

physician assistant's State of practice, and license, certification or registration number, as applicable. \* \* \*

(Approved by the Office of Management and Budget under control number 0915-0244.)

3. Section 130.21 is amended by adding a parenthetical phrase at the end of the section to read as follows:

**§ 130.21 What documentation is required for petitions filed by living persons with HIV?**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0915-0244.)

4. Section 130.22 is amended by adding a parenthetical phrase at the end of the section to read as follows:

**§ 130.22 What documentation is required for petitions filed by survivors of persons with HIV, which are filed in cases where the person with HIV dies before filing a petition?**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0915-0244.)

5. Section 130.23 is amended by adding a parenthetical phrase at the end of the section to read as follows:

**§ 130.23 What documentation is required for amendments to petitions, which are filed by survivors of persons with HIV?**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0915-0244.)

6. A new § 130.24 is added to subpart C to read as follows:

**§ 130.24 What additional documentation may the Secretary require to resolve eligibility or payment issues?**

(a) In addition to the applicable documentation required under this subpart, the Secretary may require the petitioner to provide other documentation, as the Secretary deems appropriate, to resolve issues of eligibility, or of the procedure for payment, raised by a petition.

(b) Where a petition filed on behalf of a minor or other individual who is legally incompetent to receive payment has been approved for payment, the personal representative filing the petition on the individual's behalf must submit the following before payment can be made for the legally incompetent individual:

(1) Documentation of a guardianship or conservatorship, established in accordance with State and local law; and

(2) Information identifying a guardianship or conservatorship account.

(Approved by the Office of Management and Budget under control number 0915-0244.)

**Subpart D—Procedures for Filing and Paying Complete Petitions**

8. Section 130.30 is amended by adding a parenthetical phrase at the end of the section to read as follows:

**§ 130.30 Who may file a petition for payment or an amendment to a petition?**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0915-0244.)

9. Section § 130.31 is amended by adding a parenthetical phrase at the end of the section to read as follows:

**§ 130.31 How and when is a petition for payment filed?**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0915-0244.)

10. Section 130.33 is amended by adding a sentence at the end of paragraph (c), and by revising paragraph (d)(2) to read as follows:

**§ 130.33 How will the Secretary determine whether a petition is complete?**

\* \* \* \* \*

(c) \* \* \* The Secretary may allow additional time beyond the 60-day deadline, as the Secretary deems appropriate, for the petitioner to provide the documentation required to complete the petition.

(d) \* \* \* (2) The 60-day deadline, or the extended deadline under § 130.33(c), as applicable, to complete the petition is not met; or

\* \* \* \* \*

[FR Doc. 01-29173 Filed 11-21-01; 8:45 am]

BILLING CODE 4165-15-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**45 CFR Parts 1355, 1356 and 1357**

**Administration for Children and Families**

Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews; Technical Corrections

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

**ACTION:** Technical corrections.

**SUMMARY:** The Administration for Children and Families is correcting the

final rule on Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews published on January 25, 2000 (65 FR 4019-4093), and related regulations at 45 CFR parts 1355, 1356 and 1357.

**DATES:** Effective November 23, 2001. Comments accepted until January 22, 2002.

**ADDRESSES:** Please address comments to Kathleen McHugh, Director of Policy, Children's Bureau, Administration on Children, Youth and Families, 330 C Street, SW., Washington, DC 20447. Comments will not be accepted by telephone.

**FOR FURTHER INFORMATION CONTACT:** Kathleen McHugh, Children's Bureau, 202-401-5789.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Administration on Children, Youth and Families published a final rule on the title IV-E foster care eligibility reviews and the child and family services reviews on January 25, 2000, in the **Federal Register** (65 FR 4019-4093). The purpose of the final rule was to implement reviews of title IV-E foster care maintenance payments and title IV-B and IV-E State plan requirements. The final rule also implemented certain requirements of the Social Security Act Amendments of 1994; the Multiethnic Placement Act of 1994, as amended; and the Adoption and Safe Families Act of 1997. The effective date of the rule was March 27, 2000.

**II. Need for Technical and Correcting Amendments in 45 CFR Parts 1355, 1356 and 1357**

In reviewing the final rule, we have identified several technical errors, omissions, and obsolete references in the final regulations. In addition, certain sections of the existing regulations conflict with recent changes in Federal child welfare legislation. We are making these technical, conforming amendments to correct and clarify the regulations.

*Waiver of Notice and Comment Procedures*

The Administrative Procedure Act (5 U.S.C. 55(b)(B)) requires that the Department publish a Notice of Proposed Rulemaking unless the Department finds, for good cause, that such notice is impracticable, unnecessary, or contrary to the public interest. In this instance, we are making only technical, nonsubstantive clarifications, corrections, and conforming amendments. Accordingly,

the Department has determined that it would be unnecessary to use notice and comment procedures. We will, however, consider comments received within 60 days of publication in the **Federal Register**.

#### Regulatory Text

We have made the following technical corrections in the regulatory text:

#### *Corrections to Part 1355*

- We have removed the definition of Independent Living Program (ILP) in § 1355.20(a). The Foster Care Independence Act of 1999 (12/14/99), Public Law 106–169, renamed and significantly revised the program at section 477 of the Social Security Act (the Act), which makes the regulatory definition obsolete.

- In § 1355.20(a), we amended the definition of Child abuse and neglect to remove the prior cross-reference to an obsolete definition in 45 CFR 1340.2. The Child Abuse Prevention and Treatment Act (CAPTA) Amendments of 1996 changed the definition of child abuse and neglect. Therefore, we have cross-referenced the statutory citation rather than the regulatory definition.

- We made the definition of State in § 1355.20(a) consistent with Title IV–A of the Act (section 402(a)(3) and section 419(5)). Title IV–A requires a State that operates a Temporary Assistance for Needy Families (TANF) program to certify that it will also operate a program under an approved title IV–E State plan. Title IV–A defines “State” as the 50 States, District of Columbia, Puerto Rico, the United States Virgin Islands, Guam and American Samoa (section 419(5) of the Act). We are adding Puerto Rico, the Virgin Islands, Guam and American Samoa to the definition in § 1355.20 for consistency.

- In the definition of Statewide assessment in § 1355.20(a) we added a cross-reference to the specific sections in 1355.33 that contain the requirements for a statewide assessment.

- We corrected the placement of § 1355.20(b) so that it follows the entire § 1355.20(a). As published, paragraph (b) was misplaced so that it appeared prior to the definition of Statewide assessment in § 1355.20(a).

- We amended § 1355.30(n)(2) to correct the prior cross-reference to 45 CFR 201.6. In accordance with section 1123A of the Act, we established procedures in the final rule for determinations regarding lack of compliance with title IV–B and IV–E State plan provisions; accordingly, the procedures prescribed by § 201.6 are applicable only with respect to lack of compliance arising out of an

unapprovable change in an approved State plan or the failure of a State to change its approved plan to conform to a new Federal requirement for approval of State plans.

- We deleted § 1355.30(n)(3), which cross-references 45 CFR 201.7, since there is no statutory basis for a direct appeal to a Federal Appeals Court from a Departmental Appeals Board decision pertaining to Social Security Act titles IV–B or IV–E. *California Department of Social Services v. Shalala*, 166F.3d 1019 (9th Circuit 1999).

- In § 1355.32(d)(4), we added the words, “if the provisions for such a plan are applicable” to the first sentence to eliminate an inconsistency between the statute and the regulation. The statute does not allow for program improvement prior to a penalty for every instance of noncompliance with a State plan requirement in titles IV–B or IV–E of the Act. Specifically, section 474(d)(1) of the Act makes specific provisions for penalties and corrective action for violations of section 471(a)(23) of the Act.

- We have amended § 1355.33(b)(2) to allow States to use an alternative data source for the National Child Abuse and Neglect Data System (NCANDS) in any child and family services review. As originally published the regulatory language limited the use of alternative child safety data to the initial child and family services review. However, NCANDS is a voluntary reporting system and we did not intend to require States to report data to NCANDS, although it is our preferred data source.

- In § 1355.33(b), we corrected the numbering for the last two paragraphs of that section, which were incorrectly numbered as paragraphs (b)(1) and (b)(2). They are now numbered as paragraphs (b)(5) and (b)(6).

- In § 1355.33(c)(6) we clarified that the oversample for the child and family services reviews will consist of up to 150 foster care cases and 150 in-home services cases. To make sure that there is an adequate oversample from which to pull additional cases when needed, we must ensure that there are a sufficient number of cases of each type. In this paragraph, we also clarified the language with regard to the discrepancy resolution process. As stated in § 1355.33(d), we will use the process to resolve discrepancies between information in the statewide assessment and the on-site review. The prior language in § 1355.33(c)(6), however, restricted use of the resolution process to discrepancies between statewide data indicators and the on-site review. As the amended regulation makes clear, we allow a State to submit additional

information or review additional cases when a discrepancy exists between the statewide assessment and the on-site review.

- We corrected § 1355.33(d)(2), to specify that the oversample for the child and family services reviews will consist of no more than 150 foster care cases and 150 in-home services cases.

- The prior regulatory language in § 1355.34(b)(4) required the Secretary to develop statewide data indicators for every outcome, but it is not currently possible to do this for well-being outcomes, since well-being measures are not typically captured in State information systems or reported to AFCARS. Therefore, we have amended the section to allow but not require the Secretary to develop statewide data indicators for outcomes where they do not currently exist.

- In § 1355.34(c)(2)(v), we removed an inconsistency between two sections of the regulation. We have clarified that, in a child and family services review, we will review the State plan requirement that notice and opportunity to be heard is provided to foster parents, preadoptive parents and relative caretakers in permanency hearings and six-month periodic reviews. The prior language stated that we would review to the standard that notice and opportunity be provided in any review or hearing held with respect to the child. The new language conforms to the State plan requirement as implemented by § 1356.21(o).

- We corrected § 1355.34(c)(4)(v), to make it consistent with the regulatory requirements in § 1357.15 regarding training.

- We made an editorial change in § 1355.35(e)(1), to remove the word “subsequent.”

- In § 1355.36(b)(5)(i), we corrected the terminology to clarify that withholding applies when one of the seven outcomes listed in § 1355.34(b)(1) is determined to be out of “substantial conformity.” The prior reference to “substantially achieved “ was inaccurate because that term applies only to the review of cases on-site.

- We corrected the penalty references in § 1355.38. The published rule followed the statutory requirement that an entity must remit title IV–E funds to the Secretary when it is determined to have violated section 471(a)(18) of the Act, but did not specify a procedure. In § 1355.38(b)(1), we added cross-references to paragraphs that specify when and how the entity will be penalized for violating section 471(a)(18) of the Act. Entities that violate section 471(a)(18) of the Act with regard to a person, as determined

by a DHHS investigation, will be penalized according to paragraph (g)(2) of this section. Entities that violate section 471(a)(18) of the Act, as determined by a court finding will be penalized according to paragraph (g)(4) of this section.

- In § 1355.38(b)(4), we clarify that entities, like States, must notify ACF within 30 days of a final court finding of a violation of section 471(a)(18) of the Act.

- We corrected § 1355.38(f) to reflect the new name of the former Independent Living Program. Public Law 106–169 changed the name of the Independent Living Program to the “Chafee Foster Care Independence Program.”

- We included the term “entity” in the last sentence of § 1355.38(g)(1)(i) in order to highlight paragraph (h) of this section as the relevant paragraph for details on how entities must remit funds for violating section 471(a)(18) of the Act.

- In § 1355.38(g)(2), we clarify that an entity must remit the funds paid to it by the State during the quarter in which it is notified by ACF of a section 471(a)(18) violation.

- We corrected § 1355.38(g)(4) to specify that entities must also remit title IV–E funds to the Secretary, when a court finds that the entity has violated section 471(a)(18) of the Act, for the quarter during which the court makes the finding.

- In § 1355.38(h), we added a reference to section 474(d)(2) of the Act to incorporate the statutory enforcement authority.

- We added cross references to paragraphs (g)(2) and (g)(4) in § 1355.38(h)(2) to clarify the distinction between the penalty provisions for entities that are found to have violated section 471(a)(18) of the Act with regard to an individual as a result of an DHHS investigation and as a result of a court finding. The prior language inaccurately required entities to remit funds for the quarter in which they are notified of a violation in both circumstances. In fact, however, when an entity is found to have violated section 471(a)(18) of the Act as a result of a court finding, it is to remit funds for the quarter in which the court finding was made.

- We amended the parenthetical note following § 1355.40 to remove an obsolete date and insert language consistent with the requirements of the Paperwork Reduction Act of 1995.

#### *Corrections to Part 1356*

- We deleted § 1356.20(c), as it has been superseded by the 1994 amendments to the Social Security Act

made by Public Law 104–432. Section 1356.20 applied the withholding of payment provisions in 45 CFR 201.6(e) to AFCARS. However, section 1123A of the Act applies to AFCARS.

- We corrected the parenthetical note following § 1356.20 to include language that is consistent with the Paperwork Reduction Act of 1995, Public Law 104–13.

- We corrected the cross-reference in § 1356.21(b)(1)(i) to accurately reference physical or constructive removals, but not voluntary placements, as the starting point for determining when a judicial determination of reasonable efforts to prevent a child’s removal from the home is necessary for title IV–E purposes. The prior cross-reference might have been misinterpreted as requiring judicial determinations of reasonable efforts to prevent a child’s removal from the home in voluntary placement situations.

- We corrected § 1356.21(b)(2)(ii) to clarify that a State may not claim Federal Financial Participation (FFP) for an otherwise eligible child from the date when it should have obtained a judicial determination with regard to reasonable efforts to finalize a permanency plan until the State actually obtains such a determination.

- We correct the parenthetical note following § 1356.21(g)(5) to insert language consistent with current Paperwork Reduction Act requirements.

- In § 1356.21(i)(1)(i)(A), we added a cross-reference for the regulatory definition of the date a child is considered to have entered foster care.

- In § 1356.21(j), we added the citation for the definition of foster care maintenance payments.

- Prior § 1356.21(k)(1)(i) implied that a relative has the authority to enter into a voluntary placement agreement that leads to a child’s removal from the home for title IV–E purposes. The statute at section 472(f) of the Act, however, limits this authority to parents and guardians. Accordingly, we have corrected the language in this section to conform with the statute.

- In § 1356.22(a)(3), we are adding a cross-reference to § 1356.21(e) pertaining to trial home visits to the voluntary placement agreement requirements.

- In § 1356.50, we have corrected the cross-references in paragraph (c) so that the new appeal procedures outlined in § 1355.39 apply.

- We deleted the parenthetical note following § 1356.60 because the OMB control number cited was no longer valid. The information collection referred to was the quarterly financial report for a State’s expenditures and estimates of title IV–E funds. That

reporting form (ACF–IV–E–1) displays the current OMB control number; thus, it is unnecessary to publish the number in regulation.

- We reorganized § 1356.71(a)(3) for clarity and clarified the timeframe for subsequent title IV–E foster care eligibility reviews in new § 1356.71(a)(3)(ii). While it was intended that all States have a subsequent review at three-year intervals as stated in the preamble discussion on page 4072 of the published rule, we did not expressly address the situation of States that are found to be out of substantial compliance in the primary review. Such States, in accordance with the general rule, must have another primary review within three years of the previous secondary review.

- We have clarified § 1356.71(j)(2) so that, as explained in the preamble at page 4073 of the published rule, administrative costs claimed under title IV–E associated with ineligible cases, will be disallowed.

- We have deleted § 1356.80, which was rendered obsolete by the enactment of Public Law 106–169.

#### *Corrections to Part 1357*

- We deleted the prior note following § 1357.15 because it was obsolete. We have provided the current OMB control number for the child and family services plan and language consistent with the Paperwork Reduction Act.

- We made the same changes regarding the OMB control number for the note following § 1357.16 with regard to the annual progress and services report.

#### *Impact Analysis*

No impact analysis is needed for these technical corrections. The impact of the necessary corrections falls within the analysis of the final rule published in the **Federal Register** on January 25, 2000 (65 FR 4019–4093).

#### **List of Subjects**

##### *45 CFR Part 1355*

Adoption and foster care, child welfare, Grant programs—Social programs.

##### *45 CFR Part 1356*

Adoption and foster care, Grant programs—Social programs.

##### *45 CFR Part 1357*

Child and family services, child welfare, Grant programs—Social programs.

(Catalog of Federal Domestic Assistance Program Numbers 93.658, Foster Care

Maintenance; 93.659, Adoption Assistance; and 93.645, Child Welfare Services—State Grants)

Dated: October 16, 2001.

**Brian P. Burns,**

*Deputy Assistant Secretary for Information Resources and Management.*

For the reasons set forth in the preamble, 45 CFR parts 1355, 1356, and 1357 are amended by making the following technical changes, corrections and amendments:

#### **PART 1355—GENERAL**

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

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

2. Amend § 1355.20(a) by:

a. Removing the definition of *Independent Living Program (ILP)*;

b. Revising the definition of *Child abuse and neglect*;

c. Revising the second sentence of the definition of *State*;

d. Revising the definition of *Statewide assessment*; and

e. Correctly designating paragraph (b) to follow the definition of *Statewide assessment*.

The revisions read as follows:

#### **§ 1355.20 Definitions.**

(a) \* \* \* \* \*

*Child abuse and neglect* means the definition contained in 42 U.S.C. 5106(g)(2).

\* \* \* \* \*

*State* \* \* \* For title IV–E the term “State” means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

\* \* \* \* \*

*Statewide assessment* means the initial phase of a full review of all federally-assisted child and family services programs in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services as described in § 1355.33(b) of this part, for the purpose of determining the State’s substantial conformity with the State plan requirements of titles IV–B and IV–E as listed in § 1355.34 of this part.

\* \* \* \* \*

3. Amend § 1355.30 by revising paragraph (n)(2), removing paragraph (n)(3), and redesignating paragraphs (n)(4) and (n)(5) as paragraphs (n)(3) and (n)(4) respectively to read as follows:

#### **§ 1355.30 Other applicable regulations.**

\* \* \* \* \*

(n) \* \* \*

(2) § 201.6—Withholding of payment; reduction of Federal financial participation in the costs of social services and training. (Applicable only to an unapprovable change in an approved State plan, or the failure of the State to change its approved plan to conform to a new Federal requirement for approval of State plans.)

\* \* \* \* \*

4. Amend the first sentence in § 1355.32(d)(4) to read as follows:

#### **§ 1355.32 Timetable for the reviews.**

\* \* \* \* \*

(d) \* \* \*

(4) If the partial review determines that the State is not in compliance with the applicable State plan requirement, the State must enter into a program improvement plan designed to bring the State into compliance, if the provisions for such a plan are applicable. \* \* \*

5. Amend § 1355.33 by:

a. Revising paragraph (b)(2);

b. Correctly designating the second occurrence of paragraphs (b)(1) and (2) as (b)(5) and (6);

c. Revising the first and third sentences of paragraph (c)(6); and

d. Revising the second sentence of paragraph (d)(2).

The revisions read as follows:

#### **§ 1355.33 Procedures for the review.**

\* \* \* \* \*

(b) \* \* \*

(2) Assess the outcome areas of safety, permanence, and well-being of children and families served by the State agency using data from AFCARS and NCANDS. For the initial review, ACF may approve another data source to substitute for AFCARS, and in all reviews, ACF may approve another data source to substitute for NCANDS. The State must also analyze and explain its performance in meeting the national standards for the statewide data indicators;

\* \* \* \* \*

(c) \* \* \*

(6) The sample of 30–50 cases reviewed on-site will be selected from a randomly drawn oversample of no more than 150 foster care and 150 in-home services cases. \* \* \* The additional cases in the oversample not selected for the on-site review will form the sample of cases to be reviewed, if needed, in order to resolve discrepancies between the statewide assessment and the on-site reviews in accordance with paragraph (d)(2) of this section.

(d) \* \* \*

(2) \* \* \* ACF and the State will determine jointly the number of additional cases to be reviewed, not to

exceed 150 foster care cases or 150 in-home services cases to be selected as specified in paragraph (c)(6) of this section.

\* \* \* \* \*

6. Amend § 1355.34 by revising the first two sentences of paragraph (b)(4) and paragraphs (c)(2)(v) and (c)(4)(v) to read as follows:

#### **§ 1355.34 Criteria for determining substantial conformity.**

\* \* \* \* \*

(b) \* \* \*

(4) The Secretary may, using AFCARS and NCANDS, develop statewide data indicators for each of the specific outcomes described in paragraph (b)(1) of this section for use in determining substantial conformity. The Secretary may add, amend, or suspend any such statewide data indicator(s) when appropriate.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(v) Provide foster parents, preadoptive parents, and relative caregivers of children in foster care with notice of and an opportunity to be heard in permanency hearings and six-month periodic reviews held with respect to the child (sections 422(b)(10)(B)(ii), 475(5)(G) of the Act, and 45 CFR 1356.21(o)).

\* \* \* \* \*

(4) \* \* \*

(v) Provides training for current or prospective foster parents, adoptive parents, and the staff of State-licensed or State-approved child care institutions providing care to foster and adopted children receiving assistance under title IV–E that addresses the skills and knowledge base needed to carry out their duties with regard to caring for foster and adopted children.

\* \* \* \* \*

7. Amend § 1355.35 by revising paragraph (e)(1) to read as follows:

#### **§ 1355.35 Program improvement plans.**

\* \* \* \* \*

(e) \* \* \*

(1) The methods and information used to measure progress must be sufficient to determine when and whether the State is operating in substantial conformity or has reached the negotiated standard with respect to statewide data indicators that failed to meet the national standard for that indicator;

\* \* \* \* \*

8. Amend § 1355.36 by revising paragraph (b)(5)(i) to read as follows:

**§ 1355.36 Withholding Federal funds due to failure to achieve substantial conformity or failure to successfully complete a program improvement plan.**

\* \* \* \* \*

- (b) \* \* \*
(5) \* \* \*

(i) Except as provided for in paragraphs (b)(7) and (b)(8) of this section, an amount equivalent to one percent of the funds described in paragraph (b)(4) of this section for each of the years to which withholding applies will be withheld for each of the seven outcomes listed in § 1355.34(b)(1) of this part that is determined not to be in substantial conformity; and

\* \* \* \* \*

9. Amend § 1355.38 by revising the first two sentences of paragraph (b)(1) and paragraphs (b)(4), (f), (g)(1)(i), (g)(4), (h) introductory text, and (h)(2) to read as follows:

**§ 1355.38 Enforcement of section 471(a)(18) of the Act regarding the removal of barriers to interethnic adoption.**

\* \* \* \* \*

(b)(1) A State or entity found to be in violation of section 471(a)(18) of the Act with respect to a person, as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, will be penalized in accordance with paragraph (g)(2) of this section. A State or entity determined to be in violation of section 471(a)(18) of the Act as a result of a court finding will be penalized in accordance with paragraph (g)(4) of this section.\* \* \*

\* \* \* \* \*

(4) A State or entity found to be in violation of section 471(a)(18) of the Act by a court must notify ACF within 30 days from the date of entry of the final judgement once all appeals have been exhausted, declined, or the appeal period has expired.

\* \* \* \* \*

(f) Funds to be withheld. The term "title IV-E funds" refers to the amount of Federal funds advanced or paid to the State for allowable costs incurred by a State for: foster care maintenance payments, adoption assistance payments, administrative costs, and training costs under title IV-E and includes the State's allotment for the Chafee Foster Care Independence Program under section 477 of the Act.

- (g) \* \* \*
(1) \* \* \*

(i) A determination that a State or entity is in violation of section 471(a)(18) of the Act with respect to a person as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, or:

\* \* \* \* \*

(2) Once ACF notifies a State (in writing) that it has committed a section

471(a)(18) violation with respect to a person, the State's title IV-E funds will be reduced for the fiscal quarter in which the State received written notification and for each succeeding quarter within that fiscal year or until the State completes a corrective action plan and comes into compliance, whichever is earlier. Once ACF notifies an entity (in writing) that it has committed a section 471(a)(18) violation with respect to a person, the entity must remit to the Secretary all title IV-E funds paid to it by the State during the quarter in which the entity is notified of the violation.

\* \* \* \* \*

(4) If, as a result of a court finding, a State or entity is determined to be in violation of section 471(a)(18) of the Act, ACF will assess a penalty without further investigation. Once the State is notified (in writing) of the violation, its title IV-E funds will be reduced for the fiscal quarter in which the court finding was made and for each succeeding quarter within that fiscal year or until the State completes a corrective action plan and comes into compliance, whichever is sooner. Once an entity is notified (in writing) of the violation, the entity must remit to the Secretary all title IV-E funds paid to it by the State during the quarter in which the court finding was made.

\* \* \* \* \*

(h) Determination of the amount of reduction of Federal funds. ACF will determine the reduction in title IV-E funds due to a section 471(a)(18) violation in accordance with section 474(d)(1) and (2) of the Act.

\* \* \* \* \*

(2) Any entity (other than the State agency) which violates section 471(a)(18) of the Act during a fiscal quarter must remit to the Secretary all title IV-E funds paid to it by the State in accordance with the procedures in paragraphs (g)(2) or (g)(4) of this section.

\* \* \* \* \*

**§ 1355.40 [Amended]**

10. Revise the parenthetical note following § 1355.40 to read as follows:

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0267. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

**PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV-E**

11. The authority citation for part 1356 continues to read as follows:

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

12. Amend § 1356.20 by removing paragraph (c), redesignating paragraphs (d) through (f) as paragraphs (c) through (e) respectively, and revising the parenthetical note following the section to read as follows:

**§ 1356.20 State plan document and submission requirements.**

\* \* \* \* \*

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0141. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

- 13. Amend § 1356.21 by:
a. Revising paragraphs (b)(1)(i) and (b)(2)(i);
b. Revising the parenthetical note following paragraph (g)(5);
c. Revising paragraph (i)(1)(i)(A);
d. Revising the second sentence of paragraph (j); and
e. Revising paragraph (k)(1)(i).
The revisions read as follows:

**§ 1356.21 Foster care maintenance payments program implementation requirements.**

\* \* \* \* \*

- (b) \* \* \*
(1) \* \* \*

(i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k)(1)(ii) of this section.

(2) \* \* \*

(ii) If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the schedule prescribed in paragraph (b)(2)(i) of this section, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.

\* \* \* \* \*

- (g) \* \* \*
(5) \* \* \*

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0140. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

\* \* \* \* \*

- (i) \* \* \*
(1) \* \* \*
(i) \* \* \*

(A) Must calculate the 15 out of the most recent 22 month period from the date the child is considered to have entered foster care as defined at section 475(5)(F) of the Act and § 1355.20 of this part;

(j) \* \* \* Said costs must be limited to funds expended on items listed in the definition of foster care maintenance payments in § 1355.20 of this part.

- (k) \* \* \*
(1) \* \* \*

(i) A voluntary placement agreement entered into by a parent or guardian which leads to a physical or constructive removal (i.e., a non-physical or paper removal of custody) of the child from the home; or

\* \* \* \* \*

14. Amend § 1356.22 by revising paragraph (a)(3) to read as follows:

§ 1356.22 Implementation requirements for children voluntarily placed in foster care.

- (a) \* \* \*

(3) 45 CFR 1356.21(e), (f), (g), (h), and (i); and

\* \* \* \* \*

15. Amend § 1356.50 by revising paragraph (c) to read as follows:

§ 1356.50 Withholding of funds for noncompliance with the approved title IV-E State plan.

\* \* \* \* \*

(c) For purposes of this section, the procedures in § 1355.39 of this chapter apply.

16. Remove the parenthetical note following § 1356.60.

17. Amend § 1356.71 by revising paragraph (a)(3) and revising the third sentence of paragraph (j)(2) to read as follows:

§ 1356.71 Federal review of the eligibility of children in foster care and the eligibility of foster care providers in title IV-E programs.

- (a) \* \* \*

(3) The review process begins with a primary review of foster care cases for the title IV-E eligibility requirements.

(i) States in substantial compliance. States determined to be in substantial compliance based on the primary review will be subject to another review in three years.

(ii) States not in substantial compliance. States that are determined not to be in substantial compliance based on the primary review will develop and implement a program improvement plan designed to correct the areas of noncompliance. A secondary review will be conducted after the completion of the program improvement plan. A subsequent primary review will be held three years from the date of the secondary review.

\* \* \* \* \*

- (j) \* \* \*

(2) \* \* \* If both the case ineligibility and dollar error rates exceed 10 percent, the State is not in compliance and an additional disallowance will be determined based on extrapolation from the sample to the universe of claims paid for the duration of the AFCARS reporting period (i.e., all title IV-E funds expended for a case during the

quarter(s) that case is ineligible, including administrative costs). \* \* \*

\* \* \* \* \*

§ 1356.80 [Amended]

18. Remove § 1356.80.

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV-B

19. The authority citation for Part 1357 continues to read as follows:

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq., 42 U.S.C. 130.

20. Add a parenthetical note following § 1357.15 to read as follows:

§ 1357.15 Comprehensive child and family services plan requirements.

\* \* \* \* \*

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0047. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

21. Add a parenthetical note following § 1357.16 to read as follows:

§ 1357.16 Annual progress and services reports.

\* \* \* \* \*

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0047. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

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