

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

4. Section 265.1080 is amended by revising paragraph (b)(1) and paragraph (c) introductory text to read as follows:

§ 265.1080 Applicability.

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(b) * * *

(1) A waste management unit that holds hazardous waste placed in the unit before December 6, 1995, and in which no hazardous waste is added to the unit on or after this date.

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(c) For the owner and operator of a facility subject to this subpart who has received a final permit under RCRA

section 3005 prior to December 6, 1995, the following requirements apply:

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5. Section 265.1082 is amended by revising paragraphs (a) introductory text, paragraph (a)(1), (a)(2), introductory text, (a)(2)(iii), and (a)(2)(iv) to read as follows:

§ 265.1082 Schedule for implementation of air emission standards.

(a) Owners or operators of facilities existing on December 6, 1995, and subject to subparts I, J, and K of this part shall meet the following requirements:

(1) Install and begin operation of all control equipment required by this subpart by December 6, 1995, except as provided for in paragraph (a)(2) of this section.

(2) When control equipment required by this subpart cannot be installed and in operation by December 6, 1995, the owner or operator shall:

(i) * * *

(ii) * * *

(iii) For facilities subject to the recordkeeping requirements of § 265.73 of this part, the owner or operator shall enter the implementation schedule specified in paragraph (a)(2)(ii) of this

section in the operating record no later than December 6, 1995.

(iv) For facilities not subject to § 265.73 of this part, the owner or operator shall enter the implementation schedule specified in paragraph (a)(2)(ii) of this section in a permanent, readily available file located at the facility no later than December 6, 1995.

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PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

6. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

7. Section 271.1(j) is amended by adding the promulgation date, **Federal Register** reference, and effective date to the following entry in Table 1 to read as follows:

§ 271.1 Purpose and scope.

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(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
Dec. 6, 1994	Air Emission Standards for Tanks, Surface Impoundments, and Containers	59 FR 62896–62953	Dec. 6, 1995.

8. Section 271.1(j) is amended by revising the effective date and adding the **Federal Register** reference to the

following entry in Table 2 to read as follows:

§ 271.1 Purpose and scope.

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(j) * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
Dec. 6, 1995	Air Emission Standards for Tanks, Surface Impoundments, and Containers	3004(n)	59 FR 62896–62953.

[FR Doc. 95–12367 Filed 5–18–95; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1355 and 1356

RIN 0970–AB38

Statewide Automated Child Welfare Information Systems

AGENCY: Office of Information Systems Management (OISM), ACF, HHS.

ACTION: Final rule.

SUMMARY: These final rules implement section 13713 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). Under section 13713, funding is made available for the planning, design, development and installation of statewide automated child welfare information systems. Such systems must be comprehensive in that they must meet the requirements for an Adoption and Foster Care Analysis and Reporting

System (AFCARS) required by section 479(b)(2) of the Social Security Act (the Act) and implementing regulations; to the extent practicable, be capable of interfacing with State child abuse and neglect automated systems; to the extent practicable, be capable of interfacing with, and retrieving information from the State automated system for determining eligibility for title IV-A assistance; and, be determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the programs carried out under State plans approved under title IV-B or IV-E of the Act.

Enhanced Federal funding at the 75 percent matching rate is provided for such activities as well as for the cost of hardware components effective October 1, 1993. This funding rate is eliminated under the statute after September 30, 1996, at which time a Federal matching rate of 50 percent is available. Also effective October 1, 1993, Federal financial participation at the 50 percent matching rate is available for the operation of such systems.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Marr (202) 401-6960.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This rule contains information collection activities which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

In accordance with the Paperwork Reduction Act of 1980, the Department resubmitted for OMB clearance the APD process, described in this document, under which States may apply for and obtain Federal financial participation in their ADP acquisitions. This reporting requirement was previously approved under OMB control number 0990-0174.

The reporting burden over and above what the States already do for the current APD approval process is estimated to average 10 hours for the initial submission of an APD. This includes time for reviewing instructions, and collecting and reporting the needed information in the APD.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing burden, to the Administration for Children and Families, 370 L'Enfant Promenade, SW, Washington, DC, 20447 and the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office

Building, Washington, DC 20503, Attn: Desk Officer for ACF.

Statutory Authority

These regulations are published under the authority of several provisions of the Social Security Act (the Act), as amended by Pub. L. 103-66. Section 474(a)(3) of the Act contains new requirements providing funding for statewide automated child welfare information systems to carry out the State's programs under parts IV-B and IV-E of the Act. Under section 474(a)(3)(C), Federal financial participation at the 75 percent matching rate is available from October 1, 1993 through September 30, 1996 (after which time the rate is reduced to 50 percent), for the planning, design, development and installation of statewide automated child welfare information systems (including the full amount of expenditures for hardware components for such systems) to the extent that such systems—

(i) Meet the requirements imposed by regulations promulgated pursuant to section 479(b)(2);

(ii) To the extent practicable, are capable of interfacing with the State data collection system that collects information relating to child abuse and neglect;

(iii) To the extent practicable, have the capability of interfacing with, and retrieving information from, the State data collection system that collects information relating to the eligibility of individuals under part IV-A (for the purposes of facilitating verification of eligibility of foster children); and

(iv) Are determined by the Secretary to be likely to provide more efficient, economical and effective administration of the programs carried out under a State's plans approved under part IV-B or IV-E of the Act.

Under section 474(a)(3)(D), Federal financial participation at the 50 percent matching rate is available for the operation of the systems described above.

Section 474(e) provides that the Secretary treat as necessary for the proper and efficient administration of the State plan, all expenditures of a State necessary to plan, design, develop, install, and operate the information retrieval system under section 474(a)(3)(C), without regard to whether the systems may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under part IV-E of the Act.

These regulations are also published under the general authority of section

1102 of the Act which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which she is responsible under the Act.

Background

The title IV-E Foster Care and Adoption Assistance program provides Federal funds to States for the care of eligible dependent, abused or neglected children who must be placed in foster care, and for adoption assistance payments for certain children with special needs. The title IV-B, subpart 1 program provides Federal funds for service programs for children and their families aimed at strengthening families and preventing the unnecessary separation of children from their families; assuring adequate care by the State of children who are away from their homes; providing services to return children when separation occurs; and placing children for adoption or other permanent placement when restoration to the family is not possible or appropriate.

The title IV-B, subpart 2 program is a capped entitlement for family preservation and family support services. Family preservation services are targeted to families that are already in crisis and children who are at risk of being placed in foster care and include intensive interventions to help families weather crises, provide for reunification of families by returning home foster care children whenever possible, and by arranging for the adoption of or permanent and appropriate living arrangements for those children who cannot return home. Family support services are designed to help increase the strength and stability of families and include programs to improve and reinforce parenting skills and to provide respite care for care providers and drop-in centers for families.

In recognition of the critical need for effective statewide automated capability to support these programs in a comprehensive fashion, section 13713 of Pub. L. 103-66 amends the funding provisions under section 474 of the Act to provide for the development and operation of comprehensive information systems to assist in the administration of title IV-B and IV-E programs. To encourage States to act quickly to develop efficient comprehensive statewide automated information systems, Congress limited the availability of Federal funding at the 75 percent matching rate for statewide automated child welfare information systems (SACWIS) to Fiscal Years 1994, 1995 and 1996.

When implemented, these information systems will result in more efficient and effective practices in administering child welfare programs which in turn will ultimately result in improved service delivery. Readily available information and automated procedures to assist in case assessments and plans will allow States to be more proactive in program administration and to focus efforts on preventive services and measures rather than constantly reacting to crisis. With a single statewide automated information system, States will realize more efficient and effective processes and procedures.

An interim final rule providing the requirements for States wishing to pursue enhanced funding for the development of statewide automated child welfare information systems was published in the **Federal Register** December 22, 1993 (58 FR 67939). We received 22 letters of public comment regarding the interim final rule from State agencies and other interested parties. Specific comments and responses follow the discussion of regulatory provisions. These comments did not generate any changes to the regulatory provisions outlined in the interim final rule.

Regulatory Provisions

The requirements for the automation of comprehensive child welfare services are included under 45 CFR part 1355, which provides the general requirements for Foster Care Maintenance Payments, Adoption Assistance and Child Welfare Services. The purpose of these regulations, as provided under § 1355.50, is to set forth the requirements and procedures States must meet in order to receive Federal financial participation authorized under the Budget Reconciliation Act of 1993 for the planning, design, development, installation and operation of statewide automated child welfare information systems.

Funding authority for statewide automated child welfare information systems (SACWIS), is provided at § 1355.52 to effect the statutory provisions under section 474(a)(3)(C) of the Social Security Act authorizing funding for comprehensive child welfare systems.

Paragraph (a) provides the basic requirements a State must meet in order to be eligible for Federal financial participation at a 75 percent matching rate for fiscal years 1994, 1995 and 1996 and at a 50 percent matching rate thereafter for expenditures related to the planning, design, development and installation of a statewide automated child welfare information system.

First, under § 1355.52(a)(1), the SACWIS must provide for the collection and electronic reporting of data required under section 479(b) of the Act and the implementing regulations under § 1355.40. Under section 479(b) of the Act, States must establish and implement adoption and foster care reporting systems designed to collect uniform, reliable information on children who are under the responsibility of the State title IV-B/IV-E agency for placement and care.

Under paragraph (a)(2), the SACWIS must, to the extent practicable, provide for an interface with the State's data collection system for child abuse and neglect. The phrase "to the extent practicable" as used in this paragraph is statutory and reflects in part the voluntary nature of the National Child Abuse and Neglect Data Systems (NCANDS) established under Pub. L. 100-294, the Child Abuse Prevention, Adoption and Family Services Act of 1988, as well as the inherent requirement that such interface be cost beneficial to the title IV-B/IV-E programs. (For more information on the term "practicable" as used throughout this rule, refer to ACF-OISM-AT-95-001.)

As provided in the interim final rule, we would expect that most States would integrate the automation of child abuse and neglect activities as part of their SACWIS because of the direct association between child protection and child welfare services. While the language of the statute speaks of interfacing with child abuse and neglect data systems, we understand that in many States these data are already a part of a larger child welfare system and/or States will be considering the integration of such data as part of an overall comprehensive information/client system. Accordingly, the statewide automated child welfare information systems development effort may include automated procedures which will provide the State with the capability to meet the National Child Abuse and Neglect Data System requirements.

While we believe that such interface/integration is vital, in accordance with the statute any State which can clearly demonstrate through the submission of documentation with the advanced planning document (APD) that such integration or interface is not practicable because no automated statewide database exists to complete the interface or because of cost constraints would not be required to include this provision in the SACWIS as a condition of approval. In the latter case, the documentation should establish that the costs to

develop and operate an automated interface with the existing system will exceed the combined costs of manual inquiry, verification and information exchange with the existing system, and duplicate data entry and maintenance in the SACWIS.

Similarly, paragraph (a)(3) requires that the SACWIS, to the extent practicable, provide for interface with and retrieval of information from the State automated information system that collects information relating to eligibility of individuals under title IV-A of the Act. Interface with, and access to, the data maintained by State IV-A systems is of vital importance for gathering information about clients or other relevant persons and because eligibility for foster care maintenance payments as well as adoption assistance are based in part, on a child's eligibility under the AFDC program. However, as provided in greater detail under the discussion of § 1355.53 below, this requirement need not be met if a State clearly demonstrates through the submission of documentation with the APD, as indicated under § 1355.52(a)(2), that electronic interface and data retrieval is not practicable because of limitations in the design of the IV-A system or because of cost constraints.

Finally, paragraph (a)(4) requires that the SACWIS provide for more efficient, economical and effective administration of the programs carried out under State plans approved under title IV-B and title IV-E.

As used here, efficient, economical and effective means that: the system must improve program management and administration by addressing all program services and case processing requirements by meeting the requirements of § 1355.53; the design must appropriately apply computer technology; the project must not require duplicative application system development or software maintenance; the procurement must provide for maximum free and open competition; and the costs must be reasonable, appropriate and beneficial.

Paragraph (b) provides that Federal financial participation provided under paragraph (a) is also available for the full amount of expenditures for hardware components. The matching rate provided is 75 percent with respect to Fiscal Years 1994, 1995 and 1996, and 50 percent thereafter. The general requirements applicable to the treatment of hardware expenditures under part 95 apply to all such expenditures.

Paragraph (c) provides that Federal financial participation at the 50 percent matching rate is available for the operating costs of statewide automated

child welfare information systems described under paragraph (a).

The conditions for funding systems under § 1355.52 are provided at § 1355.53. Functional guidelines providing details of these requirements were recently issued in the form of an action transmittal (ACF-OISM-AT-95-001).

Under paragraph (a), as a condition of funding, the SACWIS must be designed, developed (or an existing State system enhanced), and installed in accordance with an approved advance planning document (APD). The APD must provide for an efficient and effective design which, when implemented, will produce a comprehensive system which will improve the program management and administration of the State plans for titles IV-B and IV-E. Comprehensive means that the SACWIS must, to the extent feasible and appropriate, introduce, monitor and account for all the factors of child welfare services, foster care and adoption assistance, family preservation and support services, and independent living services, as provided under paragraph (b).

Paragraphs (b)(1) through (b)(8) provide, in accordance with section 474(a)(3)(C)(iv) of the Act, the functional requirements determined by the Secretary to be likely to provide more efficient, economical and effective administration of the programs carried out under State plans approved under part IV-B and IV-E of the Act. First, under paragraph (b)(1) the system must provide the State automated support to meet the Adoption and Foster Care reporting requirements through the collection, maintenance, integrity checking and electronic transmission of the data elements specified by the Adoption and Foster Care Analysis and Reporting System (AFCARS) requirements mandated under section 479(b) of the Act and § 1355.40 of this chapter.

Paragraph (b)(2) includes the requirements for system interface or integration necessary for the coordination of services with other Federally assisted programs and for the elimination of paperwork and duplication of data collection and data entry. Under this paragraph the SACWIS must provide for electronic data exchange with State systems for: (A) Title IV-A, (B) National Child Abuse and Neglect Data Systems (NCANDS), (C) title XIX, and (D) title IV-D, unless the State demonstrates that such interface or integration would not be practicable because of systems limitations or cost constraints.

With respect to the electronic exchange with the NCANDS and IV-A systems, these are statutory conditions of funding which must be met to the extent practicable. As indicated previously, we have defined "practicable" to mean that the interface requirement need not be met if the responding program system is not capable of an exchange (and the State does not wish to pursue such capability) or where cost constraints render such an interface infeasible as demonstrated by the State through the submission of documentation, in the APD, that the development and operation of such an exchange would exceed the costs of manual inquiry, verification and information exchange as well as the cost of duplicate data entry and maintenance.

Similarly, the electronic data exchange with the title XIX system is required unless the State Medicaid system does not have the capacity for such an interface or the State clearly demonstrates through the submittal of documentation that such an exchange would not otherwise be practicable because of cost constraints. The requirement for an interface with the State's child support enforcement system, unless demonstrated to be impracticable, duplicates the systems requirements under the title IV-D program, requiring statewide child support enforcement systems to provide electronic data exchange with the title IV-E program, to assure that benefits and services are provided in an integrated manner and that the State is able to collect support from the responsible parent.

Paragraph (b)(3) requires that the SACWIS enable the State to meet the provisions of section 422 of the Act by providing for the automated collection, maintenance, management and reporting of necessary information. Section 422 of the Act requires that each child in foster care under the responsibility of the State agency be afforded specific protections related to case planning, case reviews and dispositional hearings.

Accordingly, under paragraph (b)(3) the SACWIS must have automated procedures and processes to assist the State in meeting the 422 requirements. At a minimum, these automated procedures would include collection, maintenance, management and reporting of information on all children in foster care under the responsibility of the State, including statewide data from which the demographic characteristics, location and goals for foster children can be determined.

Under paragraph (b)(4), the SACWIS must provide for the collection and management of information necessary to facilitate the delivery of client services, the acceptance and referral of clients, client registration, and the evaluation of the need for services, including child welfare services under title IV-B subparts 1 and 2, family preservation and family support services, family reunification and permanent placement. This provision speaks to intake and assessment activities which include processing referrals for services, conducting investigations and determining the need for services.

Under paragraph (b)(5), the SACWIS must collect and manage information necessary to determine eligibility for the foster care program, the adoption assistance program, and the independent living program.

Paragraph (b)(6) requires that the SACWIS support necessary case assessment activities. Under this requirement, the system must have automated procedures to assist in evaluating the client's needs.

Under paragraph (b)(7), the SACWIS must assist the State in monitoring case plan development, review and management, including eligibility determinations and redeterminations.

Under this requirement the system must provide for service provision and case management which entails determining eligibility and supporting the caseworker's determination of whether continued service is warranted, the authorization and issuance of appropriate payments, the preparation of service plans, determining whether the agency can provide services, authorizing services and managing the delivery of services.

Finally, under paragraph (b)(8), the confidentiality and security of the information and the system must be ensured.

Paragraph (c) provides other program functions which may be included at State option in the SACWIS design under paragraph (a) of this section. We believe that the vast majority of States would want to incorporate these functions in their SACWIS development or enhancement activities but we are sensitive to the need for State flexibility to determine their own optimal level of automation and thus these elements are optional.

Under paragraph (c)(1), the SACWIS may provide management and tracking capability to assist the State in resource management, including automated procedures to assist in managing service providers, facilities, contracts and recruitment activities associated with foster care and adoptive families.

Under paragraph (c)(2) the SACWIS may provide for tracking and maintenance of legal and court information, and preparation of appropriate notifications to relevant parties.

Under paragraph (c)(3) the SACWIS may provide automated capability to assist in the administration and management of staff and workloads. This functionality would provide for a sensible and practical balance between the workload and workforce and provide a methodology for management to prioritize resource allocation and workload decisions.

Under paragraph (c)(4) of this section, the SACWIS may assist the State in tracking and management of licensing verification activities.

Paragraph (c)(5) provides that the SACWIS may support the State in priority setting and risk assessment or risk analysis activities. Such automated support could include an expert systems module, or rule-based automation to assist in consistent caseworker analysis and to aid in decision-making to the extent the APD justifies that such automation is both technologically and programmatically feasible as well as cost effective.

Paragraph (d), provides that the SACWIS design may at State option provide for interface with other automated information systems, including, but not limited to: accounting and licensing systems, court and juvenile justice systems, vital statistics and education, as appropriate. Such interface or integration would create a link to obtain and verify client information that is maintained in other systems to ensure appropriate delivery of services such as information on school attendance and performance. Other linkages could include resource directories and license payment systems.

Under paragraph (e), if the cost benefit analysis submitted as part of the APD indicates that full adherence to paragraph (c) and (d), would not be cost beneficial (e.g., relative to the State caseload or level of automation), final approval of the APD may be withheld pending reassessment of the State's specific automation needs and, as necessary, adjustment of the APD to reflect a level of automation which is cost beneficial. This paragraph is intended to make clear that any optional functionality to be undertaken by a State is subject to the same requirement for cost effectiveness as required of all other functional elements.

Paragraph (f) provides that a statewide automated child welfare information system may be designed, developed and

installed on a phased basis, in order to allow States to implement AFCARS requirements expeditiously as long as the approved APD includes the State's plan for full implementation of a comprehensive system which meets all functional and data requirements as specified in paragraphs (a) and (b) of this section, and a design which provides for a comprehensive system and which will support these enhancements on a phased basis.

Finally, paragraph (g) requires that the system perform quality assurance functions to provide for the review of case files for accuracy, completeness and compliance with Federal requirements and State standards.

Requirements for submittal of advance planning documents are provided at § 1355.54. Under § 1355.54, Submittal of advance planning documents, the State title IV-E agency must submit an APD for a statewide automated child welfare information system, signed by the appropriate State official, in accordance with procedures specified by 45 CFR part 95, subpart F. The conditions for FFP at the applicable rates for the costs of automatic data processing incurred under an approved State plan for titles IV-A, IV-B and IV-E of the Act (among others) are contained in 45 CFR part 95, subpart F.

ACF review and assessment of statewide automated child welfare information systems is provided under § 1355.55 of this regulation. Under paragraph (a), ACF will, on a continuing basis, review, assess and inspect the planning, design, development, installation and operation of the SACWIS to determine the extent to which such systems: (1) Meet § 1355.53 of this chapter, (2) meet the goals and objectives stated in the approved APD, (3) meet the schedule, budget, and other conditions of the approved APD, and (4) comply with the automated data processing services and acquisitions procedures and requirements of 45 CFR part 95, subpart F.

Under § 1355.56, Failure to meet the conditions of the approved APD, information on the consequences and actions resulting from a State's failure to meet the conditions of the approved APD is provided. Under paragraph (a) of § 1355.56, if ACF finds that the State fails to meet any of the conditions cited in § 1355.53, or to substantially comply with the criteria, requirements and other undertakings prescribed by the approved APD, approval of the APD may be suspended.

Paragraph (b) provides events which shall take place should suspension of the APD occur. Under paragraph (b)(1), if the approval of an APD is suspended

during the planning, design, development, installation, or operation of the SACWIS the State will be given written notice of the suspension stating: (A) The reason for the suspension, (B) the date of the suspension, (C) whether the suspended system complies with Part 95 criteria for 50 percent FFP, and (D) the actions required by the State for future enhanced funding.

Under paragraph (b)(2), the suspension will be effective as of the date the State failed to comply with the approved APD. Paragraph (b)(3) further provides that the suspension shall remain in effect until ACF determines that such system complies with prescribed criteria, requirements, and other undertakings for future Federal funding. Should a State cease development of an approved system, either by voluntary withdrawal or as a result of Federal suspension, paragraph (b)(4) provides that all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be subject to recoupment.

The issue of cost allocation is addressed under § 1355.57. Under paragraph (a), all expenditures of a State to plan, design, develop, install, and operate the data collection and information retrieval system described in § 1355.53 of this chapter shall be treated as necessary for the proper and efficient administration of the State plan under title IV-E, without regard to whether the system may be used with respect to children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under the State plan.

Paragraph (b) provides that cost allocation and distribution for the planning, design, development, installation and operation must be in accordance with Part 95.631 and section 479(e) of the Act, if the SACWIS includes functions, processing, information collection and management, equipment or services that are not directly related to the administration of the programs carried out under the State plans approved under titles IV-B or IV-E.

A conforming provision is provided under § 1356.60, Fiscal requirements (title IV-E), in paragraph (e), Federal matching funds for SACWIS. This paragraph merely reiterates the statutory provision that all expenditures related to an approved APD under § 1355.52, will be treated as necessary for the proper and efficient administration of the State plan, without regard to whether the system is used with respect to foster or adoptive children other than those on behalf of whom foster care

maintenance or adoption assistance payments are made under title IV-E.

Response To Comments

We received a total of 22 comments on the interim final rule published in the **Federal Register** December 22, 1993, (58 FR 67939) from State agencies and other interested parties.

Specific comments and our responses follow.

General Comments

Comment: Commenters were extremely supportive of the interim final rules. They were pleased with the flexibility provided and noted that the rules incorporate the diversity of child welfare programs into a realistic automation plan. One commenter however was concerned about the limited comment period provided.

Response: We believe that the partnership strategy employed in developing these rules fostered a positive dialogue between the Federal government and States and led to the development of a better rulemaking document which provides States with the tools they need to improve IV-B/IV-E effectiveness. As indicated in the preamble to the interim final rule, in developing these rules we relied heavily on information from existing State efforts to establish systems and the efforts of a State and Federal child welfare system workgroup.

So that the States could begin development and avoid the risk that the rules would change, we restricted the comment period to 30 days in an effort to quickly identify whether there were any fundamental problems or concerns with the terms of the interim rules which would have necessitated a major change in direction in the final rule. We felt this was critical because of the relatively short window of opportunity related to the availability of enhanced funding.

Requirements for FFP

Comment: One commenter questioned the criteria used to distinguish between development and operation and asked how implementation costs will be funded. Another commenter asked at what point a system is considered operational for the purpose of claiming expenditures at the regular rate, particularly under a phased approach.

Response: Enhanced funding is available for the planning, design development and installation of a SACWIS, while operational costs are funded at the regular administrative match rate. We view implementation costs as part of design, development and installation of the system. The State's

ability to claim enhanced funding ceases when the system (or portion of the SACWIS, in a phased development effort) has successfully passed a pilot test and is used to support child welfare activities in an automated fashion in any geographical area. However, a State may continue to claim enhanced funding for costs associated with the planning, design, development and installation of a subsequent phase of the total project, as well as allowable installation costs (e.g., conversion and training activities) for parts of the State that have not yet been converted to the new system.

As provided in ACF-OISM-AT-95-001, the operational stage of the SACWIS is the point at which the system is used for automated processing. The implementation APD covers the design, development and installation of the SACWIS. It should also be noted that hardware costs are eligible for 75 percent matching within the window provided by statute regardless of the operational status of the system.

HHS and the Food and Consumer Service (formerly the Food and Nutrition Service) published changes to our information technology policies regarding the depreciation or expensing of data processing equipment (Action Transmittal AT-94-5, dated July 22, 1994). Equipment having a useful life of more than one year and a unit acquisition cost of less than \$5,000 may now be expensed for the quarter in which it is purchased. These recent policy changes should allow States to expense a large portion of the hardware necessary for SACWIS; however, there will still remain hardware with a unit acquisition cost of greater than \$5,000. For equipment that falls into this category, the State must either depreciate or charge use allowance for the cost of the equipment over its useful life, and in accordance with statewide accounting practice.

For more information, see 45 CFR part 95, subpart F, "Automated Data Processing Equipment and Services; Conditions for Federal Financial Participation (FFP)."

Comment: One commenter asked what effect the rules will have on current and future claims at the 50 percent matching rate for systems enhancements that may not meet these requirements. Another commenter asked whether the effective date limitation means that the entire system must be accepted prior to September 30, 1996 for enhanced funding to be available.

Response: In response to the first commenter, these rules apply only to

systems funded at the enhanced matching rate provided in the 1993 legislation. However, any system initially funded under these rules would continue to be subject to these requirements even after the start of FY 1997 when the enhanced funding allowance expires.

With respect to the second comment, the system need not be fully operational by September 30, 1996 to receive enhanced funding. As provided in ACF-OISM-95-001, the three-year window for claiming enhanced funding does not mean that the project must be completed prior to the expiration of the availability of enhanced funding. However, even though the project may not be complete within this time, the statute is clear that expenditures after this date are no longer eligible for enhanced funding.

Comment: A number of commenters expressed concern that the three year window for enhanced funding is too short, especially for States which are starting with primitive systems or which require the consent of the State legislature. Others were concerned with the limitation in light of their immediate need to meet the AFCARS requirements.

Response: The three-year time limit on the availability of enhanced funding for statewide automated child welfare information systems is contained in statute and we have no statutory authority to extend the availability of this funding rate. With respect to the second point, however, we understand that States may have difficulty in dedicating the necessary time and resources to meet the AFCARS and SACWIS requirements concurrently and for this reason the rule provides a phase-in strategy to allow the AFCARS requirements of the system to be pursued first.

As provided in ACF-OISM-AT-95-001, a phased approach might allow the roll-out of a system on a phased basis under which workers could begin to use some of the planned functionality of the system, such as enhanced data collection capability which would enable compliance with the AFCARS reporting requirements, while additional modules or components are not yet available.

Functional Requirements

Comment: One commenter asked whether guidance will be offered to assure that States have a clear understanding of the systems requirements.

Response: Since issuance of the interim final rule, general guidance on systems requirements and functionality has been provided to the States in

several forums, such as the semi-annual ACF User Group Meeting, various ACF sponsored State technical advisory groups, System and Child Welfare related conferences, State and Federal Child Welfare Collaboratives, and issuance of a draft and final version of a child welfare related action transmittal (ACF-OISM-AT-95-001). As indicated in the interim final rule, we stand ready to assist in the planning, design, development and installation of a SACWIS upon request.

Comment: One commenter was concerned that the requirements are too client focused, rather than family focused, stating that in a system growing out of concern for family preservation, there needs to be greater attention to the identification of the strengths and needs of the family.

Response: We disagree with the commenter and believe that the SACWIS design envisioned under this rule supports the family. These projects are intended to be more than information systems but rather comprehensive tools to make service delivery more responsive to the needs of families and communities. It is our strong expectation, which we had hoped to convey in the interim final rule, that States will take advantage of this opportunity to move the child welfare service system into a direction which would lead to a more coordinated, flexible system, built on and linked to existing community services and support able to serve children and their families in a more effective way.

A. Interfaces

Comment: One commenter asked about the availability of FFP for systems modifications to enable the interface and data exchange requirements with SACWIS to be met. Another requested additional clarification as to what must be addressed in an interface component. Still another asked if the cost of an interface is placed completely on the State's child welfare agency and questioned the role of the agencies with jurisdiction over IV-A, Medicaid and IV-D?

Response: As provided in ACF-OISM-AT-95-001, FFP is available for the IV-B/IV-E portion of the interface. FFP is not available for the cost of automating the respondent agency. Because we have no legislative authority to pay for the reciprocating end of any interface, any modifications to another existing system to support an interface with a SACWIS (optional or required) must be funded by the program that supports the system to which this interface is being established.

To the extent that such programs are automated, the SACWIS would be required to establish an interface. Where these entities are not automated, no automated interface is possible, and the State will not need to fulfill this requirement. Further, as provided in the above cited action transmittal, FFP is not available to develop functionality in a SACWIS when it duplicates functionality which already exists in other State system(s) to which an interface is required.

The purpose of these requirements is to provide integrated services to clients through more accurate, timely and effective exchange of information.

Comment: One commenter asked that we provide clarification on cost allocation procedures between programs sharing data for purposes of the interface requirements.

Response: As indicated above, FFP is not available to develop functionality when it duplicates functions which already exist in another State system. If a function supports but does not exclusively or primarily benefit the program under title IV-E or IV-B, the cost must be allocated among all benefitting programs. To illustrate, our action transmittal provided the example of factors pertaining to the determination of eligibility for an income maintenance program such as AFDC. While the determination of eligibility for such benefits is clearly linked to the provision of services to children and families under title IV-E and IV-B, it is not reasonable to allocate the cost of developing eligibility subsystems or modules to title IV-E as the primary program benefitting from such automation. In these cases, the cost must be allocated between title IV-E and the other benefitting eligibility processes.

The issue of cost allocation is addressed in more detail in response to comments later in the preamble and in ACF-OISM-AT-95-001.

Comment: One commenter requested clarification of the requirement for interface with the IV-A (AFDC) and IV-D (child support enforcement) programs.

Response: We believe each of the interfaces referenced by the commenter are important to SACWIS development in that they are intricately related to the title IV-E program. Title IV-A eligibility is a determining factor in title IV-E eligibility. Further, the requirement for an interface where practicable between the SACWIS and the State's IV-A system is mandated in statute. The title IV-D interface requirement replicates a functional requirement of a certified IV-D system. Interface between the child

support agency and the SACWIS may be extremely beneficial to the goals of both programs in that it may assist in the collection of increased child support on behalf of children receiving child welfare services and could assist in the unification and permanent placement of children with formerly noncustodial parents.

As with the requirements for interface with the State Medicaid agency and the State child abuse and neglect system, we believe an electronic interface will be far more effective in service delivery than redundant data entry to multiple systems.

B. Case Assessment Activities

Comment: One commenter was concerned that the approach to services is not sufficiently individual and stated that an adequate SACWIS needs to support a sophisticated and highly individualized approach to the provision of services.

Response: Automation is intended to assist workers' needs in effective service delivery, not supersede their judgment. We wholeheartedly agree that individual assessment is critical but believe that the system can support and inform the caseworker by ensuring that the right questions are asked and addressed.

C. Confidentiality and Security

Comment: One commenter was particularly concerned about the requirement that the State agency responsible for the APD be accountable for the confidentiality of the SACWIS and raised related concerns regarding access to information and the cross-training of agency workers. Concern was raised by another commenter that the rule does not mention confidentiality which the commenter considers to be an important aspect of any required cross-agency interface. Still another questioned how confidentiality of information can be assured in an interface system and what rules the agency with jurisdiction over IV-A, IV-D and Medicaid have for treatment?

Response: These regulations require under § 1355.53, that at a minimum the SACWIS must ensure the confidentiality and security of the information and the system. Under this requirement, States are expected to build systems which provide necessary safeguards which would, for example, enable them to share information, when such sharing is legal and appropriate, without identifying the source, or which would enable them to limit access to specific data elements.

Each of the programs subject to an interface expectation is also subject to

specific statutory confidentiality requirements which the system must provide. However, Federal statute and regulations allow, and in many cases require, designated State agencies to disclose confidential information to other State agencies for the purpose of administering other Federal programs. Thus, confidentiality rules should not be an obstacle to the development of an effective interface with the systems used to administer the title IV-A, IV-D and XIX programs.

For more information on the issue of confidentiality, see our action transmittal, ACF-OISM-AT-95-001.

Optional Functionality

Comment: One commenter expressed hope that the final regulations will speak to the importance of incorporating outcome measure data collection within the comprehensive system development and that data collection specifically related to capturing training information for State staff be provided as an optional feature.

Response: We agree that data collection to support outcome measures are important to comprehensive systems design and believe that we have provided States with flexibility to incorporate these measures in their SACWIS. Data collection necessary to support outcome measures are integral to meeting the AFCARS requirements and are also embraced under § 1355.53(g), which requires that the system perform Quality Assurance functions for the review of casefiles for accuracy, completeness and compliance with Federal requirements as well as State standards. This would include generation of summary management reports and exception reports related to services needed and provided.

With respect to the second point, under § 1355.53(c)(1), the system may perform functions related to resource management which would include information captured for training purposes.

Comment: One commenter asked whether the provision at § 1355.53(c)(3) includes *systems* administration or administration of staff and workload and asked for clarification of whether costs associated with systems administration are eligible for enhanced funding and then regular funding for operational costs.

Response: Under § 1355.53(c)(3) the SACWIS may provide automated capability to assist in the administration and management of *staff and workloads*. This would provide a methodology for management to prioritize resource allocation and workload decisions to support program staff. It is not intended

to provide systems administrative support.

Comment: One commenter asked for clarification of whether the allowance at § 1355.53(c)(5), i.e., that the system may provide for risk analysis, was the same as risk assessment.

Response: Yes, as used under § 1355.53(c)(5) risk analysis is the same as risk assessment.

Comment: Also regarding risk analysis, one commenter expressed concern that ACF may be suggesting that commercially-available off-the-shelf (COTS) technology is limited in use to the area mentioned in the regulation and encouraged ACF to restate the position on this technology and its use so it is clear that they are not restricting it in some manner or endorsing any particular system approach. The commenter further questioned ACF's reference to "rule based" automation and noted that COTS technology is far preferable to the customized rule based software modules which have been embedded in other human service systems.

Response: It was not our intent to suggest that commercially available off the shelf technology (COTS) is either limited in its use or inferior to customized rule based technology. However, we are not aware of a COTS package available today that will meet the case management, service delivery and automated support needed to qualify as a SACWIS. A State may build or transfer a customized application software which is enabled by a COTS software development tool.

Comment: One commenter questioned whether the intent of § 1355.53(e) was to provide that if one of the optional functions under paragraph (c) and (d) is not cost beneficial, final approval of the APD may be withheld.

Response: Paragraphs (c) and (d) of § 1355.53 are optional levels of system functionality which States have discretion to adopt, and for which enhanced funding may be provided, if such functionality will be efficient and effective. However, if a State decides to include any or all of these elements in their SACWIS design, the APD would have to indicate that their inclusion would not negatively affect the cost-effectiveness of the system. The fact that they are optional functions does not eliminate the requirement that the system design prove to be cost beneficial. For example, if in a given State inclusion of one or more of these elements resulted in over-automation for demographic reasons, that is, automated to a level beyond the State's needs and thus was not cost beneficial, approval of the APD would be withheld

until the area of over-automation was dropped.

If it is shown through the cost benefit assessment that it is more cost-effective not to automate to the degree provided under the optional functionality, approval of the APD may be withheld.

Comment: We were asked by one commenter to state that the "mays" of the system are purely optional. This commenter also remarked that States should not have to justify why these functions are not included in their APD.

Response: We would reiterate that the functionality included under paragraphs (c) and (d) of § 1355.53 are State options as indicated in the preamble. If a State chooses not to include these elements in their SACWIS design, no justification is necessary in the APD. However, as provided under paragraph (e), if any of these items is included, the State must indicate in the APD that such element(s) will be cost beneficial.

Comment: One commenter asked for clarification regarding what functions can reside within a statewide payment system and what is *required* for the SACWIS.

Response: We are not limiting the use or functions of statewide payment systems under this regulation. States have flexibility to continue to use such systems as long as the IV-B/IV-E related information necessary to meet these regulations is accessible through communication or link with the SACWIS. In this case, enhanced funding may be claimed for the interface to the existing statewide payment system. However, any modifications to a separate system must be allocated to all benefitting programs affected by such modification. Any costs allocable to title IV-B or IV-E for such modifications will only be matched at the regular funding rate.

Comment: One commenter questioned whether it would be possible to modify the APD at a later date to include optional interfaces.

Response: Yes, under § 1355.53(d), the system may interface with other automated information systems. This could be included under the original APD or as an amendment to the APD, as long as the State can show, in accordance with paragraph (e), that such an interface would be cost beneficial.

Comment: One commenter stated appreciation for the section in the rules that addresses optional systems functions, acknowledging that not all States will be in a position to develop systems so far reaching.

Response: Our intent was to outline the level of functionality we thought appropriate for the vast majority of

States while recognizing the need for maximum State flexibility.

Comment: We were asked by one commenter to clarify whether the need for a cost benefit analysis in the APD process could be waived.

Response: The need for a cost benefit analysis in the APD cannot be waived. Cost benefit analyses are a required portion of all APDs, necessary to determine efficiency, effectiveness and economy of system design. As noted in the preamble to the interim final rule, OBRA '93, in authorizing enhanced funding for automated information systems for family and children's programs, specifically requires for the first time that the Secretary include economic considerations along with the traditional statutory provisions for systems implementation of "efficiency and effectiveness" in determining whether a system should be funded. In accordance with existing requirements at 45 CFR Part 95, before a project is approved the State must present a cost benefit analysis as part of an APD. We have issued technical assistance in this area in the form of a publication entitled *Feasibility, Alternatives, and Cost/Benefit Analysis Guide*. Following our initial publication, we issued additional guidance entitled *Companion Guide Cost/Benefit Analysis Illustrated*. Both of these documents are available through ACF.

Sound management practices require that a State perform a cost/benefit analysis of any proposed undertaking which would result in the expenditure of a large amount of funds.

Comment: One commenter suggested that it might be helpful to revise the language in § 1355.53(e) to provide "any function described under paragraph (c) and (d) included in the APD by the State will require cost justification or final approval of the APD may be withheld."

Response: Under paragraph (e), if a State chooses to include optional functionality in its system design, such functions are subject to all cost benefit tests required of any other functional specification. If a State cannot design a system including such optional functionality in a manner that proves cost beneficial in the APD, approval of the APD may be withheld until such time as the system is designed in such a manner that it is cost beneficial.

While the language suggested by the commenter is acceptable, since we did not receive a substantial number of questions on this issue, we are not revising the language from that provided in the interim final rule.

Comment: Paragraph (f) of § 1355.53 provides that a statewide automated child welfare information system may

be designed, developed and installed on a phased basis, in order to allow States to implement AFCARS requirements expeditiously, in accordance with section 479(b) of the Act, as long as the APD includes the State's plan for full implementation of a comprehensive system which meets all functional requirements and a system design which will support these enhancements on a phased basis. According to a commenter, it is not clear in the case of a State which has included mandatory components and optional components whether they only have to meet the mandatory components addressed in the APD to keep from jeopardizing their enhanced match.

Several commenters indicated that they were pleased with the phased approach. One of these requested clarification on enhanced funding allowed for the development of non-required features.

Response: With respect to the first comment, if a State initially anticipates developing a system on a phased basis which includes mandatory and optional functionality and later decides not to pursue the optional elements, they would not jeopardize the enhanced funding. In such a case, we would simply adjust funding approvals to reflect changes for the cost of the optional elements which were dropped from the systems effort. Corresponding changes will be required in the cost-benefit analysis for the project to reflect the anticipated differences in cost-effectiveness resulting from the change in systems functionality. However, we expect such situations to be rare and that APDs will realistically provide what the State can do.

With respect to the latter comment, optional elements are eligible for enhanced funding as long as other general requirements for enhanced funding are met.

Comment: One commenter expressed the view that the term quality assurance functions has no singular or clear meaning in the child welfare or social services arena and stated that States should not be expected to perform functions beyond their current staffing and legislative mandates and scope.

Another commenter indicated that this provision might be troubling because it sounds like the system would need to include almost the entire casefile in order to perform the functions necessary to assure compliance with Federal requirements and State standards. The commenter questioned this mandate since it was not in statute.

Other commenters requested clarification of why the quality

assurance function is needed and said the definition should include whether it is related to data integrity for AFCARS or rather review of a casefile to assure compliance with program policy requirements. One commenter asked for further guidance on the requirements for quality assurance functions to provide for review of casefiles.

Response: While not specifically mandated by statute, we believe the requirement for quality assurance capability is necessary to meet the statutory requirements of efficiency, economy and effectiveness. Since a State's SACWIS is intended to be the source of child welfare information, it is essential that the State have in place a process to ensure the quality and completeness of the data. As provided in our action transmittal (ACF-OISM-AT-95-001), it is essential that the system incorporate quality assurance measures, processes and functions to ensure completeness, accuracy and consistency of critical data and to support sound management practices. The requirement is intended to ensure that all current and historical information and data maintained by the system are kept in logical sequence, and accessible in a timely manner to monitor operation and assess performance. With respect to the commenter's concern about the need for the system to maintain the State's entire casefile, we would remind the commenter that such a requirement is inherent in the statutory requirement that the system meet the SACWIS case management and AFCARS requirements, to the extent that these requirements comprise the most significant data elements included in the casefile.

Further guidance on meeting the requirements for quality assurance are detailed in our action transmittal referenced above.

Comment: One commenter stated that quality assurance functions are focused on agency process rather than outcomes for children and families and expressed concern that while good attention is given to documenting service delivery only minimal attention is given to outcome measures. The commenter was concerned that an adequate SACWIS must not only address the scope of services but their effectiveness.

Response: We encourage States to use their SACWIS as a means for measuring the effectiveness of service delivery. Furthermore, we believe that the language is flexible enough to allow States to address outcome measures as part of their SACWIS effort. However, effective outcome measures of service delivery do not ensure the accuracy and

completeness of data, and while we encourage State to use the flexibility allowed, it is essential that the system incorporate quality assurance measures to ensure the completeness, accuracy and consistency of critical data.

Comment: One commenter stated a desire to see a statement in the optional section that allows the Secretary to approve other enhancements to the child welfare automated systems not mentioned in this section but which will result in a comprehensive system.

Response: Additional functionality beyond what is defined in § 1355.53 of the regulation may be funded at the enhanced rate as long as the State can demonstrate that it will provide more efficient, economical and effective administration of the programs under title IV-B and IV-E. To be eligible, added functionality may not duplicate functionality included in an existing system to which an interface is required and the APD must address the cost benefit of the optional functionality requested for approval by the State.

APD Submission

Comment: One respondent asked how States which have already submitted an APD expressing the intent to seek funding for a comprehensive system should submit claims now for the enhanced funding.

Response: Such States would submit requests using existing form IV-E-12, State Quarterly Report of Expenditures and Estimates, and following existing procedures for requesting program funding under title IV-E. Procedures for submitting APDs are specified by 45 CFR part 95, subpart F.

Comment: Two commenters expressed agreement with the transfer policy provided in the interim final rule. However, another requested that systems transfer be addressed in the final rule. Still another suggested that system transfer may not be the best solution.

Response: As stated in the preamble to the interim final rule, our intent in publishing these rules is to provide States necessary flexibility to develop systems fitting their individual needs. Under part 95 requirements, a State must conduct an alternative analysis to consider both the enhancement of any existing systems and the transfer of a system to determine the most cost effective approach. However, as noted in the interim final rule, we recognize that at this time, there is only limited State experience in comprehensive child welfare systems development. Because of the limited scope of current comprehensive child welfare systems, a flexible approach has been adopted in

considering justifications for not transferring existing systems.

Comment: Two commenters expressed interest in pursuing any technical assistance which ACF can provide. Another commenter questioned how technical assistance can be provided when ACF Regional Office staff have no travel money.

Response: Budget limitations often necessitate difficult decisions concerning allocation of resources, including decisions which may serve to limit the availability of on-site technical assistance. However, we do not believe that technical assistance must necessarily be on-site to be effective. In fact, we are hopeful that our action transmittal and our involvement in national users meeting and conferences have alleviated much of the need for on-site assistance. Furthermore, ACF has awarded a contract to assist in the development of a Child Welfare prototype system. As part of that contract, we will sponsor several national and regional conferences to share information and provide technical assistance to States. Central and Regional Office staff stand ready to provide States with help upon request.

Comment: One commenter asked whether, in the interest of saving time, if it is possible to share APD work being done by various other States and whether the Federal government will facilitate sharing. Another expressed interest in efforts to develop a consortia of States with similar commitments to permit more rapid and efficient development of systems which have greater capability to produce information of quality.

Response: We have and will continue to share system related documents, such as APDs, RFPs and other design documents, as they become available. These materials are available to the public upon request. We have distributed information to various States, child welfare related foundations, vendors and other public interest groups. We have entered into partnerships with States to coordinate the joint design of child welfare information systems. We have established different State Technical Advisory groups to identify the best approaches for sharing information. We have participated in regional and national system and child welfare conference and we will continue to encourage the sharing of State experience at the ACF Users Group meetings.

Review and Assessment and Part 95 Requirements

Comment: One commenter stated that depreciation of equipment is a major concern. For many States the three year window could conceivably be very narrow for the planning, design and development phases, especially under a phased-in approach and for States just entering the planning phase and asked that this be addressed in the guidance provided under an action transmittal.

Others stated that the depreciation period should be over the same period as the availability of enhanced funding, i.e., equipment should be depreciated over a three year period instead of a five year time span.

These commenters point out that the regulation appears to conflict with the statute which states that payments to States "including 75 percent of the full amount of expenditures for hardware components for such system" and suggested that since enhanced funding is available for only 3 years, the rule should reflect an exception to the 5-year depreciation schedule requirements.

On a related issue, commenters thought that language on financing of hardware appears to be the same as depreciation and suggested that expensing be instituted.

Response: As provided in our action transmittal, recent policy changes delineated at ACF-AT-94-5, dated July 22, 1994, may allow States to expense a large portion of the hardware necessary for SACWIS. For additional information, see ACF-OISM-AT-95-001.

However, the statute explicitly eliminates enhanced funding for system activities as of October 1, 1996. We have no authority to adjust this statutory date or to revise the Department's requirements for capitalization and depreciation of equipment in this final rule. The controlling requirements for depreciation are found in 45 CFR part 95, subparts F and G.

Comment: One commenter recommended that a clear timeframe for review and assessment of the systems be provided to allow States to view the process as cooperative, supportive and one that allows regular feedback, technical support and a mechanism for State accountability.

Response: As indicated previously, technical assistance is available to ensure that the process for APD review and approval and subsequent system approval is as cooperative and supportive as possible. Unlike the case with other State systems, the review process established does not entail a certification requirement in order to allow maximum flexibility.

Comment: With respect to the submittal of Advance Planning Document Updates, one commenter noted that meeting the timeframe for submitting an APD may be problematic due to new Federal requirements, identification of proposed project changes and the internal State review process.

Similarly, another commenter expressed concern that the timeframe will be difficult for some States to meet and encouraged ACF to actively seek out States to which this section applied to ensure they understand the importance of meeting this critical deadline.

Response: The regulations at 45 CFR 95.605(3)(b), indicate that a State must submit an As Needed APD Update when significant changes are expected to a project. We have identified and worked with the States affected by this requirement and have either granted final or conditional approval of their APD Updates. None of the concerned States were adversely affected by this requirement.

Comment: On a miscellaneous issue, one commenter noted that paragraph (b) has been reserved under 45 CFR 95.641 or 45 CFR 1355.55 and questioned this.

Response: The issue raised by the commenter merely speaks to a regulatory drafting requirement. Under regulatory drafting rules it is inappropriate to refer to a paragraph designated as "(a)" without referencing a "(b)" cite. There are no plans to add to this section.

Failure to Meet the Condition of the Approved APD

Comment: One commenter thought that it was unclear whether recoupment of enhanced FFP applies only to those components of the APD that are required under 45 CFR 1355.53. States could develop an APD that proposes to develop an automated system that included some permissive components, develop required components and then fail to get sufficient funding to complete the permissive components. States should not be penalized for revising the APD downward as long as they meet the minimum requirements.

Response: While we would hope that States would ensure that their plans are realistic prior to submittal, States would not be penalized in cases where optional automation plans were dropped, unless such changes negatively affected either the cost-effectiveness of the system or the State's ability to complete the project successfully. In such cases, if a State pulled back on discretionary items, we

would simply recalculate funding to make the necessary adjustments.

Comment: Another commenter noted that § 1355.56 provides that failure to meet the conditions of these regulations may result in an approved APD being suspended while at the same time recognizing that penalties are provided for failure to comply with the AFCARS regulations. The commenter was concerned that this could put States in the position of being unable to meet AFCARS because of a loss of SACWIS funding.

Response: We would like to clarify that the loss of funding discussed with respect to § 1355.56 refers only to enhanced funding for SACWIS and good systems planning would ensure that no State is put in the position of losing this funding.

We agree that there is a strong interrelationship between AFCARS implementation and SACWIS development and for this reason have allowed States to implement their SACWIS on a phased based to ensure that AFCARS requirements are met expeditiously.

Cost allocation

Comment: One commenter expressed interest that we acknowledge that systems transfer from another State may not be the best solution, but shared development (and funding) program to program in the State be encouraged.

Another asked that we provide more detail on cost allocation.

Response: We agree that systems transfer from another State may not be the best solution in SACWIS design and, as indicated in the preamble to the interim final rule, plan to be flexible in our consideration of State analysis provided in the APD for not going this route in SACWIS development.

For information regarding the effect of shared development on cost allocation or for detailed specification of the cost allocation requirement, please see our action transmittal, ACF-OISM-AT-95-001.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

Regulatory Flexibility Analysis

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

List of Subjects

45 CFR Part 1355

Adoption and foster care, Child welfare, Data collection, Definitions grant programs—Social programs

45 CFR Part 1356

Adoption and foster Care, Administrative costs, Child welfare, Fiscal requirements (title IV-E), Grant programs—social programs, Statewide information systems

(Catalog of Federal Domestic Assistance Program No. 13.658, Foster Care Maintenance, 13.659, Adoption Assistance and 13.645, Child Welfare Services—State Grants)

Approved: April 5, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Accordingly, the interim rule amending 45 CFR Parts 1355 and 1356 which was published at 58 FR 67939 on December 22, 1993, is adopted as a final rule with the following change:

PART 1355—GENERAL

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

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq.; 42 U.S.C. 1301 and 1302.

§ 1355.53 [Amended]

2. Section 1355.53(b)(3) is amended by replacing the reference to "section 427" in the first line with a reference to "section 422."

[FR Doc. 95-11909 Filed 5-18-95; 8:45 am]

BILLING CODE 4184-01-P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 35)]

Rail General Exemption Authority—Exemption of Ferrous Recyclables

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.