. This proposed rule does not affect small entities because it is applicable only to State agencies that administer title IV-B and IV-E of the Act.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (Pub. L. 104-4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation). This proposed rule does not impose any mandates on State, local or tribal governments, or the private sector that will result in an annual expenditure of \$100,000,000 or more.

Paperwork Reduction Act

Under the Paperwork Reduction Act (Pub. L. 104-13), all Departments are required to submit to OMB for review and approval any reporting or record-keeping requirements inherent in a proposed or final rule. This NPRM contains information collection

requirements in sections 1355.43, the foster care data file and 1355.44, the adoption assistance and guardianship subsidy data file, that the Department has submitted to OMB for its review. In addition, the NPRM proposes to validate whether the State complies with the AFCARS out-of-home care standards established in section 1355.45 by checking for errors in logic that mean that the data could not be accurate. However, these error checks are not information collection requirements themselves as they do not require the State to produce, maintain or submit information to ACF, and so are not a part of the burden calculations. Rather, the error checks will be performed by ACF on each State's out-of-home care data file to validate that the State is providing the data as specified in the data file requirements in section 1355.43. The error checks are not appended to this regulation as they are rather technical aspects of data reporting that cannot be completed until ACF issues a final rule that contains the required data elements.

Collection of information for AFCARS is currently authorized under OMB number 0980-0267. However, this NPRM significantly changes the collection requirements. We estimate that burden hours will increase to 673,234 as a result of the provisions in this NPRM. The respondents to the

information collection in this proposed rule are State agencies.

The Department requires this collection of information to address the data collection requirements of section 479 of the Act. Specifically, the law requires the Department to develop a data collection system that can provide comprehensive national information on the demographic characteristics of adopted and foster children and their parents; the status of the foster care population; the number and characteristics of children placed in or removed from foster care; children adopted or with respect to whom adoptions have been terminated, and children placed in foster care outside the State which has placement and care responsibility; and the extent and nature of assistance provided by government adoption and foster care programs and the characteristics of the children to whom such assistance is provided.

Further, this information is critical to our efforts to: assess a State's compliance with titles IV-B and IV-E of the Act and the CFRs (45 CFR 1355.31 through 1355.37), conduct title IV-E eligibility reviews (45 CFR 1356.71), implement the Adoption Incentive Payments program at section 473A of the Act and for other program purposes previously outlined.

The following are estimates:

Collection	Number of respondents	Number of responses per respondent	Average burden per response	Total burden hours
1355.43 Foster care data file	52	2	5556	577,776
1355.44 Adoption assistance and guardianship subsidy data file ..	52	2	918	95,458
Total				673,234

* Average burden hours per respondent are rounded.

We arrive at these estimates after taking into consideration the existing foster care, adoption assistance and guardianship subsidy populations; factoring in the increase of burden in accordance with this proposed rule and efficiencies in reporting; and the amount of caseworker and information system staff time to collect and report the information. PRA rules require that we estimate the total burden created by this NPRM regardless of what information is already available to States. Thus, these burden hours are substantially higher than currently authorized by OMB, and may be an overestimate since we are unable to account for information that States currently collect for their own purposes, but we propose to collect for the first time under this NPRM. Below we

describe in detail how we arrived at the estimated burden.

Foster Care Data File Burden

1. Our first step was to estimate the foster care reporting population at the approximate time of implementation. We used information from FY 2003 AFCARS data and applied the following assumptions:

- We assume that the proportion of children in SACWIS States versus non-SACWIS States will remain constant.
- Children newly entering foster care annually. We assume that the national number of children who enter foster care each year will rise by five percent due to our new reporting population (e.g., inclusive of some children in the State's placement and care responsibility who are in living

arrangements outside of the scope of our program rules for foster care). Although we do not know exactly how many children will be a part of the new reporting population who are not currently reported as in foster care under the existing AFCARS, we believe this new reporting population will account for a minor increase in the number of children in foster care.

- Children served annually. We assume that the number of children served annually in foster care will rise by five percent due to our new reporting population.
- Children exiting foster care. We assume that the number of children who exit foster care annually will remain about the same as it is currently, in part because we have made a change in the way States report exits from foster care

(i.e., by no longer requiring the State to report certain children who are returned home without a court discharge of the State agency's placement and care responsibility as still in foster care), and we believe that any increase in foster care exits that may have occurred due to the change in the foster care reporting population will be offset by the changes to how States report exits.

As a result we estimate 503,848 children served in SACWIS States and 75,288 in non-SACWIS States; 264,971 children with new entries into foster care in SACWIS States, and 46,760 in non-SACWIS States; and 278,068 children who exit foster care, approximately 49,000 of whom would exit to adoption.

2. Our second step was to estimate the number of recordkeeping hours that State workers will spend on meeting AFCARS requirements. We used information from our existing AFCARS collection approved by OMB as a foundation and applied the following assumptions:

- Recordkeeping will require more time in a non-SACWIS State than it does for a SACWIS State.
- Entering information into an information system for a child newly entering foster care will take approximately an hour for SACWIS States and 1.5 hours for non-SACWIS States.
- Updating the foster care record on average will take 20 minutes for SACWIS States and 30 minutes for non-SACWIS States.

- Workers will take approximately .1 hour to enter exit data for non-adoption cases and an additional 30 minutes for adoption cases.

We multiplied the time spent on the various recordkeeping activities as outlined in this step by the foster care caseload numbers described above in step 1, and arrived at a total of 576,216 recordkeeping hours for all children in the foster care population annually.

3. Our third step was to estimate the time spent on actually reporting the information (e.g., submitting the foster care file). We used the following assumptions to develop the reporting hours estimate:

- We anticipate that States will be using a new technology such as XML to transmit the data and States will need time to become familiar with and efficient in reporting their data in the first years of implementing the new procedures. This will increase the amount of time spent reporting.
- The proposed foster care data file is comprised of many elements of the existing foster care and adoption files. Therefore, our estimate should be higher

than the sum of the existing reporting burden hours of eight hours for the foster care file and four hours for the adoption file.

We estimate that the proposed foster care file will increase the reporting burden by approximately 25 percent or by 3 hours, for a total of 15 hours. We then multiplied 52 State agencies and two report periods with the 15 reporting burden hours, which results in an annual reporting burden of 1,560 hours.

4. Finally, we calculated the total burden hours for the foster care file as 577,776 hours by combining the recordkeeping (576,216) and reporting burden (1,560). Dividing this national and annual figure by the 52 State agencies and two semi-annual report periods, we arrive at approximately 5,556 burden hours per respondent each report period.

Adoption Assistance and Guardianship Subsidy File

1. We first estimated the annual burden associated with the adoption assistance elements.

- In the Department's FY 2006 budget, we estimated that an average monthly total of 369,000 children will be served in that year by the title IV-E adoption assistance program. Approximately 80% of all children receiving adoption assistance are served by the title IV-E program, so we estimate that in FY 2006 approximately 461,250 children will be the subject of an adoption assistance agreement.

- We expect adoption workers to spend .2 hours annually recording data in accordance with this NPRM on each child under an adoption assistance agreement. Most information in the adoption file is demographic and static and does not need to be updated. Further, most agreements are updated or changed on an annual or biennial basis, unless the family circumstances change, requiring small amounts of record-keeping.

- We calculate recordkeeping for adoption assistance information to take approximately 92,250 hours (.2 hours x 461,250 children).

2. We then estimated the annual burden associated with the guardianship subsidy elements.

- We estimate that the guardianship reporting population is comprised of approximately 30,000 children based on information obtained from a number of sources describing States subsidized guardianship programs.

- Like the adoption data, this information is static and will change infrequently, so we estimate worker time of approximately .1 hours annually on record keeping.

- We calculate recordkeeping for the guardianship subsidy information to take approximately 3,000 burden hours (.1 hours x 30,000 children).

3. In addition, we estimate that burden associated with actually reporting the adoption assistance and guardianship subsidy file to ACF will take each State 2 hours each report period. We then multiplied 52 State agencies and two report periods with the 2 reporting burden hours, which results in an annual reporting burden of 208 hours.

4. Finally, we calculated the total burden hours for the adoption assistance and guardianship subsidy file as 95,458 hours by combining the recordkeeping (92,250 + 3,000) and reporting burden (208). Dividing this national total by the 52 State agencies and two report periods we arrive at approximately 918 burden hours per respondent per report period.

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

1. Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;

2. Evaluating the accuracy of ACF's estimate of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhancing the quality, usefulness, and clarity of the information to be collected; and

4. Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations 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. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, either by fax to 202-395-6974 or by e-mail to OIRA_submission@omb.eop.gov. Please mark faxes and e-mails to the attention of the desk officer for ACF.

Congressional Review

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

Assessment of Federal Regulations on Policies and Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. These proposed regulations will have an impact on family well-being as defined in the legislation by collecting information on children who are in foster care, are subject to an adoption assistance agreement or are the beneficiaries of guardianship subsidies. We expect that States will be able to use this data to analyze factors that may affect the safety of children, permanency for children, and children's well-being. This information could lead to improvements in practice and policy to better serve children who are in foster care.

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, we specifically solicit comment from State and local government officials on this proposed rule.

List of Subjects in 45 CFR Part 1355

Adoption and foster care, Child welfare, Grant programs—social programs.

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

Dated: June 1, 2007.

Daniel C. Schneider,

Acting Assistant Secretary for Children and Families.

Approved: September 13, 2007.

Michael O. Leavitt,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register on December 18, 2007.

For the reasons set forth in the preamble we propose to amend 45 CFR part 1355 as follows:

PART 1355—GENERAL

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

Authority: 45 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*, 42 U.S.C. 1302.

2. Revise § 1355.40 to read as follows:

§ 1355.40 Scope of the adoption and foster care analysis and reporting system.

(a) This section applies to a State agency that administers titles IV–B and IV–E of the Social Security Act.

(b) A State agency described in paragraph (a) of this section must collect information on the characteristics and experiences of children in the reporting populations described in § 1355.41 of this part. The State agency must submit the information collected to ACF on a semi-annual basis in an out-of-home care data file and adoption assistance and guardianship subsidy data file as required in section CFR 1355.42 of this part, pertaining to information described in §§ 1355.43 and 1355.44 of this part.

(c) As used for AFCARS, the term “out-of-home care” means any child under the title IV–B/IV–E State agency's responsibility for placement and care who is away from his/her parents or legal guardians for 24 hours or more regardless of the child's living arrangement, and who has not yet reached the State's age of majority.

3. Add §§ 1355.41 through 1355.46 to read as follows:

§ 1355.41 Reporting populations.

(a) Out-of-home care reporting population.

(1) In general, the State agency must report any child who is in out-of-home care consistent with 1355.40(c). The reporting population also includes a child in the following situations:

(i) A child under the placement and care responsibility of another public agency with which the title IV–B/IV–E State agency has an agreement pursuant to section 472(a)(2) of the Social Security Act and on whose behalf the State agency makes title IV–E foster care maintenance payments.

(ii) A youth for whom the State agency makes a title IV–E foster care maintenance payment even if the youth has reached the State's age of majority.

(iii) A child in out-of-home care who is placed in a non-traditional foster care setting such as in a detention facility, hospital, or jail.

(iv) A child who is in out-of-home care but is not in a physical living arrangement because the child is missing or has run away; attending a camp, vacationing; or visiting with

parents, relatives, caretakers or other persons.

(2) A child remains in the out-of-home care reporting population until the State agency's placement and care responsibility ends, the child returns to his or her parent(s) or legal guardian(s), or the child reaches the State's age of majority and is not receiving title IV–E foster care maintenance payments. For AFCARS purposes, the period between a child's entry into and exit from out-of-home care reporting population is an out-of-home care episode.

(b) Adoption assistance and guardianship subsidy reporting population. The State agency must report all children who are:

(1) In an adoptive or pre-adoptive placement pursuant to a title IV–E adoption assistance agreement or a State adoption assistance agreement with the State agency that is or was in effect at some point during the current report period; or

(2) Receiving or had received a subsidy pursuant to a guardianship agreement with the State agency at some point during the current report period.

§ 1355.42 Data reporting requirements.

(a) *Report periods and deadlines.*

There are two six-month report periods based on the Federal fiscal year; October 1 to March 31 and April 1 to September 30. In general, the State agency must submit the out-of-home care and adoption assistance and guardianship subsidy data files to ACF within 15 days of the end of the report period (*i.e.*, by April 15 and October 15). If the reporting deadline falls on a weekend, the State has until the following Monday to submit the file.

(b) *Out-of-home care data file.* A State agency must report the information required in 45 CFR 1355.43 of this part pertaining to every child in the out-of-home care reporting population, in accordance with the following:

(1) The State agency must report the most recent information for the applicable elements in 45 CFR 1355.43(a), (b) and (c) of this part.

(2) Except as provided in paragraph (b)(3), the State agency must report the most recent information and all historical information for the applicable elements described in 45 CFR 1355.43(d), (e), (f), (g), and (h) of this part. This means that the State must report the information for the specified elements, about the child's entire experience in out-of-home care including the information about all of the child's out-of-home care episodes, unless paragraph (b)(3) applies for an out-of-home care episode.

(3) For a child who had an out-of-home care episode(s) as defined in 45 CFR 1355.41(a) of this part prior to the effective date of this final rule, the State agency must report the information for the elements described in 45 CFR 1355.43(d)(1), (g)(1), and (g)(3) of this part for the out-of-home care episode(s) that occurred prior to the effective date of the final rule.

(c) *Adoption assistance and guardianship subsidy data file.* A State agency must report the most recent information for the applicable elements in 45 CFR 1355.44 of this part that pertains to every child in the adoption assistance and guardianship subsidy reporting population during the report period.

(d) *Reporting missing information.* If the State agency fails to collect the information for an element, the State agency must report the element as blank or otherwise missing. The State agency is not permitted to default or map information that was not collected and is missing to a valid response option.

(e) *Electronic submission.* The State agency must submit the required data files electronically according to ACF's specifications.

(f) *Record retention.* The State agency must retain all records necessary to comply with the data requirements in 1355.42 through 1355.44 of this part. Record retention rules in 45 CFR 92.42(b) and (c) are not applicable to AFCARS data requirements.

§ 1355.43 Out-of-home care data file elements.

(a) *General information*—(1) *State.* Indicate the first two digits of the State's Federal Information Processing Standard (FIPS) code for the State submitting the report to ACF.

(2) *Report date.* The report date corresponds with the end of the current report period. Indicate the last month and the year of the report period.

(3) *Local agency.* The local agency must be the county or a county equivalent unit that has primary responsibility for the child. Indicate the 5-digit Federal Information Processing Standard (FIPS) code for the local agency.

(4) *Child record number.* Indicate the child's record number. This is an encrypted, unique person identification number that is the same for the child, no matter where the child lives while in the placement and care responsibility of the State agency in out-of-home care and across all report periods and episodes. If the child was previously adopted in the State, however, the State agency may provide a new record number for the child for a subsequent

out-of-home care episode. The State agency must apply and retain the same encryption routine or method for the person identification number across all report periods. The record number must be encrypted in accordance with ACF standards.

(5) *Family record number.* Indicate the family record number. This is an encrypted, unique family identification number which associates the child with the rest of the child's family. The family identification number must remain the same for the child's family, no matter where the child or family lives while the child is in the placement and care responsibility of the State agency. If the child's family remains the same, the family number must remain the same across all report periods and episodes. If the child's family changes due to adoption, the State agency must report a new family record number for the adoptive family. The State agency must apply and retain the same encryption routine or method for the family identification number across all report periods. The family record number must be encrypted in accordance with ACF standards.

(b) *Child information*—(1) *Child's date of birth.* Indicate the month, day and year of the child's birth. If the actual date of birth is unknown because the child has been abandoned, provide an estimated date of birth. Abandoned means that the child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This includes a child left at a "safe haven." A date of birth that results in a child age of 22 years or more is an invalid response.

(2) *Child's gender.* Indicate whether the child is "male" or "female," as appropriate.

(3) *Child's race.* In general, a child's race is determined by the child or the child's parent(s). Indicate whether each race category listed in the elements described in paragraphs (b)(3)(i) through (b)(3)(viii) of this section applies with a "yes" or "no."

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native child has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian child has origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(iii) *Race—Black or African American.* A Black or African American child has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander child has origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(v) *Race—White.* A white child has origins in any of the original peoples of Europe, the Middle East, or North Africa.

(vi) *Race—unknown.* The child or parent does not know the race, or at least one race of the child.

(vii) *Race—abandoned.* The child's race is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This includes a child left at a "safe haven."

(viii) *Race—declined.* The child or parent has declined to identify a race.

(4) *Child's Hispanic or Latino ethnicity.* In general, a child's ethnicity is determined by the child or the child's parent(s). A child is of Hispanic or Latino ethnicity if the child is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the parent/child does not know whether the child is of Hispanic or Latino ethnicity, indicate "unknown." If the child is abandoned indicate "abandoned." Abandoned means that the child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This includes a child left at a "safe haven." If the child or parent refuses to identify the child's ethnicity, indicate "declined."

(5) *Child's language.* Indicate whether the child is verbal, pre-verbal or non-verbal. "Verbal" means that the child uses a language. This includes a child who uses sign language, even if he/she does not speak. "Pre-verbal" means the child is not old enough to use language. "Non-verbal" means the child is of an appropriate age to use language but appears unable or incapable of using language. If the State agency indicates that the child is "verbal," the State agency must complete the element Language used described in paragraph (b)(5)(i) of this section; otherwise leave that element blank.

(i) *Languages used.* For a child who is deemed verbal in the element Child's language described in paragraph (b)(5), indicate all languages used by the child; otherwise leave this element blank. Select all of the following that apply,

and/or indicate which language the child uses if not specified: "English," "Spanish," "Chinese," "French," "German," "Tagalog," or "Sign Language."

(ii) *Language preference.* For a child who uses two or more languages as indicated in the element Languages used described in paragraphs (b)(5)(i), indicate the language with which the child has the greatest facility, or languages, if the child has a similar facility with two or more languages. If the child is not verbal or uses one language only, leave this element blank.

(6) *Health, behavioral or mental health conditions.* Indicate whether the child has been diagnosed by a qualified professional, as defined by the State agency, as having a health, behavioral or mental health condition listed below, prior to or during the child's current out-of-home care episode. Indicate "child has a diagnosed condition" if a qualified professional has made such a diagnosis and indicate which of the following conditions listed in the elements described in paragraphs (b)(6)(i) through (b)(6)(xi) of this section apply or do not apply; otherwise leave those elements blank. Indicate "no exam or assessment conducted" if a qualified professional has not conducted a medical exam or assessment of the child. Indicate "exam or assessment conducted and indicate no condition" if a qualified professional has conducted a medical exam or assessment and has concluded that the child does not have one of the conditions listed below. Indicate "exam or assessment conducted but results not received" if a qualified professional has conducted a medical exam or assessment but the agency has not yet received the results of such an exam or assessment.

(i) *Mental retardation.* The child has significantly sub-average general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect a child's/youth's socialization and learning.

(ii) *Visually impaired.* The child has a visual impairment that may significantly affect educational performance or development.

(iii) *Hearing impaired.* The child has a hearing impairment, whether permanent or fluctuating, that adversely affects educational performance.

(iv) *Physically disabled.* The child has a physical condition that adversely affects the child's day-to-day motor functioning, including, but not limited to, cerebral palsy, spina bifida, multiple sclerosis, muscular dystrophy,

orthopedic impairments, and other physical disabilities.

(v) *Anxiety disorder.* The child has one or more of the following over a long period of time and to a marked degree: Acute stress disorder, agoraphobia, generalized anxiety disorder, obsessive-compulsive disorder, panic disorder, post-traumatic stress disorder, separation anxiety, social or specific phobia.

(vi) *Childhood disorders.* The child has one or more of the following disorders over a long period of time and to a marked degree: Attention deficit/hyperactivity disorder, conduct disorder or oppositional disorder.

(vii) *Learning disability.* The child has an achievement level on individually administered, standardized tests in reading, mathematics, or written expression that is substantially below that expected for age, schooling, and level of intelligence.

(viii) *Substance use related disorder.* The child has a dependency on alcohol or other drugs (legal or non-legal).

(ix) *Developmental disability.* The child has been diagnosed with a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (P.L. 106-402), Section 102(8). This means a severe, chronic disability of an individual that is attributable to a mental or physical impairment or combination of mental and physical impairments that manifests before the age of 22, is likely to continue indefinitely, and results in substantial functional limitations in three or more of the following areas of major life activity: Self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; economic self-sufficiency; and reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. If a child is given the diagnosis of "developmental disability," do not indicate the individual conditions that form the basis of this diagnosis separately.

(x) *Other mental/emotional disorder.* The child has one or more of the following conditions over a long period of time and to a marked degree: Mood disorders, personality disorders or psychotic disorders.

(xi) *Other diagnosed condition.* The child has a condition other than those described above that requires special medical care. This includes, but is not limited to, conditions such as a chronic

illness, children diagnosed as HIV positive or children with AIDS.

(7) *Current immunizations.* Indicate whether the child's immunizations are current and up-to-date as of the end of the report period. Indicate "current" if the child's immunizations are current and up-to-date, "not current" if the child's immunizations are not up-to-date, or "not yet determined" if the child's immunization records have not yet been obtained.

(8) *Educational performance.* Indicate in the elements described in paragraphs (b)(8)(i) and (ii) of this section whether the child has repeated any grade(s) in school, and if so how many.

(i) *Repeated grades.* Indicate "repeated grade" if the child has ever repeated any grade in school; "no repeated grades" if the child has never repeated any grades, or "not school age" if the child is not yet school age. If the State agency responds that the child has repeated grades, then the State agency must complete the element Number of repeated grades described in paragraph (b)(8)(ii) of this section.

(ii) *Number of repeated grades.* If the child has repeated a grade as indicated in the element Repeated grades described in paragraph (b)(8)(i) of this section, indicate the number of grades repeated. If a child has repeated a particular grade multiple times, each time must be counted separately.

(9) *Special education.* Indicate whether the child has received special education instruction during the report period. The term "special education," as defined in 20 U.S.C. 1401(29), means specifically designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. Indicate "special education," if the child received special education, "no special education," if the child did not receive special education or is not school age, or "not yet determined" if the State agency has not established whether the child is receiving special education.

(10) *Prior adoption.* Indicate whether the child has experienced a prior finalized adoption before the current out-of-home care episode, including any public, private or independent adoption in the United States or in another country. Indicate "prior adoption" if the child has ever been legally adopted before, "no prior adoption" if the child has never been legally adopted, or "abandoned" if the information is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This includes a child left at a "safe

haven.” If the child has experienced a prior adoption, the State agency must complete the data elements Prior adoption date and Prior adoption type described in paragraphs (b)(10)(i) and (ii) of this section; otherwise leave those elements blank.

(i) *Prior adoption date.* Indicate the month and year that the prior adoption was finalized if the State agency indicated that the child was adopted previously in the element Prior adoption described in paragraph (b)(10) of this section. In the case of a prior intercountry adoption where the adoptive parents readopted the child in the United States, the State agency must provide the date of the adoption (either the original adoption in the home country or the readoption in the United States) that is considered final in accordance with the laws of the State. If the child was not previously adopted, leave this element blank.

(ii) *Prior adoption type.* Indicate the type of adoption if the State agency indicated that the child was adopted previously in the element Prior adoption described in paragraph (b)(10) of this section. Indicate “foster care adoption within State” if the child was in foster care in the reporting State at the time the prior adoption was legalized. Indicate “foster care adoption in another State” if the child was in foster care in another State at the time the prior adoption was legalized. Indicate “intercountry adoption” if the child’s prior adoption occurred in another country or the child was brought into the United States for the purposes of finalizing the prior adoption. Indicate “other private or independent adoption” if the child’s prior adoption was neither a foster care nor an intercountry adoption as defined above. If the child was not previously adopted, leave this element blank.

(iii) *Prior adoption location.* Indicate the FIPS code for the location, either State or country, in which the child was previously adopted if the State agency indicated that the prior adoption occurred outside of the reporting State in the element Prior adoption type described in paragraph (b)(10)(ii) of this section; otherwise leave blank.

(11) *Number of siblings living with the child at removal.* Indicate the total number of siblings (biological, legal or by marriage) living with the child at the time of removal. Do not include the child who is the subject of this record or adult siblings. Indicate “0” if the child did not have any siblings living with him/her at the time of the child’s removal.

(12) *Minor parent.* Indicate the number of children of the young person

reported to AFCARS. A young person has a child or children if the young person has given birth herself, or fathered any child or children who were born. This refers to biological parenthood. If the young person does not have a child, indicate “0.” If the State agency indicates that the young person has at least one child the State agency must complete the element Number of children living with the minor parent described in 45 CFR 1355.43(e)(9) of this part.

(13) *Child financial and medical assistance.* Indicate all that apply at any point during the six-month report period. Indicate “SSI or other Social Security benefits” if the child is receiving support under title XVI of the Social Security Act. Indicate “title XIX Medicaid” if the child is eligible for and may be receiving assistance under the State’s title XIX program for medical assistance, including any benefits through title XIX waivers or demonstration programs. Indicate “title XXI SCHIP” if the child is eligible for and receiving assistance under a State’s Children’s Health Insurance Program (SCHIP) under title XXI of the Social Security Act, including any benefits under title XXI waivers or demonstration programs. Indicate “State adoption assistance” if the child is receiving a State adoption subsidy or other adoption assistance. Indicate “State foster care payment” if the child is receiving a foster care payment that is solely State-funded. Indicate “child support” if child support funds are being paid to the State agency on behalf of the child by assignment from the receiving parent. Indicate “other source of financial support” if the child is receiving financial support from another source not previously listed. Indicate “no support/assistance received” if none of these apply.

(14) *Title IV-E foster care during report period.* Indicate whether a title IV-E foster care maintenance payment was paid on behalf of the child at any point during the report period with a “yes” or “no” as appropriate. Indicate “yes” if the child has met all eligibility requirements of section 472(a) of the Social Security Act and the State agency has claimed, or intends to claim Federal reimbursement for foster care maintenance payments made on the child’s behalf during the report period.

(c) *Parent or legal guardian information—*(1) *Year of birth of first parent or legal guardian.* If applicable, indicate the year of birth of the first parent (biological/legal/adoptive) or legal guardian to the child. A parent or legal guardian younger than 10 years old is not a valid response. If the child was

abandoned indicate “abandoned.” Abandoned means that the child was left alone or with others and the parent or legal guardian’s identity is unknown and cannot be ascertained. This includes a child left at a “safe haven.”

(2) *Year of birth of second parent or legal guardian.* If applicable, indicate the year of birth of the second parent (biological/legal/adoptive) or legal guardian to the child. A parent or legal guardian younger than 10 years old is not a valid response. If the child was abandoned, indicate “abandoned.” Abandoned means that the child was left alone or with others and the parent or legal guardian’s identity is unknown and cannot be ascertained. This includes a child left at a “safe haven.”

(3) *Mother married at time of the child’s birth.* Indicate whether the child’s biological mother was a married person at the time the child was born. Include common law marriage if legal in the State. Indicate “married” if the child’s mother was married, “unmarried” if the child’s mother was unmarried, “abandoned” if the child was abandoned, or “unknown,” if the child was adopted prior to the current out-of-home care episode and the State agency does not have this information. Abandoned means that the child was left alone or with others and the parent or legal guardian’s identity is unknown and cannot be ascertained. This includes a child left at a “safe haven.”

(4) *Termination of parental rights petition—first parent.* Indicate the month, day and year that a petition to terminate the first biological, legal, and/or putative parent’s rights was filed in court, if applicable.

(5) *Termination of parental rights—first parent.* Enter the month, day and year that the court terminated the parental rights of the first biological, legal, and/or putative parent, if applicable. If the first parent is known to be deceased, enter the date of death.

(6) *Termination of parental rights petition—second parent.* Indicate the month, day and year that a petition to terminate the second biological, legal and/or putative parent’s rights was filed in court, if applicable.

(7) *Termination of parental rights—second parent.* Enter the month, day and year that the court terminated the parental rights of the second biological, legal, and/or putative parent, if applicable. If the second parent is known to be deceased, enter the date of death.

(d) *Removal information—*(1) *Date of child’s removal.* Indicate the date(s) that the child was removed from his or her parents/legal guardians and placed in the placement and care responsibility of

the State agency for each removal. Indicate the month, day and year of each removal.

(2) *Removal transaction date.* Indicate the removal transaction date(s) associated with each date of child's removal. The removal transaction date is a computer-generated, non-modifiable date that indicates the date the State agency entered the date of the child's removal from his/her parent/legal guardian. The State agency must enter the removal transaction date into the information system no later than 15 days after the date of the child's removal from his/her parent/legal guardian. Indicate the month, day and year of each transaction date.

(3) *Environment at removal.* Indicate the child's general environment at the time of each removal. Indicate "household" if the child was removed from the household of a parent, legal guardian or other caretaker. Indicate "other environment or facility," if the child was not living with a parent, legal guardian or other caretaker at removal, such as if the child has run away or was in a facility or institution. Indicate "abandoned" if the child was abandoned at the time of removal. Abandoned means that the child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This includes a child left at a "safe haven."

(4) *Household composition at removal.* Indicate with whom the child was living as described in paragraphs (d)(4)(i) through (xi) of this section by indicating how many of such persons were in the household, if the State indicated that the child was removed from a household in the element described in paragraph (d)(3) of this section.

(i) *Biological parent.* Indicate the number of biological parents with whom the child was living.

(ii) *Adoptive parent.* Indicate the number of adoptive parents with whom the child was living.

(iii) *Stepparent.* Indicate the number of stepparents with whom the child was living.

(iv) *Legal guardian.* Indicate the number of legal guardians with whom the child was living. Include in this count any legal guardian regardless of any other relationship between the child and the guardian.

(v) *Maternal grandparent.* Indicate the number of maternal grandparents (by biological, legal or marital connection) with whom the child was living.

(vi) *Paternal grandparent.* Indicate the number of paternal grandparents (by biological, legal or marital connection) with whom the child was living.

(vii) *Other maternal relative.* Indicate the number of other maternal relatives (by biological, legal or marital connection), with whom the child was living, such as an aunt, uncle or cousin.

(viii) *Other paternal relative.* Indicate the number of other paternal relatives (by biological, legal or marital connection) with whom the child was living, such as an aunt, uncle or cousin.

(ix) *Adult sibling.* Indicate the number of adult brothers or sisters with whom the child was living.

(x) *Parent's or caretaker's paramour.* Indicate the number of paramours (i.e., a girlfriend, boyfriend or partner) of the child's parent or legal guardian with whom the child was living.

(xi) *Other non-relative caretaker.* Indicate the number of non-related caretakers with whom the child was living at the time of removal. For the purpose of this description, a caretaker is someone who has assumed (wholly or shared) responsibility for the day-to-day care of the child.

(5) *Biological parents' marital status.* If the child was living with at least one biological parent as indicated in the element described in paragraph (d)(4)(i) of this section, indicate the relationship between the child's biological parents at the time of removal. Indicate "married and living together" if the child's biological parents were united in matrimony according to the laws of the State and living together at the time of the child's removal. Indicate "married and living separately" if the child's biological parents were united in matrimony according to the laws of the State and were not living together at the time of the child's removal. Indicate "unmarried and living together" if the child's biological parents were not united in matrimony according to the laws of the State but were living together at the time of the child's removal. Indicate "unmarried and living separately" if the child's biological parents were not united in matrimony according to the laws of the State and were not living together at the time of the child's removal. Indicate "deceased parent" if one of the child's biological parents was deceased at the time of the child's removal.

(6) *Manner of removal.* Indicate the State's authority for removing the child from his/her home for each removal. "Court ordered removal" means that the court has issued an order that is the basis for the child's removal. "Voluntary Placement Agreement" means that an official voluntary placement agreement has been executed between the parent or guardian and the State agency. The placement remains voluntary even if a subsequent court order is issued to

continue the child in out-of-home care. "Not yet determined" means that a voluntary placement agreement has not been signed or a court order has not been issued, such as in the case of an administrative or police hold. When either a voluntary placement agreement is signed or a court order issued, the record must be updated to reflect the manner of removal at that time.

(7) *Child and family circumstances at removal.* For each out-of-home care episode in the current report period, indicate all child and family circumstances that were applicable at the time of removal. "Child status offender" means the child is alleged or found to be a status offender. A status offense is specific to juveniles, such as running away, truancy or underage alcohol violations. "Child delinquency" means that the child is alleged or found to be adjudicated delinquent. "Runaway" means the child had run away from home at the time the State title IV-B/IV-E agency received placement and care responsibility for the child. "Physical abuse" is alleged or substantiated physical abuse, injury or maltreatment of the child by a person responsible for the child's welfare. "Sexual abuse" is alleged or substantiated sexual abuse or exploitation of the child by a person who is responsible for the child's welfare. "Psychological or emotional abuse" is alleged or substantiated psychological or emotional abuse, including verbal abuse, of the child by a person who is responsible for the child's welfare. "Neglect" is alleged or substantiated negligent treatment or maltreatment including failure to provide adequate food, clothing, shelter or care by a person who is responsible for the child's welfare. "Medical neglect" is alleged or substantiated medical neglect caused by failure to provide for the appropriate health care of the child by a person who is responsible for the child's welfare, although the person was financially able to do so, or was offered financial or other means to do so. "Domestic violence" is alleged or substantiated physical or emotional abuse between one adult member of the child's home and a partner. This does not include alleged or substantiated maltreatment of the child who is the subject of the report. "Abandonment" means that the child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This includes a child left at a "safe haven." This category does not apply when the identity of the parent is known. "Failure to provide

supervision” means the parent, legal guardian or caretaker failed/fails to provide adequate care and/or age appropriate supervision for the child on a recurring or long term basis. “Failure to return” means the parent, legal guardian or caretaker did not return/has not returned for the child or made his/her whereabouts known. “Caretaker’s alcohol abuse” refers to a parent, legal guardian, or other caretaker responsible for the child who uses alcohol compulsively. “Caretaker’s drug abuse” refers to a parent, legal guardian or other caretaker who uses drugs compulsively. “Child alcohol use” means the child uses alcohol compulsively. “Child drug use” means the child uses drugs compulsively. “Prenatal alcohol exposure” means the child has been identified as prenatally exposed to alcohol, resulting in fetal alcohol spectrum disorders such as fetal alcohol exposure, fetal alcohol effect or fetal alcohol syndrome. “Prenatal drug exposure” means the child has been identified as prenatally exposed to drugs. “Diagnosed condition” means the child has a clinical diagnosis by a qualified professional of a health, behavioral or mental health condition, such as one or more of the following: mental retardation, emotional disturbance, specific learning disability, hearing, speech or sight impairment, physical disability, or other clinically diagnosed condition. “Inadequate access to mental health services” refers to a circumstance where the child’s family has inadequate resources to access necessary mental health services outside of his/her out-of-home care placement. “Inadequate access to medical services” means the child’s family has inadequate resources to access necessary medical services outside of his/her out-of-home care placement. “Child behavior problem” means the child’s behavior in his/her school and/or community adversely affects his/her socialization, learning, growth and/or moral development. This includes all child behavior problems, except adjudicated and non-adjudicated status or delinquency offenses. “Death of caretaker” refers to existing family stress or an inability to care for the child due to the death of a parent, or legal guardian, or other caretaker. “Incarceration of caretaker” means the child’s parent, legal guardian or caretaker is temporarily or permanently placed in jail or prison which adversely affects his/her ability to care for the child. “Caretaker’s inability to cope” means a physical or emotional illness or disabling condition of the child’s parent, legal guardian, or caretaker

adversely affect his/her ability to care for the child. “Caretaker’s limited mental capacity” means the child’s parent, legal guardian or caretaker has limitations in his/her ability to function in areas of daily life, such as communication or self-care which adversely affects his/her ability to care for the child. It also may be characterized by a significantly below-average score on a test of mental ability or intelligence. “Inadequate housing” indicates that the family’s housing is substandard, overcrowded, unsafe or otherwise inadequate which results in it being inappropriate for the parents and child to reside together. This circumstance also includes homelessness. “Disrupted intercountry adoption” means the child’s intercountry adoption has disrupted. Specifically, the child is involved in a disrupted intercountry adoption if immediately prior to entering out-of-home care the child was brought to the United States and placed in a preadoptive home, but the adoption has not been finalized. “Voluntary relinquishment” indicates that the child’s parent has voluntarily relinquished the child by assigning the physical and legal custody of the child to the agency, in writing, for the purpose of having the child adopted.

(e) *Living arrangement and provider information*—(1) *Date of living arrangement*. Enter the month, day and year of each of the child’s living arrangements for each out-of-home care episode. Include the date of any runaway episode. In the case of a child who enters the reporting population in the midst of an out-of-home living arrangement, indicate the date the child enters the reporting population rather than the date the child was originally placed in the living arrangement.

(2) *Foster family home*. Indicate whether each of the child’s living arrangements is a foster family home, with a “yes” or “no” as appropriate. If the child has run away from his/her living arrangement, indicate “no.” If the child is in a foster family home, the State agency must complete the element Foster family home type in paragraph (e)(3) of this section; otherwise the State agency is to respond to the element Other living arrangement type in paragraph (e)(4) of this section.

(3) *Foster family home type*. If the child is living in a foster family home according to the element Foster family home described in paragraph (e)(2) of this section, indicate all of the following that apply; otherwise leave blank. Indicate “licensed home” if the child’s living arrangement is licensed or approved by the State agency

responsible for licensing, by other agencies under contract with the title IV–B/IV–E agency, or by Indian Tribal licensing/approval authorities for foster family homes located on or near a reservation. Indicate “therapeutic foster family home” if the home provides specialized care and services. Indicate “shelter care foster family home” if the home has been designated by the State agency or licensing entity as a shelter care home, which is designed to provide short-term or transitional care. Indicate “relative foster family home” if the foster parents are related to the child by biological, legal or marital connection and live in the home as their primary residence. Indicate “pre-adoptive home” if the home is one in which the family and the agency have agreed on a plan to adopt the child. The family may or may not be receiving a foster care maintenance payment or an adoption subsidy on behalf of the child.

(4) *Other living arrangement type*. If the child is living in an arrangement other than a foster family home according to the response in the element Foster family home in paragraph (e)(2) of this section, indicate the type of setting; otherwise leave this element blank. Indicate “group home-family operated” if the child is in a group home that provides 24-hour care in a private family home in which the family members are the primary caregivers. Indicate “group home-staff operated” if the child is in a group home that provides 24-hour care for children in which the care-giving is provided by shift or rotating staff. Indicate “group home-shelter care” if the child is in a group home that provides 24-hour care and is designated by the State agency or licensing entity to provide shelter care which is short-term or transitional in nature. Indicate “residential treatment center” if the child is in a facility that has the purpose of treating children with mental health or behavioral conditions. Indicate “child care institution” if the child is in a private child care institution, or a public child care institution which accommodates no more than 25 children, and is licensed by the State in which it is situated or has been approved by the agency of such State or tribal licensing authority (with respect to child care institutions on or near Indian Reservations) responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing. Do not consider detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent as a child

care institution. Indicate “child care institution-shelter care” if the child is in a child care institution as defined above and the institution is designated by the State agency or licensing entity to provide shelter care which is short-term or transitional in nature. Indicate “supervised independent living” if the child is in an alternative transitional living arrangement where the child is under the placement and care responsibility of the agency but without 24-hour adult supervision, is receiving financial support from the child welfare agency, and is in a setting which provides the opportunity for increased responsibility for self care. Indicate “juvenile justice facility” if the child is in a secure facility or institution in which alleged or adjudicated juvenile delinquents are housed while under the State agency’s placement and care. Indicate “medical or rehabilitative facility” if the child is in a facility where an individual receives medical or physical health care, such as a hospital. Indicate “psychiatric facility” if the child is in a facility where an individual receives emotional or psychological health care, such as a psychiatric hospital or residential treatment center. Indicate “runaway” if the child has left, without authorization, the home or facility in which the child was placed.

(5) *Private agency living arrangement.* Indicate the type of contractual relationship with a private agency for each of the child’s living arrangements. Indicate “private agency involvement” if the child is placed in a living arrangement that is either licensed, managed or run by a private agency that is under contract with the State agency. Indicate “no private agency involvement” if the child’s living arrangement is not licensed, managed or run by a private agency. Indicate “runaway” if the child has run away from his/her living arrangement.

(6) *Location of living arrangement.* Indicate the general location of each of the child’s living arrangement. Indicate “out-of-State” if the child’s living arrangement is located in another U.S. State or Territory outside of the reporting State. Indicate “in-State” if the child’s living arrangement is located in the reporting State. Indicate “out-of-country” if the child’s living arrangement is outside of the United States. Indicate “runaway” if the child has run away from his living arrangement.

(7) *State or country where child is living.* Indicate the FIPS code for the State or country where the child is placed for each living arrangement, if the State agency indicated the arrangement was either out-of-State or

outside of the United States according to the element Location of living arrangement described in paragraph (e)(6) of this section; otherwise leave blank.

(8) *Number of siblings placed together.* Indicate the total number of siblings who are also in the State’s out-of-home care placed with the child in the same living arrangement on the last day of each of the child’s living arrangement(s). A sibling to the child is his/her brother or sister by biological, legal or marital connection who also is a minor. Report this information whether the child’s living arrangement is in or out-of-State. Do not include the child who is the subject of this record in this number. Indicate “0” if the child does not have any siblings in out-of-home care.

(9) *Number of children living with the minor parent.* Indicate the number of the young person’s children living with him or her in the same living arrangement if the State agency indicated that the young person has children in the element Minor parent described in paragraph (b)(12) of this section. Do not include any child(ren) of the young person who themselves are in out-of-home care. If the young person does not have any children leave this element blank.

(10) *Foster parent’s marital status.* For each foster family home living arrangement in which the child is placed, indicate the marital status of the child’s foster parent(s). Indicate “married couple” if the foster parents are considered united in matrimony according to the laws of the State. Include common law marriage, where provided by State law. Indicate “unmarried couple” if the foster parents are living together as a couple, but are not united in matrimony according to the laws of the State. Indicate “separated” if the parent is legally separated or is living apart from a spouse. Indicate “single female” if the foster parent is a female who is not married and is not living with another individual as part of a couple. Indicate “single male” if the foster parent is a male who is not married and is not living with another individual as part of a couple. If the foster parents’ marital status is either “married couple” or “unmarried couple” the State agency must complete the second foster parent data elements described in paragraphs (e)(16) through (e)(20) of this section; otherwise leave those elements blank.

(11) *Foster parent(s) relationship to the child.* For each foster family home living arrangement in which the child is placed, indicate the relationship of the foster parent(s) to the child. Indicate

“paternal grandparent(s)” if the foster parent(s) is the child’s paternal grandparent (by biological, legal or marital connection). Indicate “maternal grandparent(s)” if the foster parent(s) is the child’s maternal grandparent (by biological, legal or marital connection). Indicate “other paternal relative(s)” if the foster parent(s) is the child’s paternal relative (by biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin. Indicate “other maternal relative(s)” if the foster parent(s) is the child’s maternal relative (by biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin. Indicate “sibling(s)” if the foster parent(s) is a brother or sister of the child, either biologically, legally or by marriage. Indicate “non-relative(s)” if the foster parent(s) is not related to the child (through a biological, legal or marital connection).

(12) *Year of birth for first foster parent.* Indicate the year of birth for the first foster parent for each foster family home living arrangement in which the child is placed.

(13) *Race of first foster parent.* Indicate the race of the first foster parent for each foster family home living arrangement in which the child is placed. In general, an individual’s race is determined by the individual. Indicate whether each race category listed in the elements described in paragraphs (e)(13)(i) through (e)(3)(vii) of this section applies with a “yes” or “no.”

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East, or North Africa.

(vi) *Race—unknown.* The foster parent does not know his/her race, or at least one race.

(vii) *Race—declined.* The first foster parent has declined to identify a race.

(14) *Hispanic or Latino ethnicity of first foster parent.* Indicate the Hispanic or Latino ethnicity of the first foster parent for each foster family home living arrangement in which the child is placed. In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the first foster parent does not know his/her ethnicity indicate "unknown." If the individual refuses to identify his or her ethnicity, indicate "declined."

(15) *First foster parent's language.* In paragraphs (e)(15) (i) and (ii) of this section, if applicable, indicate the languages used and language preference for the first foster parent.

(i) *Language of first foster parent.* Indicate all languages used by the foster parent. Select all of the following that apply, and/or indicate which language the foster parent uses if not specified: "English," "Spanish," "Chinese," "French," "German," "Tagalog," or "Sign Language."

(ii) *Language preference for first foster parent.* For a foster parent who uses two or more languages as indicated in the element Languages used by first foster parent described in paragraph (e)(15)(i) of this section, indicate the language with which the foster parent has the greatest facility, or languages if the foster parent has a similar facility with two or more languages.

(16) *Year of birth for second foster parent.* Indicate the birth year of the second foster parent for each foster family home living arrangement in which the child is placed, if applicable. A foster parent must be at least 18 years old. Leave this element blank if there is no second foster parent according to Foster parent marital status described in paragraph (e)(10) of this section.

(17) *Race of second foster parent.* Indicate the race of the second foster parent for each foster family home living arrangement in which the child is placed, if applicable. In general, an individual's race is determined by the individual. Indicate whether each race category listed in the elements described in paragraphs (e)(17)(i) through (e)(17)(vii) of this section applies with a "yes" or "no." Leave this element blank if there is no second foster parent according to Foster parent

marital status described in paragraph (e)(10) of this section.

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East, or North Africa.

(vi) *Race—unknown.* The foster parent does not know his/her race, or at least one race.

(vii) *Race—declined.* The second foster parent has declined to identify a race.

(18) *Hispanic or Latino ethnicity of second foster parent.* Indicate the Hispanic or Latino ethnicity of the second foster parent for each foster family home living arrangement in which the child is placed, if applicable. In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the second foster parent does not know his/her ethnicity, indicate "unknown." If the individual refuses to identify his or her ethnicity, indicate "declined." Leave this element blank if there is no second foster parent according to Foster parent marital status described in paragraph (e)(10) of this section.

(19) *Second foster parent's language.* In paragraphs (e)(19)(i) and (e)(19)(ii) of this section, if applicable, indicate the languages used and language preference for the second foster parent.

(i) *Language of second foster parent.* If applicable, indicate all languages used by the foster parent. Select all of the following that apply, and/or indicate

which language the foster parent uses if not specified: "English," "Spanish," "Chinese," "French," "German," "Tagalog," or "Sign Language." Leave this element blank if there is no second foster parent according to Foster parent marital status described in paragraph (e)(10) of this section.

(ii) *Language preference for second foster parent.* For a foster parent who uses two or more languages as indicated in the element Languages used by second foster parent described in paragraph (e)(19)(i) of this section, indicate the language with which the foster parent has the greatest facility, or languages, if the foster parent has a similar facility with two or more languages.

(20) *Sources of Federal assistance in living arrangement.* Indicate all that apply on the last day of the child's placement in each living arrangement or the last day of the report period if the child's living arrangement is ongoing. Indicate "title IV-E foster care" if the child is determined eligible for title IV-E foster care maintenance payments. Indicate "title IV-E adoption subsidy" if the child is determined eligible for a title IV-E adoption assistance subsidy. Indicate "Title IV-A TANF" if the child is living with relatives who are receiving a TANF cash assistance payment on behalf of the child. Indicate "title IV-B" if the child's living arrangement is supported by funds under title IV-B of the Social Security Act. Indicate "SSBG" if the child's living arrangement is supported by funds under title XX of the Social Security Act. Indicate "other federal source" if the child's living arrangement is supported through other Federal funds not indicated above. If there was no Federal funding source to support the child's living arrangement on the last day of placement or last day of the report period, indicate "no Federal source."

(21) *Amount of payment.* Indicate the total (State and Federal share) per diem amount of the foster care maintenance payment or adoption assistance subsidy paid to the foster or adoptive parents on behalf of the title IV-E eligible child on the last day of each living arrangement or the last day of the report period, if so indicated in paragraph (e)(20) of this section. If no payment was made, indicate zero.

(f) *Permanency plan information and ongoing circumstances—(1) Permanency plan.* Indicate each permanency plan established for the child. Indicate "reunify with parent(s) or legal guardian(s)" if the plan is to keep the child in out-of-home care for a limited time to enable the State agency

to work with the child's parent or legal guardian to establish a stable family environment. Indicate "live with other relatives" if the plan is for the child to live permanently with a relative or relatives (through a biological, legal or marital connection) who are not the child's parents or legal guardians. Indicate "adoption" if the goal is to facilitate the child's adoption by relatives, foster parents or other unrelated individuals. Indicate "planned permanent living arrangement" if the plan is to maintain the child in a long-term living arrangement because there is a specific reason, factor, or condition why it is not appropriate or possible to return the child home, live with relatives, obtain legal guardianship or place the child for adoption. Indicate "independent living" if the plan is for the child to live independently because of a specific reason, factor or condition, it is not appropriate or possible to return the child home, have the child live permanently with a relative, have the child be adopted, or placed under a guardianship arrangement and the child is receiving or eligible to receive independent living services. Indicate "relative guardianship" if the plan is to establish a new legal guardianship with a relative (through a biological, legal or marital connection). Indicate "non-relative guardianship" if the plan is to establish a new legal guardianship with an unrelated individual. Indicate "permanency plan not established" if a permanency plan has not yet been established.

(2) *Date of permanency plan.* Indicate the month, day and year that each permanency plan was established during each out-of-home care episode.

(3) *Concurrent planning.* Indicate whether the State agency has identified a concurrent plan for the child. Indicate "concurrent plan," if there is a concurrent plan for the child, "no concurrent plan" if the State agency uses concurrent planning but does not have a concurrent plan for the child, or "not applicable" if the State (or local) agency does not engage in concurrent planning. If the State agency indicates that the child has a concurrent plan, the State agency must complete the elements Concurrent permanency plan and Date of concurrent plan described in paragraphs (f)(3)(i) and (f)(3)(ii) of this section; otherwise leave these elements blank.

(i) *Concurrent permanency plan.* If the child has a concurrent permanency plan as indicated in the element Concurrent planning described in paragraph (f)(3) of this section, indicate the type. Indicate "live with other

relatives" if the plan is for the child to live permanently with a relative or relatives (through a biological, legal or marital connection) who are not the child's parents or legal guardians. Indicate "adoption" if the goal is to facilitate the child's adoption by relatives, foster parents or other unrelated individuals. Indicate "planned permanent living arrangement" if the plan is to maintain the child in a long-term living arrangement because there is a specific reason, factor, or condition why it is not appropriate or possible to return the child home, live with relatives, obtain legal guardianship or place the child for adoption. Indicate "independent living" if the plan is for the child to live independently because of a specific reason, factor or condition, it is not appropriate or possible to return the child home, have a child live permanently with a relative, have the child be adopted, or placed under a guardianship arrangement; and the child is receiving or eligible to receive independent living services. Indicate "relative guardianship" if the plan is to establish a new legal guardianship with a relative (through a biological, legal or marital connection). Indicate "non-relative guardianship" if the plan is to establish a new legal guardianship with an unrelated individual.

(ii) *Date of concurrent plan.* Indicate the month, day and year that each concurrent plan was established if the State agency indicated that the child has a concurrent plan in the element Concurrent planning described in paragraph (f)(3) of this section.

(4) *Date of periodic review or hearing.* Enter the date of each periodic review that meets the requirements of section 475(5)(B) of the Social Security Act and permanency hearing that meets the requirements of section 475(5)(C) of the Social Security Act.

(5) *Juvenile justice involvement.* Indicate whether the child was involved with the juvenile justice system at any time during each report period. If the child was not involved with the juvenile justice system during a report period indicate "not involved." If the child was involved with the juvenile justice system, indicate the type of involvement. Indicate "alleged status offender" if a petition has been filed that alleges that the child has committed a status offense. A status offense is specific to juveniles, such as running away, truancy or underage alcohol violations. Indicate "status offender" if the child has been found to be a status offender by a juvenile judge or court. Indicate "alleged juvenile delinquent" if a petition has been filed that alleges that

the child has committed a delinquent act. Indicate "adjudicated delinquent" if the child has been adjudicated delinquent by a juvenile judge or court.

(6) *Circumstances at initial permanency plan.* For each out-of-home care episode, indicate all child and family circumstances that are applicable at the time that the State agency develops the initial permanency plan for the child, if applicable. The response options have the same definitions as indicated in paragraph (d)(7) of this section; however, the State agency must also indicate that a circumstance is applicable if the State agency has assessed that the child or family is in need of services with regard to these issues: "Physical abuse," "Sexual abuse," "Psychological or emotional abuse," "Neglect," "Medical neglect," "Domestic violence," "Abandonment," "Failure to provide supervision," "Failure to return," "Caretaker's alcohol abuse," "Caretaker's drug abuse," "Child alcohol use," "Child drug use," "Prenatal alcohol exposure," "Prenatal drug exposure," "Diagnosed condition," "Inadequate access to mental health services," "Inadequate access to medical services," "Child behavior problem," "Death of caretaker," "Incarceration of caretaker," "Caretaker's inability to cope," "Caretaker's limited mental capacity," "Inadequate housing," "Disrupted intercountry adoption," "Voluntary relinquishment," or, "None of the above" if none of the above response options is applicable for the child and/or family.

(7) *Annual circumstances.* For each out-of-home care episode, indicate all child and family circumstances that apply or are unresolved at the permanency hearing, if applicable. If the State conducts permanency hearings more frequently than annually, indicate the circumstances applicable once the child has been in foster care 12 months, and every 12 months thereafter. The response options have the same definitions as indicated in paragraph (d)(7) of this section; however, the State agency must also indicate that a circumstance is applicable if the State agency has assessed that the child or family is in need of services with regard to these issues: "Physical abuse," "Sexual abuse," "Psychological or emotional abuse," "Neglect," "Medical neglect," "Domestic violence," "Abandonment," "Failure to provide supervision," "Failure to return," "Caretaker's alcohol abuse," "Caretaker's drug abuse," "Child alcohol use," "Child drug use," "Prenatal alcohol exposure," "Prenatal drug exposure," "Diagnosed condition," "Inadequate access to mental health

services,” “Inadequate access to medical services,” “Child behavior problem,” “Death of caretaker,” “Incarceration of caretaker,” “Caretaker’s inability to cope,” “Caretaker’s limited mental capacity,” “Inadequate housing,” “Disrupted intercountry adoption,” “Voluntary relinquishment,” or, “None of the above” if none of the above response options are applicable for the child and/or family.

(8) *Annual circumstances date.* Indicate the date(s) that the State agency indicated in the element Annual circumstances described in paragraph (f)(7) of this section.

(g) *General exit information.* Provide exit information for each out-of-home care episode. An exit occurs when the agency’s placement and care responsibility of the child ends, the child is returned to his/her parents or legal guardians, or the child reaches the State’s age of majority and is not receiving title IV–E foster care maintenance payments.

(1) *Date of exit.* Indicate the month, day and year of each of the child’s exits out-of-home care. For a child who exits out-of-home care due to an adoption, enter the date the court finalized the adoption. If the child has not exited out-of-home care leave this element blank. If this element is applicable, the State agency must complete the elements Exit transaction date, Exit reason and Circumstances at exit from out-of-home care in paragraphs (g)(2), (g)(3) and (g)(6) of this section; otherwise leave those elements blank.

(2) *Exit transaction date.* The State agency must report the transaction date for each of the child’s exits from out-of-home care. The transaction date is a computer-generated, non-modifiable date that indicates accurately the month, day and year in which State agency entered the date of the child’s exit into the information system and must be entered no later than 15 days after the child’s exit.

(3) *Exit reason.* Indicate the reason for each of the child’s exits from out-of-home care. Indicate “reunify with parents/legal guardian” if the child was returned to his/her parent(s) or legal guardian. This includes a child returned to the parent under the agency’s placement and care responsibility. Indicate “live with other relatives” if the child exited to live with a relative (related by a biological, legal or marital connection), other than his/her parent or legal guardian. Indicate “adoption” if the child was legally adopted. Indicate “emancipation” if the child exited care because he/she reached the age of majority according to State law by virtue of age, marriage, etc. Indicate “relative

guardianship” if the child exited care due to a relative (related by a biological, legal or marital connection) obtaining legal guardianship of the child. Indicate “non-relative guardianship” if the child exited care due to a non-relative obtaining legal guardianship of the child. Indicate “transfer to another agency” if the responsibility for the child’s placement and care was transferred to a different agency, either within or outside of the State. Indicate “runaway” if the child ran away and the State agency’s responsibility for placement and care ended by State law, policy or court order. Indicate “death of child” if the child died while in out-of-home care. If the State agency indicates that the child exited due to the child’s death, the State agency must complete the element Death due to abuse/neglect in care described in paragraph (g)(4) of this section. If the State agency indicates that the child exited due to a transfer to another agency the State agency must complete the element Transfer to another agency described in paragraph (g)(5) of this section.

(4) *Death due to abuse/neglect in care.* If the State indicated the child died in out-of-home care in the element Exit reason described in paragraph (g)(3) of this section, indicate whether the child died due to abuse or neglect by the provider. Indicate “provider responsible” if the State has concluded that the child’s death is due to a provider’s abuse or neglect. Indicate “provider not responsible” if the State has concluded that the child’s death was not due to a provider’s abuse or neglect.” Indicate “not yet determined” if the State is involved in an ongoing investigation to determine the culpability of a provider in the child’s death.

(5) *Transfer to another agency.* If the State agency indicated that the child was transferred to another agency in the element Exit reason described in paragraph (g)(3) of this section, indicate the type of agency that received placement and care responsibility from the following options: “Tribe or tribal agency,” “juvenile justice agency,” “mental health agency,” “other State agency,” or “private agency.”

(6) *Circumstances at exit from foster care.* For each out-of-home care episode, indicate all child and family circumstances that apply or are unresolved at the time of the child’s exit from out-of-home care. The State agency must also indicate that a circumstance is applicable if the State agency has put in place referrals for services or is providing monitoring or after care services with regard to any of the following issues. The response options

have the same definitions as indicated in paragraph (d)(7) of this section. “Physical abuse,” “Sexual abuse,” “Psychological or emotional abuse,” “Neglect,” “Medical neglect,” “Domestic violence,” “Abandonment,” “Failure to provide supervision,” “Failure to return,” “Caretaker’s alcohol abuse,” “Caretaker’s drug abuse,” “Child alcohol use,” “Child drug use,” “Prenatal alcohol exposure,” “Prenatal drug exposure,” “Diagnosed condition,” “Inadequate access to mental health services,” “Inadequate access to medical services,” “Child behavior problem,” “Death of caretaker,” “Incarceration of caretaker,” “Caretaker’s inability to cope,” “Caretaker’s limited mental capacity,” “Inadequate housing,” “Disrupted intercountry adoption,” “Voluntary relinquishment,” or, “None of the above” if none of the above response options is applicable for the child and/or family.

(h) *Exit to adoption information.* Report information in paragraphs (h)(1) through (h)(11) of this section only if the State agency indicated that the child exited to adoption in the element Exit reason described in paragraph (g)(3) of this section.

(1) *Adoptive parent(s) marital status.* Indicate the marital status of the adoptive parent(s). Indicate “married couple” if the adoptive parents are considered united in matrimony according to the laws of the State. Include common law marriage, where provided by State law. Indicate “unmarried couple” if the adoptive parents are living together as a couple, but are not united in matrimony according to the laws of the State. Indicate “single female” if the adoptive parent is a female who is not married and is not living with another individual as part of a couple. Indicate “single male” if the adoptive parent is a male who is not married and is not living with another individual as part of a couple. If the response is “married” or “unmarried couple” the State agency must also complete the data elements for the second adoptive parent in paragraphs (h)(6) through (h)(8) of this section.

(2) *Adoptive parent(s) relationship to the child.* Indicate the type of relationship, kinship or otherwise, between the child and his adoptive parent or parents. Select all that apply. “Paternal grandparent(s)” means the adoptive parent(s) is the child’s paternal grandparent(s) (by a biological, legal or marital connection). “Maternal grandparent(s)” means the adoptive parent(s) is the child’s maternal grandparent(s) (by a biological, legal or marital connection). “Other paternal

relative(s)” means the adoptive parent(s) is the child’s paternal relative (by a biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin. “Other maternal relative(s)” means the adoptive parent(s) is the child’s maternal relative (by a biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin. “Sibling(s)” means an adoptive parent is a brother or sister of the child, either biologically, legally or by marriage. “Non-relative(s)” means the adoptive parent(s) is not related to the child through a biological, legal or marital connection. “Foster parent(s)” means the adoptive parent(s) was the child’s foster parent(s).

(3) *Date of birth of first adoptive parent.* Indicate the month, day and year of the first adoptive parent’s date of birth.

(4) *First adoptive parent’s race.* In general, an individual’s race is determined by the individual. Indicate whether each race category listed in the elements described in paragraphs (h)(4)(i) through (h)(4)(vii) of this section applies with a “yes” or “no.”

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East, or North Africa.

(vi) *Race—unknown.* The adoptive parent does not know his/her race, or at least one race.

(vii) *Race—declined.* The first adoptive parent has declined to identify a race.

(5) *First adoptive parent’s Hispanic or Latino ethnicity.* In general, an individual’s ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the

individual is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a “yes” or “no.” If the first adoptive parent does not know his/her ethnicity, indicate “unknown.” If the individual refuses to identify his or her ethnicity, indicate “declined.”

(6) *Date of birth of second adoptive parent.* Indicate the month, day and year of the second adoptive parent’s date of birth. Leave this element blank if there is no second adoptive parent according to the element Adoptive parent(s) marital status described in paragraph (h)(1) of this section.

(7) *Second adoptive parent’s race.* In general, an individual’s race is determined by the individual. Indicate whether each race category listed in the elements described in paragraphs (h)(7)(i) through (vii) of this section applies with a “yes” or “no.” Leave this element blank if there is no second adoptive parent according to the element Adoptive parent(s) marital status described in paragraph (h)(1) of this section.

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East, or North Africa.

(vi) *Race—unknown.* The second adoptive parent does not know his/her race, or at least one race.

(vii) *Race—declined.* The second adoptive parent has declined to identify a race.

(8) *Second adoptive parent’s Hispanic or Latino ethnicity.* In general, an individual’s ethnicity is determined by the individual. An individual is of

Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a “yes” or “no.” If the second adoptive parent does not know his/her ethnicity, indicate “unknown.” If the individual refuses to identify his or her ethnicity, indicate “declined.” Leave this element blank if there is no second adoptive parent according to the element Adoptive parent(s) marital status described in paragraph (h)(1).

(9) *Interstate or intercountry adoption.* Indicate whether the child was placed across State lines or into another country for the adoption. Indicate “interstate adoption” if the adoptive parent(s) live in another State other than the one placing the child. Indicate “intercountry adoption” if the adoptive parent(s) live outside of the United States of America. Indicate “intrastate adoption” if the child was placed within the reporting State.

(10) *Interjurisdictional adoption location.* Indicate the FIPS code for the State or country in which the child was placed for adoption if the State agency indicated that the child was placed across State lines or outside the country in the element Interstate or intercountry adoption described in paragraph (h)(9) of this section.

(11) *Adoption placing agency or individual.* Indicate the agency or individual that placed the child for adoption. Indicate “State agency” if the reporting State agency had responsibility for placement and care of the child while in out-of-home care. Indicate “private agency under a contract/agreement” if the reporting State had responsibility for the child’s placement and care and contracted with a private agency for the child’s placement for adoption. Indicate “Tribal agency with agreement” if the reporting State had placement and care of the child and an interagency agreement or contract with an Indian Tribe for placement of the child for adoption.

§ 1355.44 Adoption assistance and guardianship subsidy data file elements.

A State agency must collect and report the following information for each child in the adoption assistance and guardianship subsidy reporting population, if applicable based on 45 CFR 1355.42(c) of this part.

(a) *General information—(1) State.* State means the State responsible for reporting the child. Indicate the first two digits of the State’s Federal Information Processing Standard (FIPS)

code for the State submitting the report to ACF.

(2) *Report date.* The report date corresponds to the end of the current report period. Indicate the last month and the year of the report period.

(3) *Child record number.* The record number is the encrypted, unique person identification number. The person identification number must remain the same for the child, no matter where the child lives and across all report periods. The State agency must apply and retain the same encryption routine or method for the person identification number across all report periods. The record number must be encrypted in accordance with ACF standards. Indicate the record number for the child.

(b) *Child Demographics.*—(1) *Date of birth.* Indicate the month, day and year of the child's birth.

(2) *Child's race.* In general, a child's race is determined by the child or the child's parent(s). Indicate whether each race category listed in the elements described in paragraphs (b)(2)(i) through (b)(2)(viii) of this section applies with a "yes" or "no."

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native child has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian child has origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(iii) *Race—Black or African American.* A Black or African American child has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander child has origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(v) *Race—White.* A White child has origins in any of the original peoples of Europe, the Middle East, or North Africa.

(vi) *Race—Unknown.* The child or parent does not know the race, or at least one race of the child.

(vii) *Race—Abandoned.* The child's race is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the previous/original parent or legal guardian's identity was unknown and could not be ascertained. This includes a child left at a "safe haven."

(viii) *Race—Declined.* The child or parent has declined to identify a race.

(3) *Hispanic or Latino Ethnicity.* In general, a child's ethnicity is determined by the child or the child's parent(s). A child is of Hispanic or Latino ethnicity if the child is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the parent/child does not know whether the child is of Hispanic or Latino ethnicity, indicate "unknown." If the child was abandoned indicate "abandoned." Abandoned means that the child was left alone or with others and the previous/original parent or legal guardian's identity was unknown and could not be ascertained. This includes a child left at a "safe haven." If the child or parent refuses to identify the child's ethnicity, indicate "declined."

(c) *Adoption assistance agreement information.*—(1) *Adoption assistance agreement type.* Indicate whether the child is or was in an adoptive placement or finalized adoption with a title IV-E adoption assistance agreement or a State adoption assistance agreement in effect during the report period. "Title IV-E agreement" means an agreement with adoptive parents or prospective adoptive parents for adoption assistance pursuant to section 473 of the Social Security Act. "State agreement" means an agreement with adoptive parent(s) or prospective adoptive parent(s) for adoption assistance as defined by the State, other than a title IV-E agreement. Indicate "title IV-E agreement" or "State agreement" as appropriate.

(2) *Adoption subsidy amount.* Indicate the per diem dollar amount of the financial subsidy paid to the adoptive or prospective adoptive parent(s) on behalf of the child during the last month of the current report period, if any. The State agency must indicate "0" if a financial subsidy was not paid during the last month of the report period.

(3) *Nonrecurring adoption expenses.* Indicate whether payments were made to the adoptive or prospective adoptive parent(s) or such parents were reimbursed for nonrecurring adoption expenses during the current report period, if the State agency reported that the child has a title IV-E adoption assistance agreement in the element Adoption assistance agreement type described in paragraph (c)(1) of this section. Nonrecurring adoption expenses are reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child

with special needs. Indicate "expenses paid" or "no expenses paid" as appropriate.

(4) *Nonrecurring adoption expenses amount.* Indicate the total dollar amount of the payment made to or on behalf of the adoptive or prospective adoptive parent(s) for the nonrecurring adoption expenses during the report period if the State agency reported that these expenses were paid in the element Nonrecurring adoption expenses described in paragraph (c)(3) of this section; otherwise leave this element blank.

(5) *Final adoption.* Indicate whether the child has a finalized adoption, with "adoption final" or "adoption not final" as appropriate.

(6) *Adoption finalization date.* Indicate the month, day and year that the child's adoption was finalized if the State agency indicated there is a final adoption in the element Final adoption in paragraph (c)(5) of this section; otherwise leave this element blank.

(7) *Interstate and intercountry adoption.* Indicate whether the child was placed across State lines or was involved in an intercountry adoption. Indicate "interstate adoption" if the adoptive parent(s) live in another State other than the reporting State. Indicate "intrastate adoption" if the child is placed within the State that entered the adoption assistance agreement. Indicate "intercountry adoption—incoming" if the State agency has entered into an adoption assistance agreement on behalf of a child who immediately prior to adoptive placement was brought into the country for the purpose of achieving an adoption within the United States. Indicate "intercountry adoption—outgoing" if the State agency has entered into an adoption assistance agreement on behalf of a child who is emigrating to another country for the purposes of adoption.

(8) *Interjurisdictional adoption location.* Indicate the FIPS code for the location, either State or country, in which the child was placed into or placed from, if the State agency indicated that the child's adoption was an interstate, or an incoming or outgoing intercountry adoption in the element Interstate and intercountry adoption described in paragraph (c)(7) of this section; otherwise leave blank.

(9) *Adoption placing agency or individual.* Indicate the agency or individual that placed the child for adoption. Indicate "State agency" if the reporting State agency had responsibility for placement and care of the child while away from his or her parents or legal guardians. Indicate "private agency under a contract/"

agreement” if the reporting State title IV-B/IV-E agency had responsibility for the child’s placement and care and contracted with a private agency for the child’s placement for adoption. Indicate “Tribal agency with agreement” if the reporting State title IV-B/IV-E agency had placement and care of the child and entered into an interagency agreement or contract with an Indian Tribe for placement of the child for adoption. Indicate “Tribal agency” if a tribe or unit within a tribe had sole responsibility for the child’s placement and care and placed the child for adoption. Indicate “private agency” if a private agency had legal custody of the child or on behalf of a parent placed the child for adoption. Indicate “birth parent” if the birth parent placed the child for adoption without the assistance of a third party. Indicate “independent person” if a person other than the parent, such as a doctor, lawyer or other intermediary, facilitated the child’s adoption.

(10) *Agreement termination date.* If the State agency terminated the adoption assistance agreement or the agreement expired during the report period, indicate the month, day and year that the agreement was terminated or expired; otherwise leave this element blank.

(d) *Subsidized guardianship information.* The State agency must report information for the elements described in paragraphs (d)(1) through (d)(3) of this section for all children who are in a guardianship placement with a subsidized guardianship agreement during the report period; otherwise leave these elements blank.

(1) *Subsidized guardianship agreement type.* Indicate whether the child is under a title IV-E or State guardianship placement, with ongoing monthly payments during the current report period. “Title IV-E guardianship” means that the State agency is paying a subsidy to the child’s guardian that includes title IV-E funds pursuant to an HHS-approved demonstration waiver. “State guardianship” means that the State agency is paying a subsidy to the child’s guardian that does not include any title IV-E funds. Indicate “title IV-E guardianship” or “State guardianship” as appropriate.

(2) *Subsidized guardianship amount.* Indicate the per diem dollar amount of the subsidy paid to the guardian on behalf of the child for the last month of the current report period. Indicate “0” if a financial subsidy was not paid during the last month of the report period.

(3) *Agreement termination date.* If the State agency terminated the guardianship agreement or the agreement expired during the report period, indicate the month, day and year the agreement was terminated or expired.

§ 1355.45 Compliance.

(a) *Files subject to compliance.* ACF will evaluate the out-of-home care data file that a State agency submits to determine whether the data complies with the requirements of 45 CFR 1355.42 of this part and the file submission and data quality standards described in paragraphs (c) and (d) of this section.

(b) *Errors.* ACF will assess a State’s out-of-home care file for errors as described in paragraphs (b)(1) through (b)(5) of this section to determine if the State agency meets the file and data standards outlined in paragraph (c) of this section. ACF will develop and issue error specifications.

(1) *Missing data.* Missing data refers to instances in which an element has a blank or otherwise missing response, when such a response is not a valid option as described in 45 CFR 1355.43 of this part.

(2) *Invalid data.* Invalid data refers to instances in which an element contains a value that is outside the parameters of acceptable responses or exceeds, either positively or negatively, the acceptable range of response options as described in 45 CFR 1355.43 of this part.

(3) *Internally inconsistent data.* Internally inconsistent data refers to instances in which an element fails an internal consistency check designed to validate the logical relationship between elements within each record. This assessment will identify all elements involved in a particular check as in error.

(4) *Cross-file errors.* A cross-file error occurs when a cross-file check determines that a response option for an element recurs across the records in the out-of-home care data file beyond a specified acceptable threshold.

(5) *Tardy transactions.* Tardy transactions are instances in which the removal transaction date or exit transaction date described in 45 CFR 1355.43(d)(2) and (g)(2) of this part respectively, are entered into the State agency’s information system more than 15 days after the event.

(c) *File standards.* To be in compliance with the AFCARS requirements the State agency must submit a data file in accordance with the file standards described in paragraphs (c)(1) through (c)(3) of this section.

(1) *Timely submission.* ACF must receive the out-of-home care data file on or before the reporting deadline described in 45 CFR 1355.42(a) of this part.

(2) *Proper format.* The out-of-home care data file must meet the technical standards issued by ACF for file construction and transmission. In addition, every record within the data file must have the elements described in 45 CFR 1355.43(a)(1) through (a)(5), 1355.43(b)(1) and 1355.43(b)(2) of this part be 100 percent free of missing data, invalid data and internally inconsistent data. ACF will not process a State agency’s out-of-home care data file that does not meet the proper format standard.

(3) *Acceptable cross-file.* The out-of-home care data file must be free of any cross-file errors.

(d) *Data quality standards.* To be in compliance with the AFCARS requirements the State agency must also submit a data file that for applicable records, have no more than 10 percent of data missing, 10 percent of data invalid, 10 percent of data internally inconsistent; or, 10 percent as tardy transactions.

(e) *Compliance determination and corrected data.* (1) ACF will first determine whether the State agency’s out-of-home care data file meets the file standards in paragraph (c) of this section. If the State agency’s data file does not meet the file standards, ACF will so notify the State.

(2) If the State agency meets the file standards, ACF will then determine whether the State agency’s data file meets the data quality standards in paragraph (d) of this section. We will divide the total number of applicable records in error (numerator) by the total number of applicable records (denominator) for an element, to determine whether the State agency has met the applicable data quality standards. If the resultant error rate exceeds 10 percent, ACF will so notify the State.

(3) ACF will notify a State agency that fails to submit a data file that meets the standards in paragraph (c) or (d) of this section, within 30 days of the report deadline.

(4) In general, a State agency that has not met either the file standards or data quality standards must submit a corrected data file no later than when data is due for the subsequent six month reporting period (*i.e.*, by April 15 and October 15), as applicable. ACF will determine that the corrected data file is in compliance if it meets the file and data standards in paragraphs (c) and (d) of this section. Exception. If ACF

determines initially that the State agency's data file has not met the data quality standard related to tardy transactions, ACF will determine compliance with regard to the transactions dates only in the out-of-home care data file submitted for the subsequent report period.

(f) *Noncompliance.* If the State agency does not submit a corrected data file, or submits a corrected data file that fails to meet the compliance standards in paragraphs (c) and (d) of this section, ACF will notify the State agency of such and apply penalties as indicated in § 1355.46 of this part.

(g) *Other assessments.* ACF may use other monitoring tools or assessment procedures to determine whether the State agency is meeting all of the requirements of 45 CFR 1355.41 through 1355.44 of this part.

§ 1355.46 Penalties.

(a) *Federal funds subject to a penalty.* The funds that are subject to a penalty are the State agency's claims for title IV-E foster care administration (including SACWIS) and training for the quarter in

which the State agency is required to submit the out-of-home care data file. For out-of-home care data files due on April 15, ACF will assess the penalty based on the State agency's claims for the third quarter of the Federal fiscal year. For out-of-home care data files due on October 15, ACF will assess the penalty based on the State agency's claims for the first quarter of the Federal fiscal year.

(b) *Penalty amounts.* ACF will assess penalties in the following amounts:

(1) *First six month period.* ACF will assess a penalty in the amount of one sixth of one percent ($\frac{1}{6}$ of 1%) of the funds described in paragraph (a) of this section for the first six month period in which the State agency's submitted corrected data file does not comply with 45 CFR 1355.45 of this part.

(2) *Subsequent six month periods.* ACF will assess a penalty in the amount of one fourth of one percent ($\frac{1}{4}$ of 1%) of the funds described in paragraph (a) of this section for each subsequent six month period in which the State agency continues to be out of compliance.

(c) *Penalty reduction from grant.* ACF will offset the State agency's title IV-E foster care grant award in the amount of the penalty from the State agency's claims following the State agency notification of ACF's final determination of noncompliance.

(d) *Interest.* The State agency will be liable for interest on the amount of funds penalized by the Department, in accordance with the provisions of 45 CFR 30.13.

(e) *Appeals.* The State agency may appeal to the HHS Departmental Appeals Board, pursuant to 45 CFR part 16, ACF's final determination of noncompliance.

4. Remove the appendices to 1355.

Appendix A to Part 1355 [Removed]

Appendix B to Part 1355 [Removed]

Appendix C to Part 1355 [Removed]

Appendix D to Part 1355 [Removed]

Appendix E to Part 1355 [Removed]

Appendix F to Part 1355 [Removed]

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